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Title 3—

The President

Proclamation 10729 of April 19, 2024

National Park Week, 2024

By the President of the United States of America

A Proclamation

America's natural wonders and historic treasures are the heart and soul of our Nation. From the high plateaus and deep ravines of the Grand Canyon to the hallowed grounds of Gettysburg and the rolling forests of the Great Smoky Mountains, our national parks unite and inspire us, connecting us to something bigger than ourselves. This week, we recommit to protecting and caring for all 429 parks and encourage Americans everywhere to enjoy them.

Protecting our national parks preserves their majestic beauty as well as meaningful pieces of our Nation's history and future. They contain irreplaceable ecosystems that help sustain the air we breathe and the water we drink, and make our Nation more resilient to the threat of climate change. They give families priceless memories of sharing the great outdoors and exploring our past, and create hundreds of thousands of jobs in recreation. Many of them help preserve sites and places that are sacred to Tribal Nations, who have stewarded these lands since time immemorial.

My Administration has pursued the most ambitious land and water conservation agenda in American history—and I am on track to conserve more lands and waters than any other President in history. That work began with setting our first-ever national conservation goal: to protect and conserve at least 30 percent of all our Nation's lands and waters by 2030 by investing in locally led, voluntary conservation and restoration efforts through our ''America the Beautiful'' Initiative. I signed an Executive Order protecting America's forests and harnessing the power of nature to fight climate change while also launching a new National Nature Assessment to help evaluate the status of our lands, waters, and wildlife.

Since I took office, my Administration has conserved over 41 million acres of our Nation's precious lands and waters—from safeguarding the Tongass National Forest in Alaska, the Nation's largest national forest, to restoring protections for the desert buttes of Bears Ears National Monument in Utah. I established five new national monuments, including Baaj Nwaavjo I'tah Kukveni on the edge of the Grand Canyon, a place that is sacred to many Tribal Nations, and the Emmett Till and Mamie Till-Mobley National Monument, which tells the story of the events surrounding Emmett Till's murder and their significance in the civil rights movement. Just last month, I signed an Executive Order to better recognize and integrate the history of women and girls into the parks, monuments, and historic sites that the National Park Service helps protect.

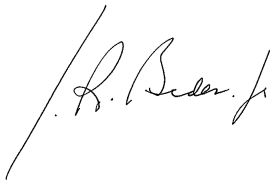
National parks and the complex ecosystems they contain also help make our Nation more resilient to the existential threat of climate change. My Administration has made the biggest investment in conservation and climate action in history, including $700 million in our national parks for increased staff and much-needed maintenance. My Bipartisan Infrastructure Law invests in sustaining our lands and waters with projects to protect salt marshes, remove invasive species from sagebrush ecosystems to reduce wildfire risk, and more. It is helping to build new trails, roads, bridges, and other transportation for our national parks as well, making our parks easier to visit.

It pays for bonuses and training opportunities for over 20,000 wildland firefighters. Meanwhile, we have been working closely with Tribal Nations to recognize the value of their Indigenous Knowledge and expand Tribal co-stewardship of national parks. My recent Budget asks for over $3 billion for the National Park Service itself to upgrade park infrastructure, work with Tribal Nations in stewarding and managing culturally significant lands, support youth programs that can lead to good-paying jobs, and more. Through the Outdoor Recreation Legacy Partnership, the National Park Service is helping to create and renovate parks and outdoor spaces in communities that have been without them for too long.

I encourage everyone to explore America's national parks—and on April 20, entry will be free. Each time my family and I have visited one, we have left feeling inspired by our Nation's natural beauty and humbled by the responsibility that we all share to make sure that it endures. This National Park Week, we recommit to the work of protecting our Nation's natural treasures for the ages.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 20 through April 28, 2024, as National Park Week. I encourage all Americans to find their park, recreate responsibly, and enjoy the benefits that come from spending time in the natural world.

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



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Presidential Documents

Proclamation 10730 of April 19, 2024

National Crime Victims' Rights Week, 2024

By the President of the United States of America

A Proclamation

Each year, millions of Americans become victims of crime and acts of violence. During National Crime Victims' Rights Week, we recommit to pursuing justice for victims and providing them with the support and resources needed to heal from the emotional, psychological, physical, and financial scars of those traumatic experiences. We continue our work to prevent crime before it occurs. Every American deserves to know that they, their families, and their communities are safe and free from violence and crime.

Since I first came to office, my Administration has been working tirelessly with law enforcement, crime victims, and other community leaders across the country to keep Americans safe. Together, we have made historic progress. Last year, the United States had one of the lowest rates of all violent crime in more than 50 years. Murder, rape, aggravated assault, and robbery all dropped sharply, as did burglary, property crime, and theft.

Reducing violence and crime is a top priority for my Administration. We helped cities, counties, and States invest over $15 billion in fighting crime and preventing violence. We made the largest-ever Federal investment in public safety, enabling law enforcement to better serve their communities—helping to keep everyone safe. Our investment also has been used to implement proven crime-prevention strategies like community violence intervention programs that leverage community leaders and formerly incarcerated people to work with young people and those at most risk of violence, intervening before it is too late with culturally competent strategies.

As a United States Senator, I supported the law that established the Crime Victims Fund, which directly compensates victims and finances victim assistance services. As President, I signed a law to replenish and strengthen the fund so that victims can continue to access the resources they need.

My Administration is also supporting survivors of gender-based violence. As a Senator, I wrote the Violence Against Women Act (VAWA), which brought survivors' stories into the forefront of the American consciousness and combatted the scourge of gender-based violence in America. VAWA has helped fund helplines, shelters, and rape crisis centers; offered survivors housing and legal assistance; and trained law enforcement agencies and courts on ways the justice system could better assist survivors of gender-based violence. When we reauthorized VAWA in 2022, we expanded Tribal courts' jurisdiction so that non-Native perpetrators of sexual assault, sex trafficking, stalking, and child abuse can be prosecuted for the crimes they commit on Tribal lands. VAWA newly empowered individuals whose intimate visual images are disclosed without their consent to take perpetrators to court through a Federal civil cause of action. This year, I worked with the Congress to increase VAWA's funding to its highest level in history. Now, more survivors have access to trauma-informed care, including those in the LGBTQI+ community and from rural areas. Additionally, I have spearheaded historic military justice reforms to better protect victims of crime in our military and ensure that prosecutorial decisions in cases of gender-based violence are fully independent from the chain of command.

To address the gun violence epidemic in America, I signed the Bipartisan Safer Communities Act, the most significant gun safety law in nearly 30 years. It helps prevent domestic abusers from purchasing guns, tackles gun trafficking, provides funding for implementation of red flag laws, expands background checks, and strengthens crisis intervention programs and youth mental health programs. I also formed the first-ever White House Office of Gun Violence Prevention and my Administration has taken more executive actions to stop the flow of illegal guns than any other Administration in history. This new office is coordinating the first centralized Federal response to mass shootings and surges in gun violence in order to help victims and communities address the economic, physical, and emotional effects of gun violence.

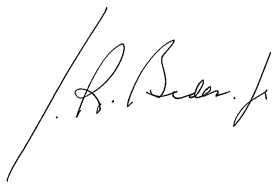
Additionally, my Administration is cracking down on hate-fueled violence. Early on, I signed into law the COVID–19 Hate Crimes Act that includes the Khalid Jabara-Heather Heyer NO HATE Act. These legislative actions help government agencies track and prosecute hate-fueled acts of violence against people from marginalized groups and establish State-run hotlines through which victims can report hate crimes. For the first time in history, we made lynching a Federal hate crime through the Emmett Till Antilynching Act. We also hosted the first-of-its-kind United We Stand Summit—bringing together civic, faith, philanthropic, and business leaders to ensure that hate has no safe harbor in America.

I also signed a historic Executive Order to advance effective and accountable community policing and strengthen trust between law enforcement and the communities they serve. My Administration provided States billions of dollars to purchase body-worn cameras, reduce court backlogs, and support crime victims. We are investing in more crisis responders who are able to de-escalate situations and respond to non-violent crimes. In addition, we are hiring more Federal prosecutors so justice for victims is not delayed, recruiting more United States Marshals to apprehend violent fugitives, and investing in better technology and training to clear court backlogs and solve murders.

This National Crime Victims' Rights Week, as each of us asks, ''How should I help?'' let us recommit to doing all we can to prevent crime and violence, support victims and help them secure the justice and healing they deserve, and make our Nation safer and more secure for all Americans. For more information on the rights of crime victims, visit Crimevictims.gov.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 21 through April 27, 2024, as National Crime Victims' Rights Week. I call upon all Americans to observe this week by participating in events that raise awareness of victims' rights and services and by volunteering to serve and support victims in their time of need.

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



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Presidential Documents

Proclamation 10731 of April 19, 2024

National Volunteer Week, 2024

By the President of the United States of America

A Proclamation

America's volunteers embody the core values that define our Nation: an optimism that is tested yet resolute; a courage that digs deep when we need it most; and an unshakeable faith in one another, our Nation, and the future we can build together. During National Volunteer Week, we celebrate the millions of selfless Americans who keep faith in all of us and give their time, service, and hearts to make sure no one is left behind.

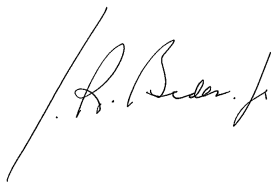
I have often said that America is a good Nation because we are a good people—every day, our country's volunteers prove that to be true. They lead by the power of their example. From helping rebuild homes after devastating disasters to tutoring our youth and helping ensure orderly elections, volunteers strengthen our communities and improve the lives of people across our Nation and around the world. Through these extraordinary acts of service, volunteers also have the opportunity to engage with new communities and try new things—building professional networks and friendships, learning skills, and finding a sense of purpose. Volunteering is truly at the heart of our American spirit: working together to build a future of greater possibilities.

My Administration is proud to have put more volunteering opportunities within reach of Americans. More than one million Americans have served as AmeriCorps volunteers, donating their time to improve communities across the country. This includes the 140,000 older Americans who serve as AmeriCorps' senior volunteers. Together, AmeriCorps volunteers have stepped up in the face of national emergencies—from helping put shots in arms during the COVID–19 pandemic to serving as recovery coaches for those impacted by the opioid crisis and responding to natural disasters. My Administration is proud to have made a historic $1 billion investment in AmeriCorps through our American Rescue Plan so they could expand operations and strengthen their programs. Around the world, our Peace Corps volunteers work alongside the members of thousands of communities to improve people's lives by helping small-scale farmers succeed, teaching small business skills in classrooms, promoting health equity, and so much more.

During National Volunteer Week, we remember that even one act of service—big or small—can make a difference. Volunteers spread hope and, in the process, inspire so many to give back to their communities. I encourage everyone to look for ways to volunteer in their own communities, show up for one another, and step up for those in need. For more information, visit AmeriCorps.gov and peacecorps.gov/volunteer.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 21 through April 27, 2024, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across the country and pledging to make service a part of their daily lives.

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



[FR Doc. 2024–08910
Filed 4–23–24; 8:45 am]
Billing code 3395–F4–P

Presidential Documents

Proclamation 10732 of April 19, 2024

Earth Day, 2024

By the President of the United States of America

A Proclamation

More than 50 years ago today, some 20 million Americans came together across the country to demand that we prioritize our planet's well-being. They came from every walk of life and political background, and were united around a common vision: to protect the Earth and our natural treasures for future generations. Their actions that day ignited an environmental movement and proved that nothing is beyond our capacity if we do it together. Today, we carry on their legacy by building a greener, more sustainable planet and, with it, a healthier, more prosperous Nation.

This work has never been more urgent. Climate change is the existential crisis of our time; no one can deny its impacts and staggering costs anymore. We have seen historic floods from Vermont to Kentucky to California. Droughts and hurricanes are growing more frequent and intense. Wildfires are destroying entire communities and spreading harmful smoky haze for thousands of miles while temperatures keep reaching record highs. Season after season, I have met with families who have lost everything to major storms, wildfires, and other climate disasters, and I have stood with the brave first responders and firefighters who sacrifice so much to protect their neighbors. Deforestation, nature loss, toxic chemicals, and plastic pollution also continue to threaten our air, lands, and waters, endangering our health, other species, and ecosystems. Our actions matter, and together we can protect our planet and our futures.

I am proud that my Administration has made the biggest investment ever to fight climate change. Through the Inflation Reduction Act, we are building a clean energy economy that creates good-paying jobs and investing in research and development here at home. We are building a cleaner, more resilient power grid; expanding solar, wind, nuclear, and geothermal power; and upgrading the transmission system to bring clean electricity to more communities. We are saving families hundreds of dollars per year on their electric bills by providing tax credits to invest in efficient electric heat pumps. We are providing thousands of dollars in tax credits to people who buy new or used electric cars. Additionally, we are supporting farmers and ranchers in the adoption of climate-smart practices like cover crops and rotational grazing to reduce greenhouse gas emissions. Meanwhile, our American Rescue Plan has also helped States and cities become more energy efficient and resilient to extreme weather, including helping people weatherize their homes, restoring wetlands to protect against storm surges and flooding, and opening cooling centers where people can stay safe from extreme heat. We have also made America's biggest investment in infrastructure in generations. As a result, we are expanding our transit and rail systems to reduce traffic and emissions, and we are building a national network of 500,000 electric vehicle charging stations.

When I think about climate change, I think about jobs—the good-paying union jobs that our legislation is creating nationwide in this clean energy revolution. Our historic investments across the clean energy economy are creating good jobs, apprenticeships, and training opportunities for thousands of workers—from manufacturers and electricians to construction workers

and linemen. American workers are installing solar panels, servicing wind turbines, capping old oil wells, manufacturing electric vehicles, and more. We are making sure coal and power plant communities, which have powered our economy for decades, have access to these jobs—we will not leave them behind. At the same time, we launched the American Climate Corps, which will put more than 20,000 young Americans to work restoring our lands and waters, deploying clean energy technologies, and helping communities prepare for and rebuild from extreme weather.

We are also bringing clean air, clean water, and clean energy to those who have historically been left behind. Through our Justice40 Initiative, we set a historic goal to direct 40 percent of the overall benefits of Federal clean energy, clean transit, and other investments that fight climate change to communities that are overburdened by pollution and disadvantaged by underinvestment. We set the strongest-ever pollution standards for cars and trucks, which will reduce carbon emissions by more than 7 billion tons while also slashing emissions of other pollutants. We are also tackling pollution from fossil fuel power plants, which have denied many Americans the clean air and water they deserve. We are replacing every lead pipe in America so that everyone can turn on their faucet and drink clean water. We are working to clean up toxic waste sites and partnering with communities to get dangerous ''forever chemicals'' out of their water supplies.

Today, I am on track to conserve more lands and waters than any President in history—getting us closer to my Administration's historic goal of conserving at least 30 percent of our Nation's lands and waters by 2030. It is a part of our ''America the Beautiful'' Initiative that supports locally led conservation, protection, and restoration through partnerships with Tribal Nations, local communities, and private landowners. So far, I have protected over 41 million acres of our Nation's lands and waters—from establishing national monuments like Baaj Nwaavjo I'tah Kukveni on the outskirts of the Grand Canyon and Camp Hale high in the Colorado Rockies, to strengthening protections for treasures like the Tongass National Forest and Bristol Bay in Alaska. These majestic places unite and inspire us and should be preserved for the ages. To restore and protect the health of our ocean, my Administration is advancing America's first-ever Ocean Climate Action Plan, accelerating offshore wind energy development, and working to designate new national marine sanctuaries in California and the Pacific Remote Islands.

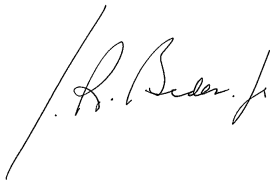
Climate change is a global issue. Certainly no one nation can tackle the climate crisis alone; we have to work together. On my first day in office, I immediately rejoined the Paris Climate Accord, reclaiming American leadership in this critical work. We have rallied the international community to tackle vital climate challenges, including collaborating with over 150 nations to commit to slashing methane emissions and over 140 nations to commit to halting and reversing forest loss by 2030 as we find new ways to boost resilience, strengthen our economies, and sustain our planet. Last year, the United States galvanized other countries to agree for the first time to transition away from the fossil fuels that jeopardize the health of our people and planet. Through our Women in the Sustainable Economy Initiative, we are working to ensure that women around the world have access to good-paying jobs in sectors such as clean energy, fisheries, recycling, forest management, and environmental conservation, that are critical to our future. By pledging a historic $3 billion to the Green Climate Fund to help reduce emissions and boost climate resilience in developing countries, we are catalyzing further global action.

Last fall, we released the Fifth National Climate Assessment, our Government's preeminent report on the impacts, risks, and responses to climate change nationwide and a go-to resource on emerging climate solutions. Together—climate activists and business leaders; farmers, manufacturers, union workers, and Indigenous communities; courageous young people; and anyone concerned about the future we leave for our kids—we can make

the changes needed to protect our planet. America has emerged from every crisis we have ever faced stronger than when we went in. We can do that now for the world. On Earth Day, I urge everyone to do their part in that fight.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 22, 2024, as Earth Day. Today, I encourage all Americans to reflect on the need to protect our precious planet; to heed the call to combat our climate and biodiversity crises while growing the economy; and to keep working for a healthier, safer, more equitable future for all.

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



[FR Doc. 2024–08911
Filed 4–23–24; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register
Vol. 89, No. 80
Wednesday, April 24, 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.

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2023–0172]

Regulatory Guide: Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks

AGENCY: Nuclear Regulatory Commission.

ACTION: Final guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 5.86, ''Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks.'' This RG clarifies reporting and recording of security events and conditions adverse to security under NRC regulations, ''Physical Protection of Plants and Materials.''

DATES: Revision 1 to RG 5.86 is available April 24, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0172 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0172. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 1 to RG 5.86 may be found in ADAMS under Accession No. ML23299A173. The NRC staff's responses to these public comments are available in ADAMS under Accession No. ML23299A189.

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

FOR FURTHER INFORMATION CONTACT: Phil Brochman, Office of Nuclear Security and Incident Response, telephone: 301–287–3691; email: *Phil.Brochman@nrc.gov* and Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301–415–1067; email: *Stanley.Gardocki@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

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

The proposed Revision 1 to RG 5.86 was issued with a temporary identification of Draft Regulatory Guide, (DG)–5081 (ADAMS Accession No. ML23198A185). This revision provides additional guidance on preemption authority, enhanced weapons authority, and firearms background checks. These new and updated requirements are part of the NRC's final rule, entitled ''Enhanced Weapons, Firearms Background Checks, and Security Event Notifications'' (hereafter the Enhanced Weapons rule), that was published in the **Federal Register** on March 14, 2023 (88 FR 15864). These provisions are found in the NRC's regulations under sections 73.15 and 73.17 of title 10 of the *Code of Federal Regulations* (CFR).

Revision 1 to RG 5.86 provides acceptable methods that eligible applicants and licensees (collectively referred to as licensees in this RG) may use to request and use either stand-alone preemption authority or combined preemption authority and enhanced weapons authority and to conduct related firearms background checks. Revision 1 also includes examples, considerations, and guidance to assist licensees and their security personnel in understanding their responsibilities in implementing the provisions of 10 CFR 73.15 and 10 CFR 73.17.

II. Additional Information

The NRC published a notice of availability of DG–5081 in the **Federal Register** on October 30, 2023 (88 FR 74070) for a 45-day public comment period. The public comment period closed on December 14, 2023. The NRC staff made changes to DG–5081 in response to public comments. The NRC staff's responses to these public comments are available in ADAMS under Accession No. ML23299A189. Additionally, the NRC staff made a change to correct an unintentional omission in DG–5081, Section B, Topic ''Firearms Background Checks.''

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Congressional Review Act

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

IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of RG 5.86 Revision 1, does not constitute backfitting as defined in 10 CFR 72.62, ''Backfitting,'' 10 CFR

70.76, ''Backfitting,'' 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087); does not constitute forward fitting as that term is defined and described in MD 8.4; and does not affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Powerplants.''

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: April 18, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

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

[FR Doc. 2024–08722 Filed 4–23–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No.: FAA–2023–2434; Amdt. No. 34–7]

RIN 2120—AL83

Control of Non-Volatile Particulate Matter From Aircraft Engines: Emission Standards and Test Procedures

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This action adopts standards for measuring non-volatile particulate matter (nvPM) exhaust emissions from aircraft engines. With this rulemaking, the FAA implements the nvPM emissions standards adopted by the Environmental Protection Agency (EPA), allowing manufacturers to certificate engines to the new nvPM emissions standards in the United States, and fulfilling the statutory obligations of the FAA under the Clean Air Act.

DATES: This rule is effective May 24, 2024.

The incorporation by reference of a certain publication listed in this rule is approved by the Director of the Federal Register as of May 24, 2024. The incorporation by reference of a certain other publication listed in this rule was approved by the Director of the Federal Register as of December 31, 2012 (77 FR 76842).

Comments on this rule must be received by June 24, 2024.

ADDRESSES: You may send comments identified by docket number 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: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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 *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or visit 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 technical questions concerning this action, contact Ralph Iovinelli, Office of Environment and Energy (AEE–300), Federal Aviation Administration, 800 Independence Ave SW, Washington DC 20591; telephone (202) 267–3566; email *Ralph.Iovinelli@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

The Clean Air Act Amendments of 1970, title 42 of the United States Code, Chapter 85, Subchapter II, part B, Section 7572, grant the Secretary of Transportation the authority to ensure compliance with aviation emission standards adopted by the United States EPA. Further, 49 CFR 1.83(c) delegates to the FAA Administrator the authority to ''[C]arry out the functions vested in the Secretary by part B of title II of the Clean Air Act.''

This rulemaking adopts regulations to enforce the standards adopted by the EPA under its authority in the Clean Air Act (the Act) in 40 CFR part 1031 at the time of aircraft certification to control certain emissions from airplane engines. This rulemaking is issued under 42 U.S.C. 7572 and 49 CFR 1.83(c).

Good Cause Statement

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) requires Federal agencies to publish a notice of proposed rulemaking unless ''. . . the agency for good cause finds (and incorporates the finding in a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

This rule adopts the procedures necessary for the FAA to implement the regulatory emissions limits and test requirements (together referred to as standards) for nvPM emitted by aircraft engines adopted by the EPA under 42 U.S.C. 7571 (sec. 231 of the Act) (87 FR 72312, November 23, 2022) that were effective December 31, 2022. These standards are set forth in 40 CFR part 1031. The FAA is statutorily required (*see* 42 U.S.C. 7572 (sec. 232 of the Act)) to incorporate the EPA's nvPM emissions standards into its regulations (14 CFR part 34) and apply the regulatory requirements that will allow applicants to demonstrate compliance with the emissions standards at the time of engine airworthiness certification. The FAA has no authority to alter the standards (emission limits and test requirements) adopted by the EPA for engine emissions in 40 CFR part 1031.

The emission standards adopted by the EPA in 40 CFR part 1031 represent the results of widely coordinated

international efforts and public notice and comment rulemaking. The FAA, EPA, industry representatives, and foreign certification authorities all participated in a multi-year process that resulted in the nvPM standards adopted by the International Civil Aviation Organization (ICAO), which the EPA thereafter prescribed in 40 CFR part 1031. Because the FAA has no authority to change any of the standards adopted by the EPA, a solicitation of comments will not result in any substantive changes to the standards and would unnecessarily delay their implementation.

Accordingly, the FAA finds that notice and comment on the standards and procedures adopted in this rulemaking is unnecessary because the FAA does not have authority to make changes to the standards or procedures adopted by the EPA and the EPA issued its proposed rule for notice and sought public comment on these standards and test procedures prior to promulgating them on November 23, 2022.

Therefore, FAA finds that good cause exists under 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for comment because such procedures are unnecessary.

Although the FAA has no authority to change any of the emission standards or procedures adopted by the EPA in accordance with the Act, the FAA is requesting comment from interested parties regarding the parts of this rulemaking that adopt the certification regulations in 14 CFR part 34 and implement them at the time of aircraft engine certification. The FAA will review and consider any comments received. Notice of any action the FAA takes as a result of a comment will be published in the **Federal Register**.

Comments Invited

The FAA encourages interested persons to participate in this rulemaking by submitting written comments containing relevant information, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from the adoption of these requirements. While the FAA cannot amend the substance of the rule based on comments, it may take them under advisement for future actions. The FAA will consider comments received on or before the closing date for comments. The FAA will also consider late filed comments to the extent practicable.

See section VII., ''How to Obtain Additional Information,'' for information on how to comment on this final rule and how the FAA will handle comments received. That section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

I. Executive Summary

This rulemaking adopts the regulations necessary for the Federal Aviation Administration (FAA) to implement the Environmental Protection Agency's (EPA) new aircraft engine emissions standards and certification test procedures for non-volatile particulate matter (nvPM) that were effective December 23, 2022.[1] The nvPM standards replace the historical smoke number (SN) requirements for certain larger aircraft engines and create new standards to address $nvPM_{mass}$ and $nvPM_{number}$.

Since the EPA and FAA share the authority for aircraft engine emission standards under the Clean Air Act (the Act),[2] this action modifies 14 CFR part 34 (part 34) by adopting maximum nvPM mass concentration ($nvPM_{MC}$) as the standard that addresses emissions plume invisibility, limits for $nvPM_{MC}$, and limits for nvPM mass ($nvPM_{mass}$) and nvPM number ($nvPM_{num}$), for certain classes of subsonic turbofan engine emissions. As part of this action, the FAA is incorporating by reference the ICAO test procedures needed to measure nvPM at certification and adding the definitions and abbreviations to part 34 that are used in the nvPM certification standards. The new nvPM emissions standards apply to engines having a rated output greater than 26.7 kilonewtons (kN). The FAA is also amending its regulations to reflect the EPA's application of smoke number (SN) standards to all new supersonic engines regardless of size, and by adopting the same clarifying language promulgated by the EPA for the current fuel venting standard.

The FAA is adopting the same nvPM emissions limits as those promulgated by the EPA and ICAO. Engine manufacturers are already complying with ICAO nvPM standards; this rule will not cause manufacturers to incur additional costs to certificate an engine in the United States. Manufacturers would likely incur higher costs if this rule is not implemented, since they would be required to seek certification with a non-U.S. authority to remain competitive globally. More detail on the cost analysis is provided in Section V. A. of this document.

This final rule fulfills FAA's obligation to implement EPA's new emissions standards for U.S. civil aircraft and conforms U.S. regulations with the standards and recommended practices (SARPs) adopted by ICAO.

II. Background

Aircraft engine exhaust is comprised of gaseous compounds, and of particulate matter that contributes to both visible plume exhaust and atmospheric particulate matter. Particulate matter emissions include both volatile and non-volatile components. Non-volatile particulate matter (nvPM) is emitted directly from the engine and is comprised of a small amount of carbon particles (or ''soot'') that did not fully convert to the gaseous form of carbon dioxide (CO_2) during the combustion process. Volatile particulate matter (vPM) condenses and agglomerates in the aircraft exhaust plume or where the gaseous emissions from the plume react with ambient chemicals present in the atmosphere. Since vPM are affected by atmospheric conditions and undergo rapid changes when emitted, they are difficult to predict or measure accurately. This rule does not address vPM, nor are there international standards for aircraft engine vPM emissions.

In 1973, the U.S. first addressed particulate matter emissions by adopting the smoke number (SN) standards of part 34 that focused on visible aircraft exhaust plumes. The SN standard was established to eliminate the visible particulate matter directly emitted by aircraft engines, rendering exhaust plumes invisible to the human eye. SN is determined by measuring the opacity of a filter after soot has been collected on it during the engine emissions certification test required by § 34.23(a).

In 2013, ICAO recognized that measuring nvPM emissions allowed a more comprehensive approach to controlling visible aircraft exhaust plumes by describing the nvPM emissions that are most likely to impact human health and welfare, and by establishing regulatory limits for them. As a result, the ICAO Committee on Aviation Environmental Protection (CAEP) began the first of two standard-setting actions work programs in its tenth triennial cycle (CAEP/10, 2013–2016) to incorporate non-volatile particulate matter emissions measurement and limits in ICAO's

[1] 87 FR 72312—Control of Air Pollution From Aircraft Engines: Emission Standards and Test Procedures.

[2] Clean Air Act mandates under 42 U.S.C. 7571 and 7572—Establishment and Enforcement of Standards. 42 U.S.C. 7571: Establishment of standards (house.gov) and 42 U.S.C. 7572: Enforcement of standards (*house.gov*)

SARPs for turbofan engines greater than 26.7 kilonewtons (kN) of rated thrust.

As part of its first standard setting action, ICAO recognized that the measurement known as maximum nvPM mass concentration ($nvPM_{MC}$) is a more accurate and modern replacement for the optical visibility standard represented by the long-standing SN standard. The visibility limit for $nvPM_{MC}$ was developed by ICAO using both measured SN and $nvPM_{MC}$ data from several modern engines to derive a SN-to-$nvPM_{MC}$ correlation. This correlation was then used to transfer the existing regulatory SN limit into an equivalent $nvPM_{MC}$ limit without increasing stringency. The $nvPM_{MC}$ measurement standard maintains the standard of invisibility of the exhaust plume that was achieved using SN but uses modern testing methodologies. The ICAO/CAEP analysis confirmed that an $nvPM_{MC}$ standard at maximum concentration is equivalent to the existing SN standard in controlling exhaust plume visibility.

In 2017, ICAO adopted the $nvPM_{MC}$ standard for engines with a rated output of greater than 26.7 kN to provide for a more precise measurement of particulate matter exhaust emissions than was possible using the SN standard. The ICAO SARP that included the $nvPM_{MC}$ standard was effective January 1, 2020, officially replacing ICAO's SN standard for civil subsonic aircraft engines that produce more than 26.7 kN of rated thrust.

From 2016 to 2019 (the CAEP/11 triennial cycle), ICAO set standards for two additional parameters for nvPM emissions from affected aircraft engines: nvPM mass ($nvPM_{mass}$) and nvPM number ($nvPM_{num}$) as the second of the two standard-setting actions. These nvPM standards were directed at controlling emissions from larger aircraft engines by addressing nvPM levels that are produced near airports, measuring nvPM [3] during landing and takeoff (LTO) cycles. The ICAO SARP that included the $nvPM_{mass}$ and $nvPM_{num}$ standards was effective January 1, 2023, for the same engines to which the nvPM mass concentration SARP applied.

As a signatory State to the Chicago Convention, the United States must establish standards that have the highest practicable degree of uniformity to the ICAO SARPs, or file a difference. By implementing the standards promulgated by EPA [4] that included ICAO's nvPM emissions standards, this rulemaking is the final action the United States needs to take to conform U.S. nvPM certification standards to the ICAO SARPs. This rule incorporates into 14 CFR part 34 the aircraft engine nvPM emissions standards adopted by the EPA in 40 CFR part 1031 that are required when certificating certain aircraft engines in the United States.

III. Summary of Regulatory Changes

This final rule adopts the emissions levels and test requirements that will allow the FAA to certificate aircraft engines to the nvPM emissions standards developed by ICAO and made effective in the United States by the EPA on December 23, 2022. These new nvPM standards apply to subsonic aircraft turbofan engines having a rated output greater than 26.7 kN.[5] As a practical matter, the new nvPM emission standards allow engine manufacturers to use the same probe and rake collection system used to measure gaseous pollutants to simultaneously measure nvPM emissions for certification purposes. This simultaneous measurement eliminates the separate SN collection and measurement of soot on filter paper, reducing the amount of fuel needed to conduct separate engine tests, and making the component emissions measurements more representative of an engine's output.

The new nvPM emissions standard has three parameters: maximum $nvPM_{MC}$, $nvPM_{mass}$, and $nvPM_{num}$. Maximum $nvPM_{MC}$ ensures the measurement continuity for visible particle emissions that SN established. $nvPM_{mass,}$ measures the total weight (mass) of the non-volatile carbon particles emitted during a time-weighted landing and takeoff (LTO) test cycle. $nvPM_{num}$ is a measurement of the number of non-volatile carbon particles emitted during the same time-weighted LTO test cycle. The addition of $nvPM_{mass}$ and $nvPM_{num}$ represents the first time the component characteristics of non-volatile emissions are being measured. The ability to identify and measure these components will allow regulatory authorities to establish more stringent limits in the future as a means to better protect human health and welfare. For a comprehensive discussion of the health effects of particulate matter on humans, see the preamble to EPA's final rule for nvPM at 87 FR 72319 (Nov 23, 2022).

The nvPM test and measurement procedures require the use of additional equipment and procedures compatible with those currently in use for measuring gaseous pollutants. The FAA is both incorporating by reference the nvPM test and measurement procedures described in ICAO Annex 16, Volume II (as adopted by the EPA), and adding additional test procedures in new §§ 34.71 and 34.73 in order to fully implement the EPA's standards.

In addition to the nvPM standards and methods described, the FAA has included other minor, nonsubstantive changes to the existing emissions regulations as they relate to nvPM to make part 34 consistent with the EPA regulations of 40 CFR part 1031, as described in Section H below. The FAA has also created a centralized incorporation by reference (IBR) section to index the ICAO materials that part 34 incorporates by reference, as described in Section G, below.

IV. Discussion of This Final Rule

This final rule establishes the certification standards for $nvPM_{MC}$, $nvPM_{mass}$, and $nvPM_{num}$ emissions from certain classes of subsonic engines that have a rated output greater than 26.7 kN, and adopts the associated test procedures established by ICAO and adopted by the EPA at 87 FR 72319 (Nov 23, 2022) required for certification in the United States. These regulations replace SN with nvPM as the required emission standard for particulate matter for applicable engines, as adopted by the EPA. None of the changes made in this rule adding nvPM measurements as a requirement for certain engines are meant to affect the SN requirements for engines of any class having a rated output of 26.7 kN or less, for turboprop engines (Class TP), or for supersonic engines (Class TSS). The nvPM requirement is adopted in § 34.25, and the test requirements in a new Subpart H to part 34 comprised of §§ 34.71 and 34.73. This rulemaking adds nvPM characteristics to the requirements for a finding of similarity of a derivative engine in § 34.48. These substantive changes are described as follows.

[3] ICAO SARPs address only aircraft engines large enough to be used on international flights, ICAO leaves the regulation of smaller engines likely to be operated only domestically to the member States.

[4] The EPA final rule that amended 40 CFR part 1031 was published at 87 FR 72312 (November 22, 2022).

[5] In 2003, ICAO found that ''*[T]here was an insignificant impact on the environment from aircraft engines of less than 26.7 kN (6000lb) thrust, and the cost of emissions reduction for these engines was high. There was no evidence to support emissions regulation for these small engines.*'' The 26.7kN applicability for emissions has been the accepted standard in FAA part 34 regulations such as §§ 34.21(d)(1) and 34.23(a)(1).) ICAO has left emissions regulation of engines with lesser output to the discretion of the member States.

A. Addition of Maximum nvPM Mass Concentration Standards for Aircraft Engines—§§ 34.25(a)(1) and 34.25(c)(1)

For Class TF, T3, or T8 engines (regulated classes of large turbofan engines) with a rated output greater than 26.7 kN, this rule replaces the SN requirement with a measurement of a maximum nvPM mass concentration ($nvPM_{MC}$) limit in micrograms per cubic meter [$\mu g/m^3$]. This action maintains the standard that aircraft engine exhaust plumes remain invisible, which was the intent of the ICAO standards adopted in the United States by the EPA. When determining $nvPM_{MC}$, values must be obtained from measurements made across the entire thrust range of an engine. The characteristic level of the measured maximum $nvPM_{MC}$ value may not exceed the regulatory limit established using the formula in § 34.25. The required test procedures and compliance demonstration for nvPM are discussed in section I.

B. Addition of nvPM Mass and nvPM Number Standards for Aircraft Engines—§§ 34.25(a)(2) and 34.25(c)(2)

The standards for $nvPM_{mass}$ and $nvPM_{num}$ apply to all subsonic turbofan and turbojet engines that have a rated output greater than 26.7 kN. The $nvPM_{mass}$ limit is the mass of emissions of nvPM expressed in milligrams (mg) divided by kN of rated thrust, as determined over the LTO cycle. The $nvPM_{num}$ limit is the number of particles divided by kN of rated thrust, as determined over the LTO cycle.

An engine for which an application for an original type certificate is submitted on or after January 1, 2023, is subject to the $nvPM_{mass}$ and $nvPM_{num}$ emission limits of § 34.25. An engine that was type certificated before January 1, 2023, for which an application for type design modification is submitted on or after January 1, 2023, is also subject to the $nvPM_{mass}$ and $nvPM_{num}$ emission limits of § 34.25. This date is consistent with the effective date of the EPA final rule that adopted these standards.

The FAA is incorporating by reference into part 34 the nvPM test and measurement procedures of ICAO Annex 16, Volume II, Appendices 4, 6 and 7. The EPA incorporated these appendices and Appendix 8, which is not relevant to FAA regulations, [6] This incorporation by reference continues the FAA use of these procedures in part 34 to conform to accepted international standards. These requirements are discussed in Section I of this document.

C. Smoke Number Standards in § 34.21(e)

As stated in Section IV, the nvPM standards for engines with a rated output greater than 26.7 kN are a replacement for SN requirements in certain classes of engines. For all other classes of engines, this rule revises § 34.21(e) to group the continuing SN requirements in one paragraph for ease of reference; the SN standards had been scattered in various sections of part 34 as compliance dates were added over time. Consistent with the standards adopted by the EPA and ICAO, the SN requirements are unchanged for engines not subject to nvPM. The applicability of § 34.21(e) was modified as described here to maintain regulatory consistency.

Section 34.21(e)(1)(A) and (B) carry forward the SN requirements for engines of the applicable class and size produced before January 1, 2023. The SN requirements of paragraph(e)(1)(B) were misplaced in § 34.23(a)(1) and referenced as a gaseous emission standard. The requirement was moved to (e)(1)(B) and § 34.23(a)(1) is marked reserved to maintain the integrity of references to the gaseous emissions standards of § 34.23.

Paragraph (e)(1)(C) applies to described engines manufactured after January 1, 2023, and contains a modification to the applicability of the SN requirements to maintain consistency with EPA regulations. Over time, regulatory changes by the U.S. and ICAO resulted in a discrepancy of applicability between the two sets of regulations. If the United States maintained its applicability division, an engine with exactly 26.7 kN of rated output would be subject to the SN standard in other ICAO member States, but subject to nvPM standards in the United States. In its rulemaking, the EPA adopted the ICAO standard for the division between SN and nvPM applicability. The FAA is adopting the same EPA and ICAO applicability descriptors to prevent a situation where an engine of exactly 26.7 kN of rated output would, without reason, be subject to two different standards. Accordingly, the SN standard for engines manufactured on or after January 1, 2023, has been modified to apply to engines having a rated output of 26.7 kN or less. The FAA is not aware of any engines rated at exactly 26.7 kN, so there are no practical consequences to this realignment, and it has no retroactive applicability.

Section 34.21(e)(2) contains the SN requirements for certain classes of engines manufactured on or after January 1, 1984, and before January 1, 2023. Engines of those classes manufactured on or after January 1, 2023, are subject to the new nvPM requirements of § 34.25.

Section 34.21(e)(3) carries forward the SN standard for certain turboprop (class TP) engines manufactured on or after January 1, 1984. This requirement is unchanged.

Section 34.21(e)(4) makes the SN standard appliable to all supersonic (class TSS) engines regardless of rated thrust. Because emissions standards for supersonic engines have not yet been agreed to internationally, these engines were not included by ICAO in the new nvPM standard. The EPA adopted the ICAO standard for SN to apply to all supersonic engines regardless of rated output in 40 CFR part 1031. This regulation carries forward that requirement in part 34.

D. Fuel Venting Description § 34.11

The fuel venting standard in part 34 subpart B prohibits the discharge of fuel to the atmosphere following engine shutdown. Fuel venting emissions are described as fuel discharge during all normal ground and flight operations. Following discussions with the EPA and ICAO, this rule adds the word ''liquid'' before ''fuel'' in the fuel venting requirements to prevent the application of the regulation to small amounts of fuel that vaporize on hot engine parts after shutdown. Small amounts of vaporizing fuel was not the concern of the fuel venting prohibition drafted in the 1960s, which was intended to address the then-common practice of dumping large amounts of liquid fuel on the ground after engine shutdown. This change will not have any effect on the requirements for engine type certification, and is a concept commonly understood in the industry.

E. Adding nvPM Characteristics for Derivative Engine Findings—§ 34.48

Section 34.48 prescribes standards for finding that an engine is a ''derivative engine for emissions purposes'' by assessing the emissions similarity between an engine and its proposed derivative. Status as a derivative engine determines whether the proposed derivative must undergo complete emissions testing. The addition of an nvPM standard requires that the derivative engine considerations also include nvPM characteristics for engines that may be considered as a

[6] Control of Air Pollution From Aircraft Engines: Emission Standards and Test Procedures quotes ''The EPA is incorporating by reference Appendix 8 of Annex 16, Volume II, which outlines procedures used to estimate measurement system losses, which are a required element of the reporting provisions.'' page 72333 in FR Vol 87 No 225, November 23, 2022.

derivative of an engine manufactured after January 1, 2023. These emission similarity ranges for nvPM have been included in § 34.48(b)(1)(v). Section 34.48(b)(3) is added for consistency with EPA regulations. The requirements for nvPM testing of a derivative engine are addressed in § 34.25(b).

F. Addition of Test Procedures and Compliance Demonstration for nvPM—Subpart H, §§ 34.71 and 34.73

In order to implement the nvPM standards adopted by the EPA, FAA regulations must include effective test and measurement procedures in the emissions certification requirements for use by manufacturers. These tests and procedures have been placed in a new subpart H to part 34 as §§ 34.71 and 34.73.

Section 34.71 identifies the nvPM emissions test requirements, such as the minimum number of emissions test runs required, the number of engines of the same type design that may be used to gather test data, and the operational conditions required for emissions certification (§ 34.71 (b), (c), and (g)). The section also includes test fuel specifications (§ 37.71 (d)), a description of the LTO cycle (§ 34.71(h)), and how to prepare and operate an engine for emissions certification (§ 34.71 (f)). Section 34.71(i) states how characteristic values, in conjunction with Table A6–1 of Annex 16 Vol II, Appendix 6, are to be determined.

Many of the test and measurement procedures required for nvPM were identified and described by ICAO. Section 34.71(e)(1) includes an incorporation by reference of ICAO Annex 16, Volume II and its Appendices requiring that those tests and procedures in the applicable Annex appendices be used when measuring and collecting data, including the other requirements of § 34.71.

Section 34.71 (e)(2) instructs the applicant on the procedures necessary when requesting a deviation from any of the test procedures or compliance demonstrations of subpart H. The FAA expects that any such deviation request would be from a test or procedure that was included in the approved test plan, but was discovered to be unworkable before the test is actually conducted. Any deviation proposed must be approved by the FAA before any emissions test is conducted. The FAA will consult with the EPA prior to making a written determination on any requested deviation.

Section 34.71(j) requires that all measurements be included in nvPM calculations. This section also cautions that if an applicant seeks to exclude any measurements, that data must be submitted to the FAA with justification for the exclusion, and that the exclusions must be approved by the FAA before the applicant makes any nvPM calculations.

Section 34.73 requires applicants to perform a compliance demonstration that shows the engine emissions of nvPM are within the applicable limits provided in § 34.25. A demonstration of compliance includes calculations to determine the characteristic nvPM emissions levels for maximum $nvPM_{MC}$, $nvPM_{mass}$, and $nvPM_{num}$ using the measurements collected in accordance with § 34.71. The applicant's compliance demonstration must be conducted within 90% confidence intervals (§ 34.73(d)), use the required rounding in calculations (§ 34.73(a)(3)), and correct for standard temperature and pressure as prescribed in the ICAO Annex 16, Volume II Appendix 1.

Section 34.73(c)(1) directs the applicant to conduct the minimum number of measurements at the thrust settings given in § 34.71(h). However, this section also provides an applicant with the flexibility to make as many additional measurements as it chooses across the entire thrust range of an engine when measuring nvPM. More measurements conducted across the thrust range of an engine result in improved understanding of any trending nvPM behavior. Section 34.71(c)(1) also allows an applicant to choose one of the three equivalent evaluation methods listed in that section when calculating $nvPM_{MC}$. Once nvPM emissions certification testing is complete, § 34.73(e) identifies the required information to be reported to the FAA in the emissions test report. The FAA notes that the EPA has separate reporting requirements that are not part of this rulemaking.

G. Incorporation by Reference (IBR) Section

This final rule includes a new section, § 34.4, that indexes all material incorporated by reference in part 34. The FAA determined that it was appropriate with this final rule to create a centralized IBR section indexing all the materials incorporated by reference in Part 34, for ease of reference and future revision.

The OFR has regulations concerning incorporation by reference (1 CFR part 51). These regulations require that, for a final rule, agencies must discuss in the preamble the way in which the materials that the agency incorporated by reference are reasonably available to interested persons, and how interested parties can obtain the materials. In addition, in accordance with 1 CFR 51.5(b), the agency must summarize the material in the preamble of the final rule.

Because this rule was passed to harmonize United States regulations with international standards, this final rule incorporates Annex 16 to the Convention on International Civil Aviation: Environmental Protection, Volume II—Aircraft Engine Emissions, Fourth Edition, July 2017 (ICAO Annex 16, Volume II). Appendices 1,4, 6, and of the 2017 Annex are referenced in § 34.71 and 34.73, and appendices 4 and 6 of the Annex are referenced in § 34.73. The content of these appendices is described above, in sub-part F.

The 2008, Third Edition, of the Annex is referenced in §§ 34.1 and 34.60. The incorporation by reference of the 2008, Third Edition, of the Annex was approved by the Director of the Federal Register as of December 31, 2012 (77 FR 76842). The new § 34.4 includes the 2008 and 2017 editions of the ICAO Annex as well. All approved material is available for inspection at the FAA. Contact the FAA Office of Rulemaking (ARM), 800 Independence Avenue SW, Washington, DC 20590 (telephone 202–267–9677). Interested parties can also purchase the Annex online from ICAO at: *store.icao.int/en/annexes/annex-16.*

H. Miscellaneous Amendments

This rule includes the following changes to part 34 to improve the clarity of the nonvolatile particulate matter emissions standards, align the provisions described with those of the EPA in 40 CFR part 1031 (formerly 40 CFR part 87), and make other minor changes as described:

(1) Definitions in § 34.1. This rule adds a definition of nvPM, and revises the definition of ''Derivative engine for emissions certification purposes'' for consistency with EPA regulations in 40 CFR part 1031 and ICAO Annex 16 Volume II. This rule revises the definition of ''Reference day condition'' to include a more accurate value for specific humidity that is recognized in the general scientific community and is consistent with the definitions used by the EPA and ICAO. This rule removes the definition of ''Fuel venting'' from § 34.1 in favor of the more specific description of fuel venting in § 34.11, where it applies.

(2) Abbreviations in § 34.2: The following terms are added to the list of abbreviations in § 34.2: nvPM, $nvPM_{MC}$, $nvPM_{mass}$, and $nvPM_{num}$. The abbreviation ''lb'' is corrected to ''lbf.'' Pound force (lbf) is used in part 34 as the English measurement equivalent of a rated output stated in kilonewton

(kN). The abbreviation ''lb'' refers to pounds mass. Three abbreviations used in part 34 were found to be missing from the § 34.2 list and are added in this rule: m for meter, mg for milligram(s), and μg for microgram(s). The amendment includes the full corrected list of abbreviations used in part 34.

(3) Updated references to EPA regulations: The replacement of references to 40 CFR part 87 with updated references to 40 CFR part 1031 in §§ 34.3, 34.6(h) and 34.7(d). In the case of § 34.3, the references were numerous, and some were more specific, such that the FAA chose to set out the text of the entire section, rather than describe individual instances.

(4) Updated references to 14 CFR part 34: The removal of the acronym ''FAR,'' replacing it with an appropriate reference to the regulations of part 34 or 40 CFR part 1031. The term ''FAR'' is not a recognized legal reference to the regulations in Title 14 of the Code of Federal Regulations.

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble presents the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: will result in benefits that justify costs; is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Impact Analysis

The FAA expects minimal cost savings to result from the final rule. The FAA will be implementing emission standards promulgated by the EPA on November 23, 2022, which adopted the standards previously set by ICAO. The EPA standards conform to the ICAO standards and the FAA does not have the authority to change the emissions standards adopted by the EPA. Manufactures are already complying with the ICAO nvPM standards to be able to market their aircraft worldwide, so this final rule will not place any new costs on manufacturers when engines are certificated in the United States.

Manufacturers would likely incur some extra costs if this rule is not implemented, as they would be required to seek certification with a non-U.S. certification authority. The FAA identified five U.S.-based manufacturers that are affected by this final rule. The costs of full emissions certification that includes nvPM emissions in the U.S. is estimated to average $548,733 [7] per engine tested, in 2019 dollars.[8] However, the flat fee for certification in the European Union is 405,310 euros [9] or $453,875 in 2019 currency exchange rate terms.[10] These certification cost estimates do not account for the transportation, staffing, and administrative costs manufacturers would have to incur.[11]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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.

As described in the RIA, the FAA identified five U.S. manufacturers that would be affected by this final rule. Based on the Small Business Administration (SBA) size standard for aircraft engine and engine parts manufacturing (Table 1), all five manufacturers are large businesses. If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b) and based on the foregoing, the head of FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities. The FAA welcomes comments on the basis for this certification.

[7] The $500,000 cost estimate provided to ICAO is in 2013 dollars which calculates to $548,733 in 2019 dollars. The Bureau of Economic Analysis Gross Domestic Price Deflator data was used to convert the cost estimate into 2019 dollars. *https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=11#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIk5JUEFfVGFibGVfTGlzdCIsIjExIl0sWyJDYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJGaXJzdF9ZZWFyIiwiMjAxMCJdLFsiTGFzdF9ZZWFyIiwiMjAyMiJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBIl1dfQ=.*

[8] Industry average cost estimates for engine emissions certification provided to ICAO as part of the nvPM emissions standard updates to Annex 16, Volume II.

[9] *https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1591083932919&uri=CELEX:32019R2153.*

[10] The 2019 annual average exchange rate of 1.1198 was used to calculate the value in dollar terms. 1/0.893 = 1.1198. *https://www.irs.gov/individuals/international-taxpayers/yearly-average-currency-exchange-rates.*

[11] Manufacturers may shop for the best price with other non-U.S. authorities, however, we expect costs savings to be minimal in all situations due to the flat fees, costs of transportation, staffing, and administrative costs associated with the certification.

TABLE 1—SMALL BUSINESS ADMINISTRATION SIZE STANDARD

NAICS code	Description	Size standard
336412	Aircraft Engine and Engine Parts Manufacturing	1,500 Employees.

Source: SBA (2022).[12]
NAICS—North American Industrial Classification System.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this rule and determined that it maintains the same standards for engine emissions certification of nvPM as was adopted by ICAO. As a result, the FAA does not consider this rule as creating an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that this final rule will not result in the expenditure of $177 million or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule since emissions testing is already required as part of aircraft engine certification.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the no differences with these regulations. This regulation is a conforming action to adopt the same standards for nvPM certification that are contained in the ICAO SARPs.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

H. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying 14 CFR regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this final rule sets standards for aircraft engine emissions at the time of certification, no effect on intrastate aviation in Alaska is expected.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[13] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[14] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to 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; or to affect uniquely or significantly their respective Tribes. The FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this final rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that this rule is not a ''significant energy action'' under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges

[12] Small Business Administration (SBA). 2022. Table of Size Standards. Effective October 1, 2022. *https://www.sba.gov/document/support-table-size-standards.*

[13] 65 FR 67249 (Nov. 6, 2000).

[14] FAA Order No. 1210.20 (Jan. 28, 2004), available at *http://www.faa.gov/documentLibrary/media/1210.pdf.*

involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609. The FAA has determined that this action will eliminate differences between U.S. aviation standards and those of other civil aviation authorities by implementing the same aircraft certification requirements for nvPM emissions that are in ICAO Annex 16.

VII. How To Obtain Additional Information

A. Electronic Access and Filing

A copy of this final rule, any background material, and all comments received may be viewed online at *www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov* and the Government Publishing Office's website at *www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 34

Aircraft, Aviation safety, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Federal Aviation Administration is amending chapter I of title 14, Code of Federal Regulations as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.,* 7572; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44714.

Subpart A—General Provisions

■ 2. Amend § 34.1 by:
■ a. Revising and republishing the definition for *Characteristic level;*
■ b. Revising the definition for *Derivative engines for emissions certification purposes;*
■ c. Removing the definition for *Fuel venting emissions;*
■ d. Adding in alphabetical order a definition for *Non-volatile particulate matter;* and
■ e. Revising the definition for *Reference day conditions.*

The revisions, republication, and addition read as follows:

§ 34.1 Definitions.

* * * * *

Characteristic level has the meaning given in Appendix 6 of ICAO Annex 16 as of July 2008 (incorporated by reference, see § 34.4). The characteristic level is a calculated emission level for each pollutant based on a statistical assessment of measured emissions from multiple tests.

* * * * *

Derivative engine for emissions certification purposes means an engine that is similar in design to an engine that has demonstrated compliance with the applicable exhaust emission standards of this part, as determined by the FAA, and has a U.S. type certificate issued in accordance with part 33 of this chapter.

* * * * *

Non-volatile particulate matter (nvPM) means emitted particles that remain at the exhaust nozzle exit plane of a gas turbine engine, and that did not volatilize after being heated to a temperature of at least 350 °C.

* * * * *

Reference day condition means the reference ambient conditions to which the measured smoke, nvPM, and gaseous emissions must be corrected. The reference day conditions are as follows:

(1) Temperature = 15 °C,
(2) Specific humidity = 0.00634 kg H_2O/kg of dry air, and
(3) Pressure = 101.325 kPa

* * * * *

■ 3. Revise § 34.2 to read as follows:

§ 34.2 Abbreviations.

The abbreviations used in this part have the following meanings in both upper and lower case:

CO_2 Carbon dioxide
CO Carbon monoxide
EPA United States Environmental Protection Agency
FAA Federal Aviation Administration, United States Department of Transportation
g Gram(s)
HC Hydrocarbon(s)
HP Horsepower
hr Hour(s)
H_2O Water
kg Kilogram(s)
kJ Kilojoule(s)
kN Kilonewton(s)
kW Kilowatt(s)
lbf Pound force
LTO Landing and takeoff
m Meter(s)
mg Milligram(s)
µg Microgram(s)
min Minute(s)
MJ Megajoule(s)
NO_X Oxides of nitrogen
nvPM Non-volatile particulate matter
$nvPM_{mass}$ Non-volatile particulate matter mass
$nvPM_{MC}$ Non-volatile particulate matter mass concentration
$nvPM_{num}$ Non-volatile particulate matter number
Pa Pascal(s)
rO Rated output
rPR Rated pressure ratio
sec Second(s)
SP Shaft power
SN Smoke number
T Temperature in degrees Kelvin
TIM Time in mode
°C Degrees Celsius
% Percent

■ 4. Revise and republish § 34.3 to read as follows:

§ 34.3 General requirements.

(a) This part provides for the approval or acceptance by the Administrator or the Administrator of the EPA of testing and sampling methods, analytical techniques, and related equipment not identical to those specified in this part. Before either approves or accepts any such alternate, equivalent, or otherwise

nonidentical procedures or equipment, the Administrator or the Administrator of the EPA shall consult with the other in determining whether or not the action requires rulemaking under sections 231 and 232 of the Clean Air Act, as amended, consistent with the responsibilities of the Administrator of the EPA and the Secretary of Transportation under sections 231 and 232 of the Clean Air Act.

(b) Under section 232 of the Act, the Secretary of Transportation issues regulations to ensure compliance with 40 CFR part 1031. This authority has been delegated to the Administrator of the FAA in accordance with 49 CFR 1.47.

(c) This part applies to civil airplanes that are powered by aircraft gas turbine engines of the classes specified herein and that have U.S. standard airworthiness certificates.

(d) Pursuant to the definition of ''aircraft'' in 40 CFR 1031.205, this regulation applies to civil airplanes that are powered by aircraft gas turbine engines of the classes specified herein and that have foreign airworthiness certificates that are equivalent to U.S. standard airworthiness certificates. This regulation applies only to those foreign civil airplanes that, if registered in the United States, would be required by applicable regulations to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane. Pursuant to 40 CFR 1031.5, this regulation does not apply where it would be inconsistent with an obligation assumed by the United States to a foreign country in a treaty, convention, or agreement.

(e) Reference in this regulation to 40 CFR part 1031 refers to title 40 of the Code of Federal Regulations, chapter I—Environmental Protection Agency, part 1031, Control of Air Pollution from Aircraft and Aircraft Engines (40 CFR part 1031).

(f) This part contains regulations that implement compliance with certain standards contained in 40 CFR part 1031. If EPA takes any action, including the issuance of an exemption or issuance of a revised or alternate procedure, test method, or other regulation, the effect of which is to relax or delay the effective date of any provision of 40 CFR part 1031 that is made applicable to an aircraft under this part, the Administrator of FAA will grant a general administrative waiver of the more stringent requirements until this part is amended to reflect the requirements relaxed by EPA.

(g) Unless otherwise stated, all terminology and abbreviations in this part that are defined in 40 CFR part 1031 have the meaning specified in that part, and all terms in 40 CFR part 1031 that are not defined in that part but that are used in this part have the meaning given them in the Clean Air Act, Public Law 91–604, as amended.

(h) All interpretations of 40 CFR part 1031 that are promulgated by the EPA also apply to this part.

(i) If the EPA, under 40 CFR part 1031, approves or accepts any testing and sampling procedures or methods, analytical techniques, or related equipment not identical to those specified in that part, this part requires an applicant to show that such alternate, equivalent, or otherwise non-identical procedures have been complied with, and that such alternate equipment was used to show compliance, unless the applicant elects to comply with those procedures, methods, techniques, and equipment specified in 40 CFR part 1031.

(j) If the EPA, under 40 CFR 1031, prescribes special test procedures for any aircraft or aircraft engine that is not susceptible to satisfactory testing using the procedures in 40 CFR part 1031, the applicant must demonstrate to the FAA Administrator that they are in compliance with those special test procedures.

(k) Wherever 40 CFR part 1031 requires agreement, acceptance, or approval by the Administrator of the EPA, this part requires a showing that such agreement or approval has been obtained.

(l) Pursuant to 42 U.S.C. 7573, no state or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless that standard is identical to a standard made applicable to the aircraft by the terms of this part.

(m) If EPA, by regulation or exemption, relaxes a provision of 40 CFR part 1031 that is implemented in this part, no state or political subdivision thereof may adopt or attempt to enforce the terms of this part that are superseded by the relaxed requirement.

(n) If any provision of this part is rendered inapplicable to a foreign aircraft as provided in 40 CFR 1031.5 (international agreements), and paragraph (d) of this section, that provision may not be adopted or enforced against that foreign aircraft by a state or political subdivision thereof.

(o) For exhaust emissions requirements of this part that apply beginning February 1, 1974, January 1, 1976, January 1, 1978, January 1, 1984, and August 9, 1985, continued compliance with those requirements is shown for engines for which the type design has been shown to meet those requirements, if the engine is maintained in accordance with applicable maintenance requirements of 14 CFR chapter I. All methods of demonstrating compliance and all model designations previously found acceptable to the Administrator shall be deemed to continue to be an acceptable demonstration of compliance with the specific standards for which they were approved.

(p) Each applicant must allow the Administrator to make, or witness, any test necessary to determine compliance with the applicable provisions of this part.

■ 5. Amend Subpart A by adding § 34.4 to read as follows:

§ 34.4 Incorporation by Reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51). All approved material is available for inspection at the FAA and at the National Archives and Records Administration (NARA). Contact the FAA Office of Rulemaking (ARM), 800 Independence Avenue SW, Washington, DC 20590 (telephone 202–267–9677) 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.*

(a) The material may be obtained from the following source: International Civil Aviation Organization (ICAO): Document Sales Unit, 999 University Street, Montreal, Quebec H3C 5H7, Canada, phone + 1 514–954–8022, or *www.icao.int.*

(1) Annex 16 to the Convention on International Civil Aviation: Environmental Protection, Volume II—Aircraft Engine Emissions, Third Edition, July 2008 (ICAO Annex 16); in §§ 34.1 and 34.60.

(2) Annex 16 to the Convention on International Civil Aviation: Environmental Protection, Volume II—Aircraft Engine Emissions, Fourth Edition, July 2017 (ICAO Annex 16, Volume II), in §§ 34.71 and 34.73.

(b) [Reserved]

■ 6. Amend § 34.6 by revising paragraph (b) to read as follows:

§ 34.6 Aircraft safety.

* * * * *

(b) Consistent with 40 CFR part 1031, if the FAA Administrator determines that any emission control regulation in this part cannot be safely applied to an aircraft, that provision may not be adopted or enforced against that aircraft

by any state or political subdivision thereof.

* * * * *

■ 7. Amend § 34.7 by revising paragraph (d) to read as follows:

§ 34.7 Exemptions.

* * * * *

(d) *Applicants seeking exemption from other emissions standards of this part and 40 CFR 1031.15.* Applicants must request exemption from both the FAA and the EPA, even where the underlying regulatory requirements are the same. The FAA and EPA will jointly consider such exemption requests, and will assure consistency in the respective agency determinations.

* * * * *

■ 8. Amend § 34.11 by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 34.11 Standard for fuel venting emissions.

(a) No liquid fuel venting emissions shall be discharged into the atmosphere from any new or in-use aircraft gas turbine engine subject to the subpart. This paragraph is directed at the elimination of intentional discharge to the atmosphere of fuel drained from fuel nozzle manifolds after engines are shut down and does not apply to normal fuel seepage from shaft seals, joints, and fittings.

* * * * *

(c) As applied to an airframe or an engine, any manufacturer or operator may show compliance with the liquid fuel venting and emissions requirements of this section that were effective beginning February 1, 1974 or January 1, 1975, by any means that prevents the intentional discharge of fuel from fuel nozzle manifolds after the engines are shut down. Acceptable means of compliance include one of the following:

* * * * *

■ 9. Amend § 34.21 by revising paragraph (e) to read as follows:

§ 34.21 Standards for exhaust emissions.

* * * * *

(e) Smoke exhaust emissions from each gas turbine engine shall not exceed:

(1)(A) For Class TF of rated output less than 26.7 kN (6,000 lbf) manufactured on or after August 9, 1985, and before July 18, 2012:

$SN = 83.6(rO)^{-0.274}$ (rO is in kN) not to exceed a maximum of SN = 50.

(B) For Classes TF, T3, and T8 of rated output less than 26.7 kN (6,000 lbf) manufactured on or after July 18, 2012, and before January 1, 2023:

$SN = 83.6(rO)^{-0.274}$ or 50.0, whichever is smaller.

(C) For Classes TF, T3, and T8 of rated output of 26.7 kN (6,000 lbf) or less manufactured on or after January 1, 2023:

$SN = 83.6(rO)^{-0.274}$ or 50.0, whichever is smaller.

(2) For Classes T3, T8, TSS, and TF of rated output greater than or equal to-26.7 kN (6,000 lbf) manufactured on or after January 1, 1984, and before January 1, 2023:

$SN = 83.6(rO)^{-0.274}$ (rO is in kN) not to exceed a maximum of SN = 50.

(3) For Class TP of rated output equal to or greater than 1,000 kW manufactured on or after January 1, 1984:

$SN = 187(rO)^{-0.168}$ (rO is in kW).

(4) For Class TSS manufactured on or after January 1, 2023:

$SN = 83.6(rO)^{-0.274}$ (rO is in kN) not to exceed a maximum of SN = 50.

* * * * *

§ 34.23 [Amended]

■ 10. Amend § 34.23 by removing and reserving paragraph (a)(1).

■ 11. Amend Subpart C by adding § 34.25 to read as follows:

§ 34.25 Non-volatile particulate emissions standards (nvPM).

The standards of this section apply to an aircraft engine of Class TF, T3, or T8 with a rated output greater than 26.7 kN that is manufactured after January 1, 2023. Where a maximum $nvPM_{MC}$ standard is expressed as a formula, calculate and round the standard to the nearest 1.0 μg/m^3. Where an $nvPM_{mass}$ standard is expressed as a formula, calculate and round the standard to three significant figures or to the nearest 0.1 mg/kN. Where an $nvPM_{num}$ standard is expressed as a formula, calculate and round the standard to three significant figures. Engines comply with an applicable standard if the test results show that the engine type certificate family's characteristic level does not exceed the numerical level of the nvPM standard when tested as described in subpart H of this part.

(a) Except as provided in paragraph (b) or (c) of this section;

(1) The characteristic level for the maximum $nvPM_{MC}$ expressed in units of μg/m^3 must not exceed the following:

$$nvPM_{MC} = 10^{(3+2.9rO^{-0.274})}$$

and

(2) The characteristic level for nvPM mass expressed in [mg/kN] and for nvPM number expressed in [particles/kN] must not exceed the following:

TABLE 1 TO PARAGRAPH (a)(2)

Class	Rated output (rO) (kN)	$nvPM_{mass}$ (mg/kN)	$nvPM_{num}$ (particles/kN)
TF, T3, T8	26.7 < rO ≤ 200	4646.9 − 21.497 (rO)	$2.669 \times 10^{16} - 1.126 \times 10^{14}$ (rO).
	rO > 200	347.5	4.170×10^{15}.

(b) For a change in type design by the type design holder, when the application for an amended type certificate is filed after January 1, 2023:

(1) If the engine qualifies as a derivative engine in accordance with § 34.48 of this part, no testing is required for the engine to use the same nvPM certificated parameters ($nvPM_{mass}$, $nvPM_{num}$, and maximum $nvPM_{MC}$) as the engine it is derived from; or

(2) If the engine does not qualify as a derivative engine in accordance with § 34.48 of this part, the applicant must demonstrate compliance with each requirement in paragraph (a) of this section.

(c) For issuance of an original type certificate when an application for type certification is filed after January 1, 2023, the applicant must demonstrate that the engine does not exceed:

(1) For maximum $nvPM_{MC}$: as prescribed in paragraph (a)(1) of this section; and

(2) For the characteristic level for $nvPM_{mass}$ expressed in units of [mg/kN], and for $nvPM_{num}$ expressed in units of [particles/kN], the following:

TABLE 2 TO PARAGRAPH (c)(2)

Class	Rated output (rO) (kN)	$nvPM_{mass}$ (mg/kN)	$nvPM_{num}$ (particles/kN)
TF, T3, T8	$26.7 < rO \leq 150$	$1251.1 - 6.914$ (rO)	$1.490 \times 10^{16} - 8.080 \times 10^{13}$ (rO).
	$rO > 150$	214.0	2.780×10^{15}.

■ 12. Amend § 34.48 by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 34.48 Derivative engines for emissions certification purposes.

(a) *General.* A type certificate holder may request from the FAA a determination that an engine configuration is considered a derivative engine for emissions certification purposes (all gaseous emissions and either nvPM or smoke number as applicable). To be considered a derivative engine for emissions certification purposes under this part, the configuration must have been derived from the original engine that was certificated to the requirements of part 33 of this chapter and one of the following:

* * * * *

(b) *Emission similarity* (1) The type certificate holder must demonstrate that the proposed derivative engine model's emissions meet the applicable standards and differ from the original model's emission rates within the following ranges and values:

(i) ±3.0 g/kN for NO_X.

(ii) ±1.0 g/kN for HC.

(iii) ±5.0 g/kN for CO.

(iv) ±2.0 SN for smoke (where applicable).

(v) The following values apply for maximum $nvPM_{MC}$, $nvPM_{mass}$, and $nvPM_{num}$ (where applicable):

(A) maximum $nvPM_{MC}$:

(*1*) ±200 μg/m3 if the characteristic level of maximum $nvPM_{MC}$ is below 1,000 $\mu g/m^3$; or

(*2*) ±20% of the characteristic level if the characteristic level for maximum $nvPM_{MC}$ is at or above 1,000 $\mu g/m^3$.

(B) $nvPM_{mass}$:

(*1*) 80 mg/kN if the characteristic level for $nvPM_{mass}$ emissions is below 400 mg/kN; or

(*2*) ±20% of the characteristic level if the characteristic level for $nvPM_{mass}$ emissions is greater than or equal to 400 mg/kN.

(C) $nvPM_{num}$:

(*1*) 4×10^{14} particles/kN if the characteristic level for $nvPM_{num}$ emissions is below 2×10^{15} particles/kN; or

(*2*) ±20% of the characteristic level if the characteristic level for $nvPM_{num}$ emissions is greater than or equal to 2×10^{15} particles/kN.

(2) If the characteristic level of the original certificated engine model (or any other sub-models within the emission type certificate family tested for certification) before modification is at or above 95% of the applicable standard for any pollutant, an applicant must measure the proposed derivative engine model's emissions for all pollutants to demonstrate that the derivative engine's resulting characteristic levels will not exceed the applicable emission standards. If the characteristic levels of the originally certificated engine model (and all other sub-models within the emission type certificate family tested for certification) are below 95% of the applicable standard for each pollutant, the applicant may use engineering analysis consistent with good engineering judgment to demonstrate that the derivative engine will not exceed the applicable emission standards. The engineering analysis must address all modifications from the original engine, including those approved for previous derivative engines.

(3) In unusual circumstances and consistent with good engineering judgement, the FAA may adjust the ranges specified in paragraph (b)(1) of this section to evaluate a proposed derivative engine.

* * * * *

■ 13. Amend § 34.60 by revising paragraph (h) to read as follows:

§ 34.60 Introduction.

* * * * *

(h) The system and procedure for sampling and measurement of gaseous emissions shall be as specified by in Appendices 2, 3, 4, 5 and 6 to the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Third Edition, July 2008 (incorporated by reference, see § 34.4).

■ 14. Add subpart H to read as follows:

Subpart H—Test Procedures and Compliance Demonstration for Non-Volatile Particulate Matter Emissions

34.71 Non-Volatile Particulate Matter (nvPM) Test Procedures.

34.73 Demonstration of compliance for nvPM emissions.

Subpart H—Test Procedures and Compliance Demonstration for Non-Volatile Particulate Matter Emissions

§ 34.71 Non-volatile particulate matter (nvPM) test procedures.

For each Class TF, T3, or T8 engine manufactured after January 1, 2023, that has a rated output greater than 26.7 kN, the test procedures for measuring each required nvPM parameter are as follows:

(a) Measure the emissions of all nvPM parameters required in this part, as applicable.

(b) Collect data from at least three engine tests, with each test conducted at the reference LTO time/thrust combinations shown in paragraph (h) of this section.

(c) For the engines referenced in paragraph (b) of this section, all emissions certification tests may be conducted on one or more engines of the same type design.

(d) Use a test fuel that meets the specifications described in Appendix 4 of ICAO Annex 16, Volume II (incorporated by reference, see § 34.4). The test fuel must not have any additive whose purpose is to suppress nvPM emissions.

(e) (1) When conducting test measurements in accordance with paragraphs (a) through (c) of this section, use the equipment and procedures specified in Appendix 1, Appendix 4, Appendix 6, and Appendix 7 of ICAO Annex 16, Volume II (incorporated by reference, see § 34.4), when demonstrating whether an engine meets the applicable nvPM limit specified in § 34.25 of this part.

(2) An applicant that seeks to use a procedure or equipment that differs from any specified in this part must request FAA approval in writing with supporting justification before the alternative procedure or equipment may be used to demonstrate compliance. The FAA will consult with the EPA on any such request. The FAA may approve the requested alternative for measuring nvPM, including testing and sampling methods, analytical techniques, and equipment specifications. Each request must meet one of the following conditions:

(i) The engine cannot be tested using a specified procedure; or

(ii) The alternative procedure is shown to be equivalent to, or more accurate or precise than, the specified procedure.

(f) Any engine accessory included in a type design that may reasonably be expected to influence either nvPM emissions or measurements must be installed on the engine before testing. The test engine must not extract shaft power or bleed service air to provide power to auxiliary gearbox-mounted components necessary to drive aircraft systems;

(g) For each percentage of rated output thrust level prescribed in paragraph (h) of this section, a test engine must reach and maintain a steady operating condition before any nvPM emission measurement is made;

(h) The following landing and takeoff (LTO) cycles apply for nvPM emissions testing and for calculating weighted LTO values:

TABLE 1 TO PARAGRAPH (h)

Mode	Class TF, T3, T8	
	TIM (min)	% of rO
Taxi/idle	26.0	7
Takeoff	0.7	100
Climbout	2.2	85
Descent	NA	NA
Approach	4.0	30

(i) An engine complies with an applicable limit if the test results show that the engine type certificate family's characteristic level does not exceed any limit for maximum $nvPM_{MC}$, $nvPM_{num}$, and $nvPM_{mass}$ described in § 34.25.

(j) All measurements collected during engine tests required in paragraph (b) of this section must be used in the calculation of nvPM. Before any calculations are made, the FAA must approve the exclusion of any measurements that the applicant seeks to exclude, including any justification for such exclusions.

(k) The system and procedure for sampling and measurement of gaseous emissions shall be as specified by Appendices 1, 4, 6, and 7 of ICAO Annex 16, Volume II (incorporated by reference, see § 34.4).

§ 34.73 Demonstration of compliance for nvPM emissions.

(a) Each compliance demonstration by an applicant requires:

(1) Establishing a mean value from tests conducted on one or more engines;

(2) Calculating a ''characteristic level'' by applying a set of statistical factors that take into account the number of engines tested in accordance with § 34.71(b) of this part; and

(3) Rounding each characteristic level to the same number of decimal places as the corresponding emission limit.

(b) In demonstrating compliance with this subpart, an applicant must use the nvPM measurements collected in accordance with § 34.71 as follows:

(1) An engine complies with an applicable standard when the engine type certificate family's characteristic level does not exceed any nvPM limit described in § 34.25 of this part; and

(2) A compliance demonstration consists of:

(i) Determining the maximum $nvPM_{MC}$, and the mean value for $nvPM_{mass}$ and $nvPM_{num}$ from the data collected in accordance with paragraph § 34.71(f) of this part;

(ii) Correcting each data point to standard temperature and pressure conditions;

(iii) Applying the appropriate statistical factor shown in Table 6–1 of Appendix 6 of ICAO Annex 16, Volume II (incorporated by reference, see § 34.4) to account for the number of engines tested; and

(iv) Rounding each characteristic level to the same number of decimal places as the corresponding nvPM limit in § 34.25 of this part.

(c) (1) In determining maximum $nvPM_{MC}$, an applicant must use one of the following evaluation methods for all engines measured in accordance with § 34.71(c) of this par and using the thrust settings given in § 34.71(h) of this part. An applicant may choose to measure additional thrust settings; while there is no restriction on the number of thrust settings measured, the same thrust settings must be used on each engine tested. A dataset consists of $nvPM_{MC}$ measurements made at each thrust setting across the thrust range chosen by the applicant for each engine. Plot all $nvPM_{MC}$ measurements versus thrust setting.

(i) Method 1—

(A) Average the individual data points measured at each thrust setting to develop one dataset of nvPM mass concentration for each engine tested, creating an average dataset for each engine; and

(B) Use the averages generated in paragraph (c)(1) of this section to develop a single curve fit to determine the overall maximum $nvPM_{MC}$ value;

(ii) Method 2—

(A) Measure individual data points of $nvPM_{MC}$ versus thrust. Using all datasets generated for each engine physically tested, develop a single, separate curve fit;

(B) Determine the maximum $nvPM_{MC}$ from each engine curve fit resulting from paragraph (c)(1) of this section; and

(C) If more than one engine is physically tested, average the $nvPM_{MC}$ values from paragraph (c)(2) of this section to determine the overall maximum $nvPM_{MC}$ value for the model tested; or

(iii) Method 3—

(A) Develop a curve fit of $nvPM_{MC}$ versus thrust for each test conducted on each engine physically tested;

(B) From each curve fit developed in paragraph (c)(1) of this section, use the resultant curve fit equation to solve for each maximum;

(C) Average the maximum values for each engine physically tested; and

(D) Average the maximum values determined in paragraph (c)(1)(iii)(C) of this section to determine the overall average maximum $nvPM_{MC}$ value.

(2) Using the data measured in § 34.71(b) of this part, determine the nvPM characteristic levels for $nvPM_{num}$ and $nvPM_{mass}$ as follows:

(i) Average all $nvPM_{num}$ and $nvPM_{mass}$ measurements in units of number of particles per kN or mg per kN, as applicable, from each emissions test at each percentage of rated output thrust setting;

(ii) Multiply the averaged measurement from paragraph (a)(2)(i) of this section by the appropriate time in mode (TIM) as shown in § 34.71(h);

(iii) Sum the products from paragraph (a)(2)(ii) of this section to determine the LTO values for $nvPM_{num}$ and $nvPM_{mass}$; and

(iv) Divide the result of paragraph (a)(2)(iii) of this section by the characteristic level factor, shown in Table A6–1 of Appendix 6 of ICAO Annex 16, Volume II (incorporated by reference, see § 34.4), for the number of engines physically tested to determine the $nvPM_{mass}$ and $nvPM_{num}$ characteristic values.

(d) The data used to determine the regressed curves must meet a 90% confidence interval, CI_{90}, limit of ±1.5% of each nvPM limit specified in § 34.25 of this part. If a certification test fails to meet the CI_{90} limit, the engine type may still comply with the requirements. Failure may be caused by excessive data scatter, too few data points, or erroneous data used to regress an accurate curve. Without deleting or removing any prior measurement data, additional data acquired from further tests may improve the CI_{90} by adding to the sample population.

(e) The following information must be reported to the FAA substantiating

compliance with nvPM limits of § 34.25 of this part:

(1) The values of nvPM emissions measured and computed in accordance with the procedures and calculated as required by this subpart in § 34.71 of this part and paragraphs (a) through (d) of this section;

(2) For each engine tested:

(i) Engine model, series, and serial number;

(ii) Rated thrust (kN);

(iii) Overall pressure ratio;

(iv) The methods of data acquisition; and

(v) The method of data analysis chosen by the applicant under paragraphs (a) through (d) of this section.

(3) Demonstration that the fuel used for each test is in compliance with the fuel specification listed in Appendix 4 of ICAO Annex 16, Volume II (incorporated by reference, see § 34.4). For the fuel used for nvPM emissions certification, include the following fuel characteristics:

(i) Hydrogen/carbon ratio;

(ii) Net heat of combustion (MJ/kg);

(iii) Hydrogen content (mass per cent);

(iv) Total aromatics content (volume per cent);

(v) Naphthalene content (volume per cent); and

(vi) Sulfur content (ppm by mass).

(4) For each engine tested for certification purposes, the following values measured and computed in accordance with the procedures of § 34.71 of this part:

(i) Fuel flow (kg/s) at each thrust setting of the LTO cycle;

(ii) nvPM EI_{mass} (mg/kg of fuel) at each thrust setting of the LTO cycle;

(iii) nvPM mass emission rate [nvPM $EI_{mass} \times$ fuel flow] in mg/s;

(iv) nvPM EI_{num} (particles/kg of fuel) at each thrust setting of the LTO cycle;

(v) nvPM number emission rate [nvPM $EI_{num} \times$ fuel flow] in particles/s;

(vi) Total gross emissions of nvPM mass measured over the LTO cycle in mg;

(vii) Total gross emissions of nvPM number measured over the LTO cycle in particles;

(viii) LTO $nvPM_{mass}$/thrust in mg/kN;

(ix) LTO $nvPM_{num}$/thrust in particles/kN; and

(x) Maximum $nvPM_{MC}$ in $\mu g/m^3$; and

(5) For each engine tested for certification purposes, the characteristic levels for the maximum $nvPM_{MC}$, the LTO $nvPM_{mass}$/thrust, and the LTO $nvPM_{num}$/thrust.

Issued under authority provided in 42 U.S.C 4321 *et seq.,* 7572, 49 U.S.C. 106(f), 40113, 44701–44702, 44703, and 44704, in Washington, DC.

Michael G. Whitaker,

Administrator.

[FR Doc. 2024–08453 Filed 4–23–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0317]

RIN 1625–AA00

Safety Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the San Diego Bay. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards during the XPONENTIAL 2024 demonstration. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector San Diego.

DATES: This rule is effective from 8a.m. on April 22, 2024, to 1 p.m. on April 25, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0317 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 Shelley Turner, Waterways Management Sector San Diego, U.S. Coast Guard; telephone 619–278–7261, email *Shelley.E.Turner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory 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.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it impracticable. The Coast Guard did not receive adequate notice to solicit comments provide prior notice on the need for the safety zone. We must forgo notice and comment to provide safety to protect personnel, vessels, and the marine environment from potential hazards during the demonstration.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the Coast Guard must establish this safety zone by April 22, 2024 to protect the public and property in the area.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector San Diego (COTP) has determined that potential hazards associated with the XPONENTIAL 2024 demonstration from April 22, 2024, to April 25, 2024, will be a safety concern for anyone within a 100-yard distance from the proposed zone. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the demonstration.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. on April 22, 2024, to 1 p.m. on April 25, 2024. The safety zone will cover all navigable waters within 100 yards of the following coordinates; 32°42′16.81″ N 117°09′58.72″ W, 32°42′10.57″ N 117°10′04.98″ W, 32°41′57.10″ N 117°09′46.17″ W, 32°42′08.28″ N 117°09′33.50″ W, 32°42′14.00″ N 117°09′44.63″ W, 32°42′09.58″ N 117°09′49.26″ W, 32°42′16.81″ N 117°09′58.72″ W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the XPONENTIAL 2024 demonstration is being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of the San Diego Bay will be of very limited duration and is necessary for safety of life to participants in the event. Moreover, the Coast Guard will issue a Safety Marine Information Broadcast over Channel 22A.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a 100 yard perimeter around the coordinates during the duration set forth in this temporary final rule. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–130 to read as follows:

§ 165.T11–130 Safety Zone; San Diego Bay, San Diego, California.

(a) *Location.* The following area is a safety zone: all water surface to the bottom encompassing a 100-yard perimeter around the following coordinates; 32°42′6.81″ N 117°09′58.72″ W, 32°42′ 0.57″ N 117°10′04.98″ W, 32°41′57.10″ N

117°09′46.17″ W, 32°42′08.28″ N
117°09′33.50″ W, 32°42′14.00″ N
117°09′44.63″ W, 32°42′09.58″ N
117°09′49.26″ W, 32°42′16.81″ N
117°09′58.72″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM Channel 21A or by telephone at 619–278–7033. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8 a.m. on April 22, 2024, to 1 p.m. on April 25, 2024.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2024–08763 Filed 4–19–24; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240314–0080; RTID 0648–XD892]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; 2024 Closure of the Northern Gulf of Maine Scallop Management Area to the Limited Access General Category Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Northern Gulf of Maine (NGOM) Scallop Management Area for the remainder of the 2024 fishing year for Limited Access General Category vessels. Regulations require this action once NMFS projects that 100 percent of the Northern Gulf of Maine Set-Aside will be harvested. This action is intended to prevent the overharvest of the 2024 Northern Gulf of Maine Set-Aside.

DATES: Effective 0001 hour local time, April 20, 2024, through March 31, 2025.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, (978) 281–9233.

SUPPLEMENTARY INFORMATION: The regulations governing fishing activity in the NGOM Scallop Management Area are located in 50 CFR 648.54 and 648.62. These regulations authorize vessels issued a valid Federal scallop permit to fish in the NGOM Scallop Management Area under specific conditions, including the NGOM Set-Aside for the 2024 fishing year, and a State Waters Exemption Program for the State of Maine and Commonwealth of Massachusetts. Section 648.62(b)(2) requires the NGOM Scallop Management Area to be closed to scallop vessels issued Federal Limited Access General Category (LAGC) scallop permits, except as provided below, for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that 100 percent of the NGOM Set-Aside is projected to be harvested. Any vessel that holds a Federal NGOM (LAGC B) or Individual Fishing Quota (IFQ) (LAGC A) permit may continue to fish in the Maine or Massachusetts state waters portion of the NGOM Scallop Management Area under the State Waters Exemption Program found in § 648.54 provided it has a valid Maine or Massachusetts state scallop permit and fishes only in that state's respective waters.

Based on trip declarations by federally permitted LAGC scallop vessels fishing in the NGOM Scallop Management Area and analysis of fishing effort, we project that the 2024 NGOM Set-Aside will be harvested as of April 20, 2024. Therefore, in accordance with § 648.62(b)(2), the NGOM Scallop Management Area is closed to all federally permitted LAGC scallop vessels as of April 20, 2024. As of this date, no vessel issued a Federal LAGC scallop permit may fish for, possess, or land scallops in or from the NGOM Scallop Management Area after 0001 local time, April 20, 2024, unless the vessel is fishing exclusively in state waters and is participating in an approved state waters exemption program as specified in § 648.54. Any federally permitted LAGC scallop vessel that has declared into the NGOM Scallop Management Area, complied with all trip notification and observer requirements, and crossed the vessel monitoring system demarcation line on the way to the area before 0001, April 20, 2024, may complete its trip and land scallops. This closure is in effect until the end of the 2024 scallop fishing year, through March 31, 2025.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. NMFS also finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons noted below. The NGOM Scallop Management Area opened for the 2024 fishing year on April 1, 2024. The regulations at § 648.60(b)(2) require this closure to ensure that federally permitted scallop vessels do not harvest more than the allocated NGOM Set-Aside. NMFS can only make projections for the NGOM closure date as trips into the area occur on a real-time basis and as activity trends appear. As a result, NMFS can typically make an accurate projection only shortly before the set-aside is harvested. The rapid harvest rate that has occurred in the last 2 weeks makes it more difficult to project a closure well in advance. To allow federally permitted LAGC scallop vessels to continue taking trips in the NGOM Scallop Management Area during the period necessary to publish and receive comments on a proposed rule would result in vessels harvesting more than the 2024 NGOM Set-Aside for the NGOM Scallop Management Area. This would result in excessive fishing effort in the area thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures to make up for the excessive harvest. Also, the public had prior notice and full opportunity to comment on this closure process when we solicited comments during rulemaking for 2024 NGOM management provisions (89 FR 20341, March 22, 2024).

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

Dated: April 18, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–08721 Filed 4–19–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 80
Wednesday, April 24, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–23–0086]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the South Texas Onion Committee (Committee) to increase the assessment rate established for the 2023–2024 and subsequent fiscal periods from $0.05 to $0.08 per 50-pound container or equivalent for South Texas onions. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 24, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk. Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be sent to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or via the internet at: *https://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: *https://www.regulations.gov*. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Delaney Fuhrmeister, Marketing Specialist, or Christian Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375 or Email: *Delaney.Fuhrmeister@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. Part 959 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of onions operating within the area of production.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to 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.

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. Under the Order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the proposed assessment rate would be applicable to all assessable onions for the 2023–2024 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec. 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate for South Texas onions handled under the Order from $0.05 per 50-pound container or equivalent, the rate that was established for the 2020–2021 and subsequent fiscal periods, to $0.08 per 50-pound container or equivalent for the 2023–2024 and subsequent fiscal periods.

Sections 959.41 and 959.42 authorize the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The

members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2020–2021 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of $0.05 per 50-pound container or equivalent of South Texas onions within the production area. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on November 1, 2023, and unanimously recommended 2023–2024 fiscal period expenditures of $280,657 and an assessment rate of $0.08 per 50-pound container or equivalent of South Texas onions handled for the 2023–2024 and subsequent fiscal periods. In comparison, last fiscal period's budgeted expenditures were $177,657. The proposed assessment rate of $0.08 per 50-pound container or equivalent is $0.03 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better align assessment revenue with budgeted expenses and to replenish reserves which were depleted between March 2021 and December 2022 when the Committee ceased collecting assessments during a temporary suspension of the Order. The Committee estimates shipments for the 2023–2024 season to be around 3,600,000 50-pound containers or equivalents, an increase from the 3,020,000 50-pound containers or equivalents handled for the 2022–2023 fiscal period.

The major expenditures recommended by the Committee for the 2023–2024 fiscal period include $92,000 for research and marketing; $80,000 for the compliance program; and $37,050 for administrative expenses. By comparison, budgeted expenses for these items during the 2022–2023 fiscal period were $20,000; $50,000; and $37,050, respectively.

At the current assessment rate of $0.05, the expected 3,600,000 50-pound containers or equivalents would generate $180,000 in assessment revenue (3,600,000 50-pound containers or equivalents multiplied by $0.05 assessment rate), which would not cover budgeted expenses. The Committee recommended increasing the assessment rate to meet necessary expenses, fund marketing research, and restore reserves. By increasing the assessment rate by $0.03 to $0.08, assessment income would generate $288,000 in assessment revenue (3,600,000 50-pound containers or equivalents multiplied by $0.08 assessment rate). This amount should be appropriate to ensure the Committee has sufficient revenue to fully fund its recommended 2023–2024 fiscal period budgeted expenditures and to begin replenishing the Committee's reserve funds.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, expected shipments of onions, and the amount of funds available in the financial reserve. Income derived from handler assessments ($288,000), and other sources including interest income, would be adequate to cover budgeted expenses ($280,657). Funds available in the financial reserve (currently about $78,000) would be kept within the maximum permitted by the Order (approximately two fiscal periods' expenses as authorized in § 959.43).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information. Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2023–2024 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 23 handlers of South Texas onions subject to regulation under the Order and approximately 55 producers of South Texas onions in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural service firms as those having annual receipts of less than $34,000,000 (North American Industry Classification System (NAICS) code 115114, Postharvest Crop Activities), and small agricultural producers of onions as those having annual receipts of less than $3,750,000 (NAICS code 111219, Other Vegetable farming) (13 CFR 121.201).

According to data from Market News and production records from the Committee, the average price for South Texas onions handled during the 2022–2023 season was approximately $23.25 per 50-pound container or equivalent, with total shipments of around 3,020,000 50-pound containers or equivalents shipped. Based on the average terminal market price and shipment information, the number of handlers, and assuming a normal distribution, the majority of South Texas onion handlers have estimated average annual receipts of significantly less than $34,000,000 ($23.25 multiplied by 3,020,000 50-pound containers or equivalents equals $70,215,000, divided by 23 handlers equals $3,052,826 per handler).

In addition, based on data from the National Agricultural Statistics Service and the Committee, the average price producers received for South Texas onions during the 2022–2023 season was approximately $17 per 50-pound container or equivalent, with total shipments of around 3,020,000 million 50-pound containers or equivalents. Using the average price producers received and shipment information, the number of producers, and assuming a normal distribution, the majority of producers have estimated average annual receipts of significantly less than $3,750,000 ($17 multiplied by 3,020,000 50-pound containers or equivalents equals $51,340,000, divided by 55 producers equals $933,455 per producer). Thus, the majority of handlers and producers of South Texas

onions may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2023–2024 and subsequent fiscal periods from $0.05 to $0.08 per 50-pound container or equivalent of South Texas onions. The Committee unanimously recommended 2023–2024 fiscal period expenditures of $280,657 and an assessment rate of $0.08 per 50-pound container or equivalent of South Texas onions. The proposed assessment rate of $0.08 is $0.03 higher than the current rate. The Committee expects the industry to handle 3,600,000 50-pound container or equivalent of South Texas onions during the 2023–2024 fiscal period. Thus, the $0.08 per 50-pound container or equivalent rate should provide $288,000 in assessment income (3,600,000 50-pound containers or equivalents multiplied by $0.08 assessment rate). Income derived from handler assessments and other sources including interest income, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2023–2024 fiscal period include $92,000 for research and marketing; $80,000 for the compliance program; and $37,050 for administrative expenses. By comparison, budgeted expenses for these items during the 2022–2023 fiscal period were $20,000; $50,000; and $37,050, respectively.

The Committee recommended increasing the assessment rate to meet necessary expenses, fund marketing research, and restore reserves, which were depleted between March 2021 and December 2022 when the Committee ceased collecting assessments during a temporary suspension of the marketing order. The Committee estimates shipments for the 2023–2024 season to be around 3,600,000 50-pound containers or equivalents. Given the estimated number of shipments, the current assessment rate of $0.05 would generate $180,000 in assessment income (3,600,000 50-pound containers or equivalents multiplied by $0.05 assessment rate), which would not cover budgeted expenses. By increasing the assessment rate by $0.03 to $0.08, assessment income would be $288,000 (3,600,000 50-pound containers or equivalents multiplied by $0.08 assessment rate). This amount should provide sufficient funds to meet anticipated 2023–2024 expenses, while adding money to the financial reserve.

Prior to arriving at this budget and proposed assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of $0.05 per 50-pound container or equivalent or increasing the assessment rate to $0.06. However, neither of these assessment rates would provide enough income to cover budgeted expenses. Consequently, these alternative assessment rates were rejected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates the average grower price for the 2023–2024 season should be approximately $16.00 per 50-pound container or equivalent of South Texas onions. Therefore, the estimated assessment revenue for the 2023–2024 crop year as a percentage of total grower revenue would be about 0.5 percent ($0.08 assessment rate divided by $16.00 multiplied by 100).

This proposed action would increase the assessment obligation imposed on South Texas onion handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the South Texas onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the November 1, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses*. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this proposed rule is consistent with and would effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to comment on this proposed rule. All written comments timely received will be considered before a final determination is made on this rulemaking.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 959 as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 959.237 to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2023, an assessment rate of $0.08 per 50-pound container or equivalent is established for South Texas onions.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–08679 Filed 4–23–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0039]

RIN 1904–AF60

Energy Conservation Program: Energy Conservation Standards for Dishwashers

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including dishwashers. In this notice of proposed rulemaking, the U.S. Department of Energy (''DOE'') proposes amended energy conservation standards for dishwashers identical to those set forth in a direct final rule published elsewhere in this issue of the **Federal Register**. If DOE receives adverse comment and determines that such comment may provide a reasonable basis for withdrawal of the direct final rule, DOE will publish a notice of withdrawal and will proceed with this proposed rule.

DATES: DOE will accept comments, data, and information regarding this NOPR no later than August 12, 2024. Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before May 24, 2024.

ADDRESSES: See section IV of this document, ''Public Participation,'' for details. If DOE withdraws the direct final rule published elsewhere in this issue of the **Federal Register**, DOE will hold a public meeting to allow for additional comment on this proposed rule. DOE will publish notice of any meeting in the **Federal Register**.

Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2019–BT–STD–0039. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–STD–0039, by any of the following methods:

(1) *Email: ApplianceStandardsQuestions@ee.doe.gov.* Include the docket number EERE–2019–BT–STD–0039 in the subject line of the message.

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

(3) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 1000 Independence Ave. SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

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

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-STD-0039.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through *www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, 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) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 306–7097. Email: *Amelia.Whiting@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

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I. Synopsis of the Proposed Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include dishwashers, the subject of this proposed rulemaking. (42 U.S.C. 6292(a)(6))

Pursuant to EPCA, any new or amended energy conservation standard must, among other things, 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

[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.

significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

In light of the above and under the authority provided by 42 U.S.C. 6295(p)(4)(A)(i), DOE is proposing this rule amending the energy conservation standards for dishwashers and is concurrently issuing a direct final rule elsewhere in this issue of the **Federal Register**. DOE will proceed with this notice of proposed rulemaking (''NOPR'') only if it determines it must withdraw the direct final rule pursuant to the criteria provided in 42 U.S.C. 6295(p)(4). The amended standard levels in the proposed rule and the direct final rule were recommended in a letter submitted to DOE jointly by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility. This letter, titled ''Energy Efficiency Agreement of 2023'' (hereafter, the ''Joint Agreement'' [3]), recommends specific energy conservation standards for dishwashers that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). DOE subsequently received letters of support for the Joint Agreement from States including New York, California, and Massachusetts [4] and utilities including San Diego Gas and Electric and Southern California Edison [5] advocating for the adoption of the recommended standards. As discussed in more detail in the accompanying direct final rule and in accordance with the provisions at 42 U.S.C. 6295(p)(4), DOE has determined that the recommendations contained in the Joint Agreement comply with the requirements of 42 U.S.C. 6295(o).

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for dishwashers. The standards are expressed in terms of maximum estimated annual energy use (''EAEU'') in kilowatt hours per year (''kWh/yr''), and maximum per cycle water consumption in gallons per cycle (''gal/cycle''), as determined in accordance with DOE's dishwashers test procedure codified at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix C2 (''appendix C2'').

Table I.1 presents the proposed amended standards for dishwashers. The proposed standards are the same as those recommended by the Joint Agreement. These standards would apply to all products listed in Table I.1 and manufactured in, or imported into, the United States starting on [*Date 3 years after date of publication of the final rule in the* **Federal Register**], as recommended in the Joint Agreement.

Table I.1 Proposed Energy Conservation Standards for Dishwashers (Compliance Starting 3 Years After the Publication of the Final Rule)

Product Class	Maximum Estimated Annual Energy Use *(kWh/year)*	Maximum Per-Cycle Water Consumption *(gal/cycle)*
PC 1: Standard-size Dishwasher*	223	3.3
PC 2: Compact-size Dishwasher	174	3.1

* The energy conservation standards in this table do not apply to standard-size dishwashers with a cycle time for the normal cycle of 60 minutes or less.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for dishwashers.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include dishwashers, the subject of this document. (42 U.S.C. 6292(a)(6)) EPCA prescribed energy conservation design standards for these products (42 U.S.C. 6295(g)(1) and (10)(A)), and directed DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (10)(B)). EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

In establishing energy conservation standards with both energy and water use performance standards for dishwashers manufactured after January 1, 2010, Congress directed DOE to ''determine[e] whether to amend'' those standards. (42 U.S.C. 6295(g)(10)(B)) Congress's directive, in section 6295(g)(10)(B), to consider whether ''to amend the standards in effect for dishwashers'' refers to ''the standards'' established in the immediately preceding section, 6295(g)(10)(A). There, Congress established energy conservation standards with *both* energy and water use performance standards for dishwashers. Indeed, the energy and water use performance standards for dishwashers (both standard and compact size) are contained within a single paragraph. *See id.* Everything in section 6295(g) suggests that Congress intended both of those twin standards to be evaluated when it came time, ''[n]ot later than January 1, 2015,'' to consider amending them. (*Id.* 6295(g)(10)(B)(i)) Accordingly, DOE understands its authority, under section 6295(g)(10)(B), to include consideration of amended energy and water use performance standards for dishwashers.

DOE similarly understands its authority under 42 U.S.C. 6295(m) to amend ''standards'' for covered products to include amending both the energy and water use performance standards for dishwashers. Neither section 6295(g)(10)(B) nor section 6295(m) limit their application to ''energy use standards.'' Rather, they direct DOE to consider amending ''the standards,'' 42 U.S.C. 6295(g)(10)(B), or simply ''standards,'' *id.* 6295(m)(1)(B),

[3] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0055.*

[4] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0056.*

[5] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0057.*

which may include both energy use standards and water use standards.

Finally, DOE is proposing these standards in this companion NOPR to a direct final rule pursuant to 42 U.S.C. 6295(p)(4). That section also extends broadly to any ''energy or water conservation standard'' without qualification. Thus, pursuant to section 6295(p)(4), DOE may, so long as other relevant conditions are satisfied, promulgate a direct final rule that includes water use performance standards for a covered product like dishwashers, where Congress has already established energy and water use performance standards.

DOE is aware that the definition of ''energy conservation standard,'' in section 6291(6), expressly references water use only for four products specifically named: showerheads, faucets, water closets, and urinals. *See id.* However, DOE does not read the language in 6291(6) as fully delineating the scope of DOE's authority under EPCA. Rather, as is required of agencies in applying a statute, individual provisions, including section 6291(6) of EPCA, must be read in the context of the statute as a whole.

The energy conservation program was initially limited to addressing the energy use, meaning electricity and fossil fuels, of 13 covered products (*See* sections 321 and 322 of the Energy and Policy Conservation Act, Pub. L. 94–163, 89 Stat 871 (December 22, 1975)). Since its inception, Congress has expanded the scope of the energy conservation program several times, including by adding covered products, prescribing energy conservation standards for various products, and by addressing water use for certain covered products. For example, in the Energy Policy Act of 1992, Congress amended the list of covered products in 42 U.S.C. 6292 to include showerheads, faucets, water closets and urinals and expanded DOE's authority to regulate water use for these products. (*See* Sec. 123, Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat 2776 (Oct. 24, 1992)). When it did so, Congress also made corresponding changes to the definition of ''consumer product'' (42 U.S.C. 6291(1)), the definition of ''energy conservation standard'' (42 U.S.C. 6291(6)), the section governing the promulgation of test procedures (42 U.S.C. 6293), the criteria for prescribing new or amended energy conservation standards (42 U.S.C. 6295(o)), and elsewhere in EPCA.

Later, Congress further expanded the scope of the energy conservation program several times. For instance, Congress added products and energy conservation standards directly to 42 U.S.C. 6295, the section of EPCA that contains statutorily prescribed standards as well as DOE's standard-setting authorities. *See* 42 U.S.C. 6295(a) (stating that the ''purposes of this section are to—(1) provide Federal energy conservation standards applicable to covered products; and (2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.'')). When Congress added these new standards and standard-setting authorities to 42 U.S.C. 6295 after the Energy Policy Act of 1992, it often did so without making any conforming changes to sections 6291 or 6292. For example, in the Energy Policy Act of 2005, Congress prescribed standards by statute, or gave DOE the authority to set standards for, battery chargers, external power supplies, ceiling fans, ceiling fan light kits, beverage vending machines, illuminated exit signs, torchieres, low voltage dry-type distribution transformers, traffic signal modules and pedestrian modules, certain lamps, dehumidifiers, and commercial prerinse spray valves (''CPSVs'') in 42 U.S.C. 6295 without updating the list of covered products in 42 U.S.C. 6292. (*See* Sec. 135, Energy Policy Act of 2005, 119 Stat 594 (Aug. 8, 2005))

Congress also expanded the scope of the energy conservation program by directly adding water use performance standards for certain products to 42 U.S.C. 6295. For example, in the Energy Policy Act of 2005, Congress added a water use performance standard (but no energy use performance standard) for commercial prerinse spray valves (''CPSVs'') and did so without updating the list of covered products in 42 U.S.C. 6292 to include CPSVs and without adding CPSVs to the list of enumerated products with water use performance standards in the ''energy conservation standard'' definition in 42 U.S.C. 6291(6). In the Energy Independence and Security Act of 2007 (''EISA 2007''), Congress amended 42 U.S.C. 6295 by prescribing energy conservation standards for residential clothes washers and dishwashers that included both energy and water use performance standards. (*See* Sec. 301, EISA 2007, Pub. L. 110–140, 121 Stat 1492 (Dec. 19, 2007)). Again, when it did so, Congress did not add these products to the list of enumerated products with water use performance standards in the definition of ''energy conservation standard'' in 42 U.S.C. 6291(6).

In considering how to treat these products and standards that Congress has directly added to 42 U.S.C. 6295 without making conforming changes to the rest of the statute, including the list of covered products in 42 U.S.C. 6292, and the water-use products in the definition of an ''energy conservation standard,'' DOE construes the statute as a whole. When Congress added products and standards directly to 42 U.S.C. 6295, it must have meant those products to be covered products and those standards to be energy conservation standards, given that the purpose of 42 U.S.C. 6295 is to provide ''energy conservation standards applicable to covered products'' and to ''authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.'' Elsewhere in EPCA, the statute's references to covered products and energy conservation standards can only be read coherently as including the covered products and energy conservation standards Congress added directly to section 6295, even if Congress did not make conforming edits to 6291 or 6292. For example, manufacturers are prohibited from ''distribut[ing] in commerce any new *covered product* which is not in conformity with an applicable *energy conservation standard*.'' (42 U.S.C. 6302(a)(5) (emphasis added)) It would defeat congressional intent to allow a manufacturer to distribute a product, *e.g.,* a CPSV or ceiling fan, that violates an applicable energy conservation standard that Congress prescribed simply because Congress added the product directly to 42 U.S.C. 6295 without also updating the list of covered products in 42 U.S.C. 6292(a). In addition, preemption in EPCA is based on ''the effective date of an *energy conservation standard* established in or prescribed under section 6295 of this title for any *covered product.*'' (42 U.S.C. 6297(c) (emphasis added)) Nothing in EPCA suggests that standards Congress adopted in 6295 lack preemptive effect, merely because Congress did not make conforming amendments to 6291, 6292, or 6293.

It would similarly defeat congressional intent for a manufacturer to be permitted to distribute a covered product, *e.g.,* a clothes washer or dishwasher, that violates a water use performance standard because Congress added the standard to 42 U.S.C. 6295 without also updating the definition of energy conservation standard in 42 U.S.C. 6291(6). By prescribing directly, in 6295(g)(10), energy conservation standards for dishwashers that include both energy and water use performance standards, Congress intended that energy conservation standards for

dishwashers include both energy use and water use.

DOE recognizes that some might argue that Congress's specific reference in section 6291(6) to water standards for showerheads, faucets, water closets, and urinals could ''create a negative implication'' that energy conservation standards for other covered products may not include water use standards. *See Marx* v. *Gen. Revenue Corp.,* 568 U.S. 371, 381 (2013). ''The force of any negative implication, however, depends on context.'' *Id.; see also NLRB* v. *SW Gen., Inc.,* 580 U.S. 288, 302 (2017) (''The *expressio unius* canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded.'' (alterations and quotation marks omitted)). In this context, the textual and structural cues discussed above show that Congress did not intend to exclude from the definition of energy conservation standard the water use performance standards that it specifically prescribed, and directed DOE to amend, in section 6295. To conclude otherwise would negate the plain text of 6295(g)(10). Furthermore, to the extent the definition of energy conservation standards in section 6291(6), which was last amended in the Energy Policy Act of 1992, could be read as in conflict with the energy and water use performance standards prescribed by Congress in EISA 2007, any such conflict should be resolved in favor of the more recently enacted statute. *See United States* v. *Estate of Romani,* 523 U.S. 517, 530–31 (1998) (''[A] specific policy embodied in a later federal state should control our construction of the priority statute, even though it had not been expressly amended.'') Accordingly, based on a complete reading of the state, DOE has determined that products and standards added directly to 42 U.S.C. 6295 are appropriately considered ''covered products'' and ''energy conservation standards'' for the purposes of applying the various provisions in EPCA.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for dishwashers appear at title 10 of the CFR part 430, subpart B, appendix C1 (''appendix C1'') and appendix C2.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including dishwashers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (''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 DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

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

(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'' 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))

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 must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Additionally, pursuant to the amendments contained in EISA 2007, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for dishwashers address standby mode and off mode energy use. The standards proposed in this rule incorporate standby mode and off mode energy use.

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

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

DOE has previously explained its interpretation of its direct final rule authority. In a final rule amending the Department's ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' at 10 CFR part 430, subpart C, appendix A, DOE noted that it may issue standards recommended by interested persons that are fairly representative of relative points of view as a direct final rule when the recommended standards are in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. 86 FR 70892, 70912 (Dec. 13, 2021). But the direct final rule provision in EPCA, under which this proposed rule is issued, does not impose additional requirements applicable to other standards rulemakings, which is consistent with the unique circumstances of rules issued through consensus agreements under DOE's direct final rule authority. *Id.* DOE's discretion remains bounded by its statutory mandate to adopt a standard that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified—a requirement found in 42 U.S.C. 6295(o). *Id.* As such, DOE's review and analysis of the Joint Agreement is limited to whether the recommended standards satisfy the criteria in 42 U.S.C. 6295(o).

B. Background

1. Current Standards

In a direct final rule published on May 30, 2012 (''May 2012 Direct Final Rule''), DOE adopted the current energy conservation standards for dishwashers manufactured on or after May 30, 2013, consistent with the levels proposed in a letter submitted to DOE by groups representing manufacturers, energy and environmental advocates, and consumer groups on July 30, 2010. 77 FR 31918, 31918–31919. This collective set of comments, titled ''Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances'' (the ''July 2010 Joint Petition''),[6] recommended specific energy conservation standards for dishwashers that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). 77 FR 31918, 31919. The July 2010 Joint Petition proposed energy conservation standard levels for the standard-size and compact-size dishwasher product classes based on the same capacity definitions that existed at that time. 77 FR 31918, 31926. These product classes are the same as the two current product classes for dishwashers. In the May 2012 Direct Final Rule, DOE analyzed the benefits and burdens of multiple standard levels for dishwashers, including a standard level that corresponded to the recommended levels in the July 2010 Joint Petition, and determined that the levels recommended in the Joint Petition satisfied the EPCA requirements set forth under 42 U.S.C. 6295(o). 77 FR 31918, 31921, 31924.

In a final determination published on December 13, 2016 (''December 2016 Final Determination''), DOE concluded that amended energy conservation standards would not be economically justified at any level above the standards established in the May 2012 Direct Final Rule, and therefore determined not to amend the standards. 81 FR 90072. The current energy and water conservation standards are set forth in DOE's regulations at 10 CFR part 430, § 430.32(f), and are repeated in Table II.1. The currently applicable DOE test procedure for dishwashers appears at appendix C1.

[6] DOE Docket No. EERE–2011–BT–STD–0060–0001.

Table II.1 Federal Energy Conservation Standards for Dishwashers

Product Class	Maximum Estimated Annual Energy Use* *(kWh/year)*	Maximum Per-Cycle Water Consumption* *(gal/cycle)*
Standard-Size Dishwasher	307	5.0
Compact-Size Dishwasher	222	3.5

* Using appendix C1

The regulatory text at 10 CFR 430.32(f) references the Association of Home Appliance Manufacturers (''AHAM'') standard AHAM DW–1–2020 [7] to define the items in the test load that comprise the serving pieces and each place setting. The number of serving pieces and place settings help determine the capacity of the dishwasher, which is used to determine the applicable product class.

2. Current Test Procedure

On December 22, 2021, DOE published a test procedure NOPR (''December 2021 TP NOPR'') proposing amendments to the dishwasher test procedure at appendix C1 and a new test procedure at appendix C2. 86 FR 72738. On January 18, 2023, DOE published a final rule amending the test procedure at appendix C1 and establishing a new test procedure at appendix C2 (''January 2023 TP Final Rule''). 88 FR 3234. The new appendix C2 specifies updated annual cycles and low-power mode hours, both of which are used to calculate the EAEU metric, and introduces a minimum cleaning performance threshold to validate the selected test cycle. 88 FR 3234, 3236.

Subsequently, on July 27, 2023, DOE published a final rule adding clarifying instructions to the dishwasher test procedure at appendix C1 regarding the allowable dosing options for each type of detergent; clarifying the existing detergent reporting requirements; and adding an enforcement provision for dishwashers to specify the detergent and dosing method that DOE would use for any enforcement testing of dishwasher models certified in accordance with the applicable dishwasher test procedure prior to July 17, 2023 (*i.e.,* the date by which the January 2023 TP Final Rule became mandatory for product testing). 88 FR 48351.

EPCA authorizes DOE to design test procedures that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) In general, a consumer-acceptable level of cleaning performance (*i.e.,* a representative average use cycle) can be easier to achieve through the use of higher amounts of energy and water use during the dishwasher cycle. Conversely, maintaining acceptable cleaning performance can be more difficult as energy and water levels are reduced. Improving one aspect of dishwasher performance, such as reducing energy and/or water use as a result of energy conservation standards, may require a trade-off with one or more other aspects of performance, such as cleaning performance. 88 FR 3234, 3250–3251. As discussed, the currently applicable energy conservation standards for dishwashers are based on appendix C1, which does not prescribe a method for testing dishwasher cleaning performance.

The January 2023 TP Final Rule established a new test procedure at appendix C2, which includes provisions for a minimum cleaning index threshold of 70 to validate the selected test cycle. 88 FR 3234, 3261. The cleaning index is calculated based on the number and size of particles remaining on each item of the test load at the completion of a dishwasher cycle as specified in AHAM DW–2–2020.[8] Items that do not have any soil particles are scored 0 (*i.e.,* completely clean). No single item in the test load can exceed a score of 9. Individual scores for each item in the test load are combined as a weighted average to calculate the per cycle cleaning index. A cleaning index of 100 indicates a completely clean test load. *Id.* at 3255. In the January 2023 TP Final Rule, DOE specified that the cleaning index is calculated by only scoring soil particles on all items in the test load and that spots, streaks, and rack contact marks on glassware are not included in the cleaning index calculation.[9] *Id.* at 3248. Manufacturers must use the results of testing under the new appendix C2 to determine compliance with the energy conservation standards proposed in this NOPR. Accordingly, DOE used appendix C2 as finalized in the January 2023 TP Final Rule as the basis for the analysis in the direct final rule accompanying this NOPR. *Id.* at 3234.

DOE adopted a minimum cleaning performance threshold in appendix C2 to determine if a dishwasher, when tested according to the DOE test procedure, ''completely washes a normally soiled load of dishes,'' so as to better represent consumer use of the product (*i.e.,* to produce test results that are more representative of an average consumer use cycle). 88 FR 3234, 3253, 3255. Based on the data available, DOE determined that the cleaning performance threshold provides a reasonable proxy for when consumers are likely to be dissatisfied with performance on the normal cycle. 88 FR 3234, 3261. The cleaning index threshold established as part of the new appendix C2 ensures that energy and water savings are being realized for products that comply with the energy conservation standards for dishwashers proposed in this NOPR. 88 FR 3234, 3253, 3254.

The standards proposed in this NOPR are expressed in terms of the EAEU and water consumption metrics as measured according to the newly established test procedure contained in appendix C2.

3. The Joint Agreement

On September 25, 2023, DOE received a joint statement (*i.e.,* the Joint Agreement) recommending standards for dishwashers, that was submitted by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility.[10] In

[7] Uniform Test Method for Measuring the Energy Consumption of Dishwashers. AHAM DW–1–2020. Copyright 2020.

[8] Household Electric Dishwashers. AHAM DW–2–2020. Copyright 2020.

[9] In the December 2021 TP NOPR, DOE proposed a cleaning index threshold of 65 calculated by scoring soil particles on all items as well as spots, streaks, and rack contact marks on glassware. 86 FR 72738, 72756, 72758. In the January 2023 TP Final Rule, DOE noted that the specified cleaning index threshold of 70 is equivalent to the cleaning index threshold of 65 that was proposed in the December 2021 TP NOPR. 88 FR 3234, 3261.

[10] The signatories to the Joint Agreement include the AHAM, American Council for an Energy Efficient Economy, Alliance for Water Efficiency, ASAP, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company. Members of AHAM's Major Appliance Division that make the affected

Continued

addition to the recommended standards for dishwashers, the Joint Agreement also included separate recommendations for several other covered products.[11] And, while acknowledging that DOE may implement these recommendations in separate rulemakings, the Joint Agreement also stated that the recommendations were recommended as a complete package and each recommendation is contingent upon the other parts being implemented. DOE understands this to mean the Joint Agreement is contingent upon DOE initiating rulemaking processes to adopt all the recommended standards in this agreement. That is distinguished from an agreement where issuance of an amended energy conservation standard for a covered product is contingent on issuance of amended energy conservation standards for the other covered products. If the Joint Agreement were so construed, it would conflict with the anti-backsliding provisions in 42 U.S.C. 6295(o)(1), because it would imply the possibility that, if DOE were unable to issue an amended standard for a certain product, it would have to withdraw a previously issued standard for one of the other products. The anti-backsliding provision, however, prevents DOE from withdrawing or amending an energy conservation standard to be less stringent. As a result, DOE will be proceeding with individual rulemakings that will evaluate each of the recommended standards separately under the applicable statutory criteria.

A court decision issued after DOE received the Joint Agreement is also relevant to this rule. On March 17, 2022, various States filed a petition seeking review of a final rule revoking two final rules that established product classes for dishwashers with a cycle time for the normal cycle of 60 minutes or less, top-loading residential clothes washers and certain classes of consumer clothes dryers with a cycle time of less than 30 minutes, and front-loading residential clothes washers with a cycle time of less than 45 minutes (collectively, ''short-cycle product classes''). The petitioners argued that the final rule revoking the short-cycle product classes violated EPCA and was arbitrary and capricious. On January 8, 2024, the United States Court of Appeals for the Fifth Circuit granted the petition for review and remanded the matter to DOE for further proceedings consistent with the Fifth Circuit's opinion. *See Louisiana* v. *United States Department of Energy,* 90 F.4th 461 (5th Cir. 2024).

On February 14, 2024, following the Fifth Circuit's decision in *Louisiana* v. *United States Department of Energy,* DOE received a second joint statement from this same group of stakeholders in which the signatories reaffirmed the Joint Agreement, stating that the recommended standards represent the maximum levels of efficiency that are technologically feasible and economically justified.[12] In the letter, the signatories clarified that ''short-cycle'' product classes for residential clothes washers, consumer clothes dryers, and dishwashers did not exist at the time that the signatories submitted their recommendations and it is their understanding that these classes also do not exist at the current time. Accordingly, the parties clarified that the Joint Agreement did not address short-cycle product classes. The signatories also stated that they did not anticipate that the recommended energy conservation standards in the Joint Agreement will negatively affect features or performance, including cycle time, for dishwashers.

The Joint Agreement recommends amended standard levels for dishwashers as presented in Table II.2. (Joint Agreement, No. 55 at p. 5) Details of the Joint Agreement recommendations for other products are provided in the Joint Agreement posted in the docket.[13]

Table II.2 Recommended Amended Energy Conservation Standards for Dishwashers

Product Class	Standard Levels Using Test Procedure Appendix C2		Compliance Date
	Estimated Annual Energy Use *(kWh/year)*	Per-Cycle Water Consumption *(gal/cycle)*	
Standard-Size Dishwasher (≥ 8 place settings plus 6 serving pieces)	223	3.3	3 years after publication of the direct final rule published elsewhere in this issue of the *Federal Register*
Compact-Size Dishwasher (< 8 place settings plus 6 serving pieces)	174	3.1	3 years after publication of the direct final rule published elsewhere in this issue of the *Federal Register*

products include: Alliance Laundry Systems, LLC; Asko Appliances AB; Beko US Inc.; Brown Stove Works, Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux; Elicamex S.A. de C.V.; Faber; Fotile America; GE Appliances, a Haier Company; L'Atelier Paris Haute Design LLG; LG Electronics; Liebherr USA, Co.; Midea America Corp.; Miele, Inc.; Panasonic Appliances Refrigeration Systems (PAPRSA) Corporation of America; Perlick Corporation; Samsung Electronics America, Inc.; Sharp Electronics Corporation; Smeg S.p.A; Sub-Zero Group, Inc.; The Middleby Corporation; U-Line Corporation; Viking Range, LLC; and Whirlpool Corporation.

[11] The Joint Agreement contained recommendations for 6 covered products: refrigerators, refrigerator-freezers, and freezers; clothes washers; clothes dryers; dishwashers; cooking products; and miscellaneous refrigeration products.

[12] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0059.*

[13] The Joint Agreement is available in the docket at *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0055.*

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

For further background information on these proposed standards and the supporting analyses, please see the direct final rule published elsewhere in this issue of the **Federal Register**. That document and the accompanying technical support document (''TSD'') contain an in-depth discussion of the analyses conducted in evaluating the Joint Agreement, the methodologies DOE used in conducting those analyses, and the analytical results.

When the Joint Agreement was submitted, DOE was conducting a rulemaking to consider amending the standards for dishwashers. As part of that process, on May 19, 2023, DOE published a NOPR and announced a public meeting (''May 2023 NOPR'') seeking comment on its proposed amended standard to inform its decision consistent with its obligations under EPCA and the Administrative Procedure Act (''APA''). 88 FR 32514. DOE held a public meeting on June 8, 2023, to discuss and receive comments on the NOPR and NOPR TSD. The NOPR TSD is available at: *https://www.regulations.gov/document/EERE-2019-BT-STD-0039-0032*.

III. Proposed Standards

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))

DOE considered the impacts of amended standards for dishwashers at each trial standard level (''TSL''), beginning with the maximum technologically feasible (''max-tech'') level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy. DOE refers to this process as the ''walk-down'' analysis.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the manufacturing impact analysis (''MIA''). Second, DOE accounts for energy and water 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 and water savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the direct final rule TSD [14] available in the docket for this rulemaking. 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.[15]

A. Benefits and Burdens of TSLs Considered for Dishwasher Standards

Table III.1 and Table III.2 summarize the quantitative impacts estimated for each TSL for dishwashers. The national impacts are measured over the lifetime of dishwashers purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2027–2056). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle (''FFC'') results. The consumer operating savings are inclusive of energy and water. DOE is presenting monetized benefits of greenhouse gas (''GHG'') emissions reductions in accordance with the applicable Executive Orders and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the Interim Estimates presented by the Interagency Working Group. The efficiency levels contained in each TSL are described in section V.A of the direct final rule published elsewhere in this issue of the **Federal Register**.

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[14] The TSD is available in the docket for this rulemaking at *www.regulations.gov/docket/EERE-2019-BT-STD-0039*.

[15] 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*.

Table III.1 Summary of Analytical Results for Dishwaters TSLs: National Impacts

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative FFC National Energy Savings					
Quads	0.05	0.08	0.31	0.34	1.28
Cumulative Water Savings					
Trillion gallons	0.09	0.11	0.24	0.26	0.92
Cumulative FFC Emissions Reduction					
CO_2 *(million metric tons)*	2.34	3.18	9.48	10.33	38.89
CH_4 *(thousand tons)*	26.70	35.53	98.97	107.80	406.30
N_2O *(thousand tons)*	0.01	0.01	0.06	0.06	0.23
NO_X *(thousand tons)*	6.09	8.09	22.37	24.37	91.86
SO_2 *(thousand tons)*	0.16	0.28	1.41	1.53	5.73
Hg *(tons)*	0.00	0.00	0.01	0.01	0.03
Present Value of Monetized Benefits and Costs (*3% discount rate, billion 2022$*)					
Consumer Operating Cost Savings	0.43	0.63	3.16	3.36	1.75
Climate Benefits*	0.13	0.18	0.54	0.58	2.20
Health Benefits**	0.22	0.31	0.94	1.02	3.85
Total Benefits†	0.79	1.12	4.64	4.97	7.80
Consumer Incremental Product Costs‡	0.26	0.41	0.26	0.41	21.87
Consumer Net Benefits	0.17	0.22	2.90	2.95	(20.12)
Total Net Benefits	0.53	0.71	4.38	4.56	(14.08)
Present Value of Monetized Benefits and Costs (*7% discount rate, billion 2022$*)					
Consumer Operating Cost Savings	0.18	0.27	1.38	1.46	0.68
Climate Benefits*	0.13	0.18	0.54	0.58	2.20
Health Benefits**	0.09	0.12	0.37	0.40	1.52
Total Benefits†	0.41	0.57	2.29	2.45	4.40
Consumer Incremental Product Costs‡	0.15	0.24	0.15	0.24	12.86
Consumer Net Benefits	0.03	0.03	1.23	1.23	(12.18)
Total Net Benefits	0.25	0.33	2.13	2.21	(8.46)

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

* Climate benefits are calculated using four different estimates of the SC-CO_2, SC-CH_4 and SC-N_2O. Together, these represent the global SC-GHG. For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

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

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate.

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

Table III.2 Summary of Analytical Results for Dishwashers TSLs: Manufacturer and Consumer Impacts

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts					
Industry NPV (million 2022$) (No-new-standards case INPV = 735.8)	680.8 to 729.7	673.7 to 723.3	587.1 to 639.1	579.9 to 632.8	334.4 to 414.6
Industry NPV (% change)	(7.5) to (0.8)	(8.4) to (1.7)	(20.2) to (13.1)	(21.2) to (14.0)	(54.5) to (43.7)
Consumer Average LCC Savings (2022$)					
PC 1: Standard-size dishwashers	$5	$5	$17	$17	($145)
PC 2: Compact-size dishwashers	$32	$4	$32	$4	$4
Shipment-Weighted Average*	$5	$4	$17	$16	($142)
Consumer Simple PBP (years)					
PC 1: Standard-size dishwashers	4.9	4.9	3.9	3.9	15.9
PC 2: Compact-size dishwashers	0.0	5.5	0.0	5.5	5.5
Shipment-Weighted Average*	4.8	4.9	3.8	3.9	15.7
Percent of Consumers that Experience a Net Cost					
PC 1: Standard-size dishwashers	4%	4%	3%	3%	97%
PC 2: Compact-size dishwashers	0%	54%	0%	54%	54%
Shipment-Weighted Average*	4%	5%	3%	4%	96%

Parentheses indicate negative (-) values. The entry "n.a." means not applicable because there is no change in the standard at certain TSLs.

* Weighted by shares of each product class in total projected shipments in 2027.

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DOE first considered TSL 5, which represents the max-tech efficiency levels for both product classes. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters and control strategies, separate drain pump, tub insulation, hydraulic system optimization, water diverter assembly, temperature sensor, 3-phase variable-speed motor, and flow meter) and condensation drying, including use of a stainless steel tub; flow-through heating implemented as an in-sump integrated heater; and control strategies. The majority of these design options reduce both energy and water use together.[16] For a compact-size dishwasher, this efficiency level includes the design options considered at the lower efficiency levels (*i.e.,* improved control strategies) and additionally includes the use of permanent magnet motor, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. Similar to standard-size dishwashers, the majority of these design options reduce both energy and water use together. TSL 5 would save an estimated 1.28 quads of energy and 0.92 trillion gallons of water, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit (inclusive of both energy and water) would be −$12.18 billion using a discount rate of 7 percent, and −$20.12 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 would be 38.89 Mt of CO_2, 5.73 thousand tons of SO_2, 91.86 thousand tons of NO_X, 0.03 tons of Hg, 406.30 thousand tons of CH_4, and 0.23 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 5 would be $2.20 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 would be $1.52 billion using a 7-percent discount rate and $3.85 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 5 would be −$8.46 billion. Using a 3-percent discount rate for all benefits and costs, the estimated

[16] As discussed previously in section IV.A.2 of the direct final rule published elsewhere in this issue of the **Federal Register**, because the energy used to heat the water consumed by the dishwasher is included as part of the EAEU energy use metric, technologies that decrease water use also inherently decrease energy use.

total NPV at TSL 5 would be −$14.08 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 5, the average LCC impact would be a loss of $145 for standard-size dishwashers and a $4 savings for compact-size dishwashers. The simple payback period would be 15.9 years for standard-size dishwashers and 5.5 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost would be 97 percent for standard-size dishwashers and 54 percent for compact-size dishwashers. Notably, for the standard-size product class, which as discussed represents 98 percent of the market, TSL 5 (which includes EL 4 for this product class) would increase the first cost by $178. This associated increase in first cost at TSL 5 for standard-size dishwashers could impact the number of new shipments by approximately less than 2 percent annually due to consumers shifting to extending the lives of their existing dishwashers beyond their useful life, repairing instead of replacing, or handwashing their dishes. In the national impact analysis, DOE modeled a scenario where part of this 2-percent of consumers forgoing the purchase of a new dishwasher due to price increases would substitute to handwashing. This results in a small increase in energy and water use, which is then subtracted from the energy and water savings projected to result from the proposed amended standards at TSL5.

For the low-income consumer group, the average LCC impact would be a loss of $29 for standard-size dishwashers and a savings of $62 for compact-size dishwashers. The simple payback period would be 6.6 years for standard-size dishwashers and 2.3 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost would be 46 percent for standard-size dishwashers and 26 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact would be a loss of $159 for standard-size dishwashers and a loss of $14 for compact-size dishwashers. The simple payback period would be 19.8 years for standard-size dishwashers and 6.8 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost would be 98 percent for standard-size dishwashers and 62 percent for compact-size dishwashers. For the consumer sub-group of well-water households, the average LCC impact would be a loss of $162 for standard-size dishwashers and a loss of $19 for compact-size dishwashers. The simple payback period would be 21.4 years for standard-size dishwashers and 6.9 years for compact-size dishwashers. The fraction of well-water consumers experiencing a net LCC cost would be 98 percent for standard-size dishwashers and 63 percent for compact-size dishwashers.

At TSL 5, the projected change in INPV ranges from a decrease of $334.4 million to a decrease of $414.6 million, which corresponds to decreases of 54.5 percent and 43.7 percent, respectively. Industry conversion costs could reach $681.0 million at this TSL, as manufacturers work to redesign their portfolios of model offerings, transition their standard-size dishwasher platforms entirely to stainless steel tubs, and renovate manufacturing facilities to accommodate changes to the production line and manufacturing processes.

DOE estimates that less than 1 percent of dishwasher shipments currently meet the max-tech levels. Standard-size dishwashers account for approximately 98 percent of annual shipments. Of the 19 standard-size dishwasher original equipment manufacturers (''OEMs''), only one OEM, which accounts for approximately 2 percent of basic models in the CCD, currently offers products that meet the max-tech efficiencies that would be required. All manufacturers interviewed, which together account for approximately 90 percent of the industry shipments, expressed uncertainty as to whether they could reliably meet the standard-size dishwasher max-tech efficiencies and the cleaning performance threshold and noted meeting max-tech would require a platform redesign and significant investment in tooling, equipment, and production line modifications. Many manufacturers would need to increase production capacity of stainless steel tub designs. Some manufacturers noted that a max-tech standard could necessitate new tub architectures.

For compact-size dishwashers, which account for the remaining 2 percent of annual shipments, DOE estimates that 14 percent of shipments currently meet the required max-tech efficiencies. Of the five compact-size dishwasher OEMs, two OEMs currently offer compact-size products that meet max-tech. At TSL 5, compact-size countertop dishwashers with four or more place settings and in-sink dishwashers with less than four place settings are not currently available in the market. Meeting TSL 5 is technologically feasible for those products; however, DOE expects that it would take significant investment relative to the size of the compact-size dishwasher market to redesign products to meet the max-tech efficiencies.

Based on the above considerations, the Secretary tentatively concludes that at TSL 5 for dishwashers, the benefits of energy and water savings, emissions reductions, and the estimated monetary value of the health benefits and climate benefits from emissions reductions would be outweighed by the negative NPV of consumer benefits and the impacts on manufacturers, including the large potential reduction in INPV. At TSL 5, a majority of standard-size dishwasher consumers (97 percent) would experience a net cost and the average LCC loss is $145 for this product class. Additionally, at TSL 5, manufacturers would need to make significant upfront investments to redesign product platforms and update manufacturing facilities. Some manufacturers expressed concern that they would not be able to complete product and production line updates within the 3-year conversion period. Consequently, the Secretary has tentatively concluded that TSL 5 is not economically justified.

DOE next considered TSL 4, which represents the highest efficiency levels providing positive LCC savings. TSL 4 comprises the gap-fill efficiency level between the ENERGY STAR V. 7.0 level and the ENERGY STAR V. 6.0 level (EL 2) for standard-size dishwashers and the max-tech efficiency level for compact-size dishwashers. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters, separate drain pump, and tub insulation) and additionally includes the use of improved control strategies. For a compact-size dishwasher, this efficiency level includes the design options considered at the lower efficiency levels (*i.e.,* improved control strategies) and additionally includes the use of a permanent magnet motor, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. The majority of these design options for both standard-size and compact-size dishwashers reduce both energy and water use together. TSL 4 would save an estimated 0.34 quads of energy and 0.26 trillion gallons of water, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit (inclusive of energy and water) would be $1.23 billion using a discount rate of 7 percent, and $2.95 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 would be 10.33 Mt of CO_2, 1.53 thousand tons of SO_2, 24.37 thousand tons of NO_X, 0.01 tons of Hg, 107.80 thousand tons of CH_4, and 0.06 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 4 would be $0.58 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 would be $0.40 billion using a 7-percent discount rate and $1.02 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 would be $2.21 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 would be $4.56 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 4, the average LCC impact would be a savings of $17 for standard-size dishwashers and $4 for compact-size dishwashers. The simple payback period would be 3.9 years for standard-size dishwashers and 5.5 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost would be 3 percent for standard-size dishwashers and 54 percent for compact-size dishwashers.

For the low-income consumer group, the average LCC impact would be a savings of $21 for standard-size dishwashers and $62 for compact-size dishwashers. The simple payback period would be 1.6 years for standard-size dishwashers and 2.3 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost would be 2 percent for standard-size dishwashers and 26 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact would be a savings of $13 for standard-size dishwashers and a loss of $14 for compact-size dishwashers. The simple payback period would be 4.9 years for standard-size dishwashers and 6.8 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost would be 4 percent for standard-size dishwashers and 62 percent for compact-size dishwashers. For the consumer subgroup of well-water households, the average LCC impact would be a savings of $12 for standard-size dishwashers and a loss of $19 for compact-size dishwashers. The simple payback period would be 5.5 years for standard-size dishwashers and 6.9 years for compact-size dishwashers. The fraction of well-water consumers experiencing a net LCC cost would be 4 percent for standard-size dishwashers and 63 percent for compact-size dishwashers.

At TSL 4, the projected change in INPV ranges from a decrease of $155.9 million to a decrease of $103.1 million, which corresponds to decreases of 21.2 percent and 14.0 percent, respectively. Industry conversion costs could reach $137.2 million at this TSL as some manufacturers of standard-size dishwashers would redesign products to enable improved controls and better design tolerances and manufacturers of certain compact-size dishwashers would redesign products to meet max-tech.

DOE estimates that approximately 10 percent of dishwasher shipments currently meet the TSL 4 efficiencies, of which approximately 9 percent of standard-size dishwasher shipments and 14 percent of compact-size dishwasher shipments meet the required efficiencies. Compared to max-tech, more manufacturers offer standard-size dishwashers that meet the required efficiencies. Furthermore, since the May 2023 NOPR, more manufacturers now offer standard-size dishwasher models that meet the TSL 4 efficiencies. DOE believes that the recent introduction of more high-efficiency standard-size dishwashers is largely in response to ENERGY STAR V. 7.0, which went into effect in July 2023. Of the 19 OEMs offering standard-size products, 16 OEMs offer products that meet the efficiency level that would be required. For compact-size dishwashers, TSL 4 represents the same efficiency level as for TSL 5. Just as with TSL 5, compact-size countertop dishwashers with four or more place settings and in-sink dishwashers with less than four place settings are not currently available in the market at TSL 4 levels. Meeting TSL 4 is technologically feasible for those products; however, DOE expects that it would take significant investment (nearly $11 million) relative to the size of the compact-size dishwasher market (no-new-standards case INPV of $15.4 million) for them to meet the max-tech efficiencies.

Based upon the above considerations, the Secretary tentatively concludes that at TSL 4 for dishwashers, the benefits of energy and water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the health benefits and climate benefits from emissions reductions would be outweighed by negative LCC savings for the senior-only households for the compact-size dishwasher product class and the high percentage of consumers with net costs for the compact-size dishwasher product class. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered the Recommended TSL (*i.e.,* TSL 3), which comprises the gap-fill efficiency level between the ENERGY STAR V. 7.0 level and the ENERGY STAR V. 6.0 level (EL 2) for standard-size dishwashers and the ENERGY STAR V. 6.0 level (EL 1) for compact-size dishwashers. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters, separate drain pump, and tub insulation) and additionally includes the use of improved control strategies. For a compact-size dishwasher, this efficiency level represents the use of improved controls. The majority of these design options for both standard-size and compact-size dishwashers reduce both energy and water use together. The Recommended TSL would save an estimated 0.31 quads of energy and 0.24 trillion gallons of water, an amount DOE considers significant. Under the Recommended TSL, the NPV of consumer benefit (inclusive of energy and water) would be $1.23 billion using a discount rate of 7 percent, and $2.90 billion using a discount rate of 3 percent.

The cumulative emissions reductions at the Recommended TSL would be 9.48 Mt of CO_2, 1.41 thousand tons of SO_2, 22.37 thousand tons of NO_X, 0.01 tons of Hg, 98.97 thousand tons of CH_4, and 0.06 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at the Recommended TSL would be $0.54 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at the Recommended TSL would be $0.37 billion using a 7-percent discount rate and $0.94 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at the Recommended TSL would be $2.13 billion. Using a 3-percent discount rate for all benefits and

costs, the estimated total NPV at the Recommended TSL would be $4.38 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At the Recommended TSL, the average LCC impact would be a savings of $17 for standard-size dishwashers and $32 for compact-size dishwashers. The simple payback period would be 3.9 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost would be 3 percent for standard-size dishwashers and 0 percent for compact-size dishwashers.

For the low-income consumer group, the average LCC impact would be a savings of $21 for standard-size dishwashers and $39 for compact-size dishwashers. The simple payback period would be 1.6 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost would be 2 percent for standard-size dishwashers and 0 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact would be a savings of $13 for standard-size dishwashers and $26 for compact-size dishwashers. The simple payback period would be 4.9 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost would be 4 percent for standard-size dishwashers and 0 percent for compact-size dishwashers. For the consumer sub-group of well water households, the average LCC impact would be a savings of $12 for standard-size dishwashers and $23 for compact-size dishwashers. The simple payback period would be 5.5 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of well water consumers experiencing a net LCC cost would be 4 percent for standard-size dishwashers and 0 percent for compact-size dishwashers.

At the Recommended TSL, the projected change in INPV ranges from a decrease of $148.8 million to a decrease of $96.7 million, which corresponds to decreases of 20.2 percent and 13.1 percent, respectively. Industry conversion costs could reach $126.9 million at this TSL as some manufacturers would redesign standard-size products to enable improved controls and better design tolerances.

DOE estimates that approximately 11 percent of dishwasher shipments currently meet the Recommended TSL efficiencies, of which approximately 9 percent of standard-size dishwasher shipments and 87 percent of compact-size dishwasher shipments meet the required efficiencies. At this level, the decrease in conversion costs compared to TSL 4 would be entirely due to the lower efficiency level required for compact-size dishwashers, as the efficiency level that would be required for standard-size dishwashers is the same as for TSL 4 (EL 2). All the compact-size dishwasher OEMs currently offer products that meet the Recommended TSL. At this level, DOE expects manufacturers of compact-size dishwashers would implement improved controls, which would likely require minimal upfront investment.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that a standard set at the Recommended TSL for dishwashers would be economically justified. At this TSL, the shipments weighted-average LCC savings for both product classes would be $17. The shipments weighted-average share of consumers with a net LCC cost for both product classes would be 3 percent. For all consumer sub-groups, the LCC savings would be positive and the net share of consumers with a net LCC cost would be below 5 percent for both product classes. The FFC national energy and water savings would be significant and the NPV of consumer benefits would be $2.90 billion and $1.23 billion using both a 3-percent and 7-percent discount rate respectively. Notably, the benefits to consumers would vastly outweigh the cost to manufacturers. At the Recommended TSL, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over eight times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at the Recommended TSL would be economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $0.54 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $0.94 billion (using a 3-percent discount rate) or $0.37 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

The proposed standards would be applicable to the regulated cycle type (*i.e.,* normal cycle); manufacturers could continue to provide currently available additional, non-regulated cycle types (*e.g.,* quick cycles, pots and pans, heavy, delicates, *etc.*). Specifically, DOE expects quick cycles, many of which clean a load within 1 hour or less, and existing drying options would still be available on dishwasher models that currently offer such cycle types. DOE has no information suggesting that any aspect of this NOPR would limit the other cycle options, especially quick cycles. Additionally, in the January 2022 Preliminary TSD, DOE provided data from its investigatory testing sample that determined cycle time is not substantively correlated with energy and water consumption of the normal cycle.[17] Based on these results, DOE has tentatively determined that the NOPR would not have any substantive impact to normal cycle durations.

[17] *See* section 5.5.1 of the January 2022 Preliminary TSD. Available at *www.energy.gov/sites/default/files/2022-01/dw-tsd.pdf.*

The test procedure in appendix C2, which includes provisions for a minimum cleaning index threshold of 70 to validate the selected test cycle, will go into effect at such time as compliance would be required with any amended energy conservation standards. At the Recommended TSL, both standard-size and compact-size dishwasher models achieving the efficiencies, as measured by appendix C2, including the cleaning performance threshold, are readily available on the market.

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 proposed amended energy conservation standards, DOE considers amended standard levels for dishwashers by grouping the efficiency levels for each product class into TSLs and evaluates all analyzed efficiency levels in its LCC analysis and all efficiency levels with positive LCC savings for the NIA and MIA. For both standard-size and compact-size dishwashers, the proposed standard level represents the maximum energy savings that would not result in a large percentage of consumers experiencing a net LCC cost. The efficiency levels at the proposed standard level would result in positive LCC savings for both product classes, significantly reduce the number of consumers experiencing a net cost, and reduce the decrease in INPV and conversion costs to the point where DOE has tentatively concluded they are economically justified, as discussed for the Recommended TSL in the preceding paragraphs.

At the Recommended standard level for the standard-size product class, the average LCC savings would be $17, the percentage of consumers experiencing a net cost would be 3 percent (see Table V.3 of the direct final rule published elsewhere in this issue of the **Federal Register**), and the FFC energy savings would be 0.3 quads. At the Recommended standard level for compact-size product class, the average LCC savings would be $32 and there are no consumers that would experience a net cost. DOE tentatively concludes that there is economic justification to propose the standards for standard-size and compact-size dishwashers independent of each other.

Therefore, based on the previous considerations, DOE proposes the energy conservation standards for dishwashers at the Recommended TSL.

While DOE considered each potential TSL under the criteria laid out in 42 U.S.C. 6295(o) as discussed in the preceding paragraphs, DOE notes that the Recommended TSL for dishwashers proposed in this NOPR is part of a multi-product Joint Agreement covering six rulemakings (refrigerators, refrigerator-freezers, and freezers; miscellaneous refrigeration products; consumer conventional cooking products; residential clothes washers; consumer clothes dryers; and dishwashers). The signatories indicate that the Joint Agreement for the six rulemakings should be considered as a joint statement of recommended standards, to be adopted in its entirety. As discussed in section V.B.2.e of the direct final rule published elsewhere in this issue of the **Federal Register**, many dishwasher OEMs also manufacture refrigerators, refrigerator-freezers, and freezers, miscellaneous refrigeration products, consumer conventional cooking products, residential clothes washers, and consumer clothes dryers. Rather than requiring compliance with five amended standards in a single year (2027),[18] the negotiated multi-product Joint Agreement staggers the compliance dates for the five rulemakings over a 4-year period (2027–2030). DOE understands that the compliance dates recommended in the Joint Agreement would help reduce cumulative regulatory burden. These compliance dates help relieve concern on the part of some manufacturers about their ability to allocate sufficient resources to comply with multiple concurrent amended standards, about the need to align compliance dates for products that are typically designed or sold as matched pairs, and about the ability of their suppliers to ramp up production of key components. The Joint Agreement also provides additional years of regulatory certainty for manufacturers and their suppliers while still achieving the maximum improvement in energy efficiency that is technologically feasible and economically justified.

The proposed energy conservation standards for dishwashers, which are expressed in EAEU and per-cycle water consumption, shall not exceed the values shown in Table III.3.

Table III.3 Proposed Energy Conservation Standards for Dishwashers

Product Class	Estimated Annual Energy Use *(kWh/year)**	Per-Cycle Water Consumption *(gal/cycle)*
PC 1: Standard-size Dishwashers (≥ 8 place settings plus 6 serving pieces)	223	3.3
PC 2: Compact-size Dishwashers (< 8 place settings plus 6 serving pieces)	174	3.1

* Based on appendix C2.

[18] The refrigerators, refrigerator-freezers, and freezers (88 FR 12452); consumer conventional cooking products (88 FR 6818); residential clothes washers (88 FR 13520); consumer clothes dryers (87 FR 51734); and dishwashers (88 FR 32514) utilized a 2027 compliance year for analysis at the proposed rule stage. Miscellaneous refrigeration products (88 FR 12452) utilized a 2029 compliance year for the NOPR analysis.

B. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2022$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy and water, minus increases in product purchase costs, and (2) the annualized monetary value of the climate and health benefits.

Table III.4 shows the annualized values for dishwashers under the recommended TSL, expressed in 2022$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reductions, and the 3-percent discount rate case for GHG social costs, the estimated cost of the standards proposed in this rule would be $14.0 million per year in increased equipment costs, while the estimated annual benefits would be $127.2 million in reduced equipment operating costs, $29.0 million in GHG reductions, and $34.3 million in reduced NO_X and SO_2. In this case, the net benefit would amount to $176.4 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards would be $14.0 million per year in increased equipment costs, while the estimated annual benefits would be $171.2 million in reduced operating costs, $29.0 million in climate benefits, and $50.8 million in health benefits. In this case, the net benefit would amount to $237.0 million per year.

Table III.4 Annualized Benefits and Costs of Proposed Standards for Dishwashers

	Million 2022$/year		
	Primary Estimate	Low-Net-Benefits Estimate	High-Net-Benefits Estimate
3% discount rate			
Consumer Operating Cost Savings	171.2	164.1	175.8
Climate Benefits*	29.0	28.3	29.3
Health Benefits**	50.8	49.6	51.3
Total Benefits†	251.0	242.0	256.4
Consumer Incremental Product Costs‡	14.0	17.0	13.2
Net Monetized Benefits	237.0	224.9	243.1
Change in Producer Cashflow (INPV)‡‡	(14) – (9)	(14) – (9)	(14) – (9)
7% discount rate			
Consumer Operating Cost Savings	127.2	122.5	130.5
Climate Benefits* (3% discount rate)	29.0	28.3	29.3
Health Benefits**	34.3	33.5	34.5
Total Benefits†	190.5	184.3	194.3
Consumer Incremental Product Costs‡	14.0	16.7	13.3
Net Monetized Benefits	176.4	167.6	181.0
Change in Producer Cashflow (INPV)‡‡	(14) – (9)	(14) – (9)	(14) – (9)

Note: This table presents the costs and benefits associated with dishwashers shipped in 2027–2056. These results include consumer, climate, and health benefits that accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *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 and IV.H of the direct final rule published elsewhere in this issue of the *Federal Register*. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC-GHG (*see* section IV.L of the direct final rule published elsewhere in this issue of the *Federal Register*). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC-GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. *See* section IV.L of the direct final rule published elsewhere in this issue of the *Federal Register* for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate, but DOE does not have a single central SC-GHG point estimate.

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

‡‡ Operating Cost Savings are calculated based on the life-cycle cost analysis and national impact analysis as discussed in detail below. *See* sections IV.F and IV.H of the direct final rule published elsewhere in this issue of the *Federal Register*. 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 the direct final rule published elsewhere in this issue of the *Federal Register*. 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 8.5 percent that is estimated in the MIA (*see* chapter 12 of the direct final rule TSD for a complete description of the industry weighted-average cost of capital). For dishwashers, the change in INPV ranges from -$14 million to -$9 million. DOE accounts for that range of likely impacts in analyzing whether a trial standard level is economically justified. *See* section V.C of the direct final rule published elsewhere in this issue of the *Federal Register*. 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 Tiered scenario, which models a reduction of manufacturer markups due to reduced product differentiation as a result of amended standards. 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 the direct final rule published elsewhere in this issue of the *Federal Register* to provide additional context for assessing the estimated impacts of this proposed 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 annualized the net benefit calculation for this proposed rule, the annualized net benefits would range from $223 million to $228 million at 3-percent discount rate and would range from $163 million to $168 million at 7-percent discount rate. Parentheses () indicate negative values.

IV. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule until the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document. Comments relating to the direct final rule published elsewhere in this issue of the **Federal Register**, should be submitted as instructed therein.

Submitting comments via *www.regulations.gov*. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

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

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file

format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Public Meeting

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

V. Severability

DOE proposes adding a new paragraph (3) into section 10 CFR 430.32(f) to provide that each energy and water conservation for each dishwasher category is separate and severable from one another, and that if any energy or water conservation standard is stayed or determined to be invalid by a court of competent jurisdiction, the remaining standards shall continue in effect. This severability clause is intended to clearly express the Department's intent that should an energy or water conservation standard for any product class be stayed or invalidated, the other conservation standards shall continue in effect. In the event a court were to stay or invalidate one or more energy or water conservation standards for any product class as finalized, the Department would want the remaining energy conservation standards as finalized to remain in full force and legal effect.

VI. Procedural Issues and Regulatory Review

The regulatory reviews conducted for this proposed rule are identical to those conducted for the direct final rule published elsewhere in this issue of the **Federal Register**. Please see the direct final rule for further details.

A. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') and a final regulatory flexibility analysis (''FRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*). DOE has not prepared an IRFA for the products that are the subject of this proposed rulemaking.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth in the following paragraphs.

For manufacturers of dishwashers, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (*See* 13 CFR part 121.) The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of dishwashers is classified under NAICS 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.[19]

DOE conducted a focused inquiry into small business manufacturers of the products covered by this rulemaking. DOE reviewed its Compliance Certification Database,[20] California Energy Commission's Modernized Appliance Efficiency Database System,[21] and ENERGY STAR's Product Finder dataset [22] to create a list of companies that import or otherwise manufacture the products covered by this proposal. DOE then consulted publicly available data to identify OEMs selling dishwashers in the United States. DOE relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet [23]) to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer products covered by this rulemaking, do not meet SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 21 dishwasher OEMs. Of the 21 OEMs identified, DOE determined no companies qualify as a small domestic business.

Based on the initial finding that there are no dishwasher manufacturers who would qualify as small businesses, DOE certifies that the proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities and has not prepared an IRFA for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

The following standard appears in the proposed amendatory text of this document and was previously approved

[19] U.S. Small Business Administration. ''Table of Small Business Size Standards.'' (Effective March 17, 2023). Available at *www.sba.gov/document/support-table-size-standards* (last accessed Dec. 22, 2023).

[20] U.S. Department of Energy Compliance Certification Database, available at *www.regulations.doe.gov/certification-data/products.html#q=Product_Group_s%3A** (last accessed Aug. 23, 2023).

[21] California Energy Commission Modernized Appliance Efficiency Database System, available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed Aug. 23, 2023).

[22] ENERGY STAR Product Finder data set, available at *www.energystar.gov/productfinder* (last accessed Aug. 23, 2023).

[23] The Dun & Bradstreet Hoovers subscription login is accessible at *app.dnbhoovers.com* (last accessed Dec. 22, 2023).

for the locations in which it appears: AHAM DW–1–2020.

VII. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Signing Authority

This document of the Department of Energy was signed on April 12, 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 April 12, 2024.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend § 430.32 by revising paragraph (f) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(f) *Dishwashers.* (1) All dishwashers manufactured on or after May 30, 2013, shall meet the following standard—

(i) Standard size dishwashers shall not exceed 307 kwh/year and 5.0 gallons per cycle. Standard size dishwashers have a capacity equal to or greater than eight place settings plus six serving pieces as specified in AHAM DW–1–2020 (incorporated by reference, see § 430.3) using the test load specified in section 2.3 of appendix C1 or section 2.4 of appendix C2 to subpart B of this part, as applicable.

(ii) Compact size dishwashers shall not exceed 222 kwh/year and 3.5 gallons per cycle. Compact size dishwashers have a capacity less than eight place settings plus six serving pieces as specified in AHAM DW–1–2020 (incorporated by reference, see § 430.3) using the test load specified in section 2.3 of appendix C1 or section 2.4 of appendix C2 to subpart B of this part, as applicable.

(2) All dishwashers manufactured on or after [*Date 3 years after date of publication of the final rule in the* **Federal Register**], shall not exceed the following standard—

Product class	Estimated annual energy use (kWh/year)	Maximum per-cycle water consumption (gal/cycle)
(i) Standard-size [1] (≥8 place settings plus 6 serving pieces) [2]	223	3.3
(ii) Compact-size (<8 place settings plus 6 serving pieces) [2]	174	3.1

[1] The energy conservation standards in this table do not apply to standard-size dishwashers with a cycle time for the normal cycle of 60 minutes or less.

[2] Place settings are as specified in AHAM DW–1–2020 (incorporated by reference, see § 430.3) and the test load is as specified in section 2.4 of appendix C2 to subpart B of this part.

(3) The provisions of paragraph (f)(2) of this section are separate and severable from one another. Should a court of competent jurisdiction hold any provision(s) of this section to be stayed or invalid, such action shall not affect any other provision of this section.

* * * * *

[FR Doc. 2024–08211 Filed 4–23–24; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[NOTICE 2024–12]

Amending Definition of Contribution to Include ''Valuable Information''

AGENCY: Federal Election Commission.

ACTION: Notification of Disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on April 29, 2019. The Petition asked the Commission to amend the existing regulation defining ''contribution'' by adding a new section to include within the definition of contribution certain ''valuable information.'' The Petition would further require the Commission to initiate investigations and report to a law enforcement agency ''automatically'' and without a vote whenever the Commission receives notice that any person has received certain ''foreign information'' or ''compromising information.'' The Commission is not initiating a rulemaking at this time because it lacks the statutory authority to do so.

DATES: April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Luis M. Lipchak, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act, 52 U.S.C. 30101–45 (the ''Act''), and Commission regulations define a contribution as ''any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.'' [1] ''Anything of value'' includes all in-kind contributions, such as the provision of goods and services without charge or at a charge that is less than the usual and normal charge.[2] Moreover, Commission regulations identify the following as

[1] 52 U.S.C. 30101(8)(A)(i); *see also* 11 CFR 100.52(a).

[2] 11 CFR 100.52(d)(1).

contributions: payment for attendance at a fundraiser, political event, or the purchase price of a fundraising item sold by a political committee; [3] compensation by a third party for personal services an individual provides unpaid to a political committee; [4] an extension of credit, unless the extension is extended in the ordinary course of a person's business and under terms and conditions that are substantially similar to credits extended to nonpolitical entities; [5] and anything of value given to a national party committee for the purchase or construction of an office building or facility.[6]

On April 29, 2019, the Commission received a Petition for Rulemaking (''Petition'') from Sai, Fiat Fiendum, Inc., Make Your Laws PAC, Inc., and Make Your Laws Advocacy, Inc. (collectively ''Petitioners''). The Petitioners asked the Commission to amend 11 CFR part 100, subpart B, by adding a new § 100.57 to include within the definition of contribution certain ''valuable information.'' [7]

The Petition proposes to define ''valuable information'' as information that: (1) is not freely available to the public; (2) is provided to a person regulated by the Act at a cost less than the market rate or by a person not hired by the recipient to generate such information; (3) would cost a non-trivial amount for the recipient to obtain at their own expense; and (4) is information that would likely have the effect of influencing any election for Federal office or that parties or candidate committees have traditionally expended money to obtain.[8]

The proposal sets out two types of ''valuable information'' that would require special treatment: ''foreign information'' and ''compromising information.'' [9] ''Foreign information'' would include any information that comes from a source that is prohibited from making contributions under the Act.[10] ''Compromising information'' would include ''any information that could be used to blackmail or otherwise compromise any candidate for Federal office (including indirect coercion, such as of a candidate's family), regardless of source.'' [11]

The Petition would require any person who receives ''foreign information'' or ''compromising information,'' or is offered any ''foreign information'' or ''compromising information,'' to notify the Commission in writing within three days.[12] Any ''compromising information'' the Commission received would have to be maintained under seal unless the information was otherwise available to the public, or all persons against whom the information could be used had consented to the information being made public.[13]

Under the Petitioners' proposal, upon learning of any ''foreign information'' or ''compromising information,'' the Commission would be required, automatically and without a vote of the Commission, to: (1) initiate investigations pursuant to 11 CFR 111.3 and 111.10; (2) provide a report to the Federal Bureau of Investigation; and (3) in the case of ''compromising information,'' provide a report to every reasonably identifiable person against whom such information could be used, or whose private information is disclosed by such information.[14] The Petitioners' proposal would also require the Commission, upon learning of any ''foreign information'' or ''compromising information,'' to: (1) immediately provide a report to any other law enforcement entity with likely jurisdiction over the matter; (2) within 14 days, publicly issue a report on the matter, redacting any material under seal and any material the disclosure of which could compromise an ongoing law enforcement investigation; and (3) within 30 days after the conclusion of any law enforcement investigation, issue a public report on the matter, redacting any material under seal.[15]

The Commission published a Notice of Availability (''NOA'') on July 31, 2019, asking for public comment on the Petition.[16] The Commission received 39 comments from individuals supporting the Petition, two from individuals opposing the Petition, and one from an individual posing several questions regarding the Petition. The Commission also received comments from three organizations that opposed initiating a rulemaking in response to the Petition. The organizational comments raised various concerns with the petition, including that the proposed regulations are vague, would lead to confusion and burdens that would unnecessarily implicate the First Amendment, and that, as acknowledged by the Petition, the Act already covers ''valuable information'' addressed by the proposed regulation.

One organizational commenter opposed the Petition because the ''proposed regulatory definition is redundant'' and the information covered by the proposed amendment is ''already a 'contribution' within the meaning of the Act.'' [17] Another organizational commenter argued that the Petition was ''either unconstitutional or duplicative,'' that the proposed definitions were vague, and that the proposed enforcement procedures were inconsistent with the statute.[18]

In deciding whether to initiate a rulemaking in response to a petition, the Commission generally considers five factors: (1) the Commission's statutory authority; (2) policy considerations; (3) the desirability of proceeding on a case-by-case basis; (4) the necessity or desirability of statutory revision; and (5) available agency resources.[19] After considering these factors and reviewing the comments received on the Petition, the Commission has decided not to initiate a rulemaking at this time.

First, and most significantly, the Commission lacks the statutory authority to promulgate the rule sought by the Petition. The Act empowers the Commission to ''make, amend, or repeal such rules . . . as are necessary to carry out the provisions of [the] Act.'' [20] The Act requires an affirmative vote of at least four Commissioners in order to initiate an investigation or report apparent violations to the appropriate law enforcement authorities.[21] Thus, the Commission has no authority to promulgate a rule, as Petitioners wish, that would require the Commission to initiate an investigation or report an apparent violation to a law enforcement agency ''automatically,'' without a Commission vote. Furthermore, the Act prohibits the Commission from disclosing any information about a pending investigation without the written consent of the respondent.[22] Thus, the Commission also lacks the authority to promulgate a rule, as the Petitioners propose, that would require the Commission to disseminate ''compromising information'' or other information that may be subject of a pending Commission enforcement action.

Additionally, the Commission chooses not to amend the definition of

[3] 11 CFR 100.53.
[4] 11 CFR 100.54.
[5] 11 CFR 100.55.
[6] 11 CFR 100.56.
[7] Petition at 3.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Petition at 3–4.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *See* Notice of Availability, 84 FR 37154 (July 31, 2019).
[17] Campaign Legal Center, Comment.
[18] Institute for Free Speech, Comment.
[19] 11 CFR 200.5.
[20] 52 U.S.C. 30107(a)(8).
[21] 52 U.S.C. 30106(c), 30107(a)(9), 30109(a)(2).
[22] 52 U.S.C. 30109(a)(4), (12).

contribution to include ''valuable information'' as a matter of policy, because such an amendment would be redundant and potentially confusing to the public. The existing definition of contribution includes ''anything of value.'' [23]

Accordingly, after reviewing the comments received regarding the Petition and in consideration of the factors discussed, the Commission declines to initiate a rulemaking in response to the Petition.

Copies of the comments and the Petition for Rulemaking are available on the Commission's website, *https://www.fec.gov/fosers/* (REG 2019–01 Amending Definition of Contribution to Include ''Valuable Information'' (2019)) and at the Commission's Public Records Office, 1050 First Street NE, Washington, DC 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m.

Dated: April 18, 2024.

On behalf of the Commission.

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–08698 Filed 4–23–24; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104, 110

[NOTICE 2024–11]

Contributions From Corporations and Other Organizations to Political Committees

AGENCY: Federal Election Commission.

ACTION: Notification of disposition of petition for rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on May 14, 2015. The Petition asks the Commission to revise existing rules concerning the reporting of contributions to political committees from corporations and other organizations. For the reasons described below, the Commission is not initiating a rulemaking at this time.

DATES: April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Luis M. Lipchak, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act, 52 U.S.C. 30101–45 (the ''Act''), and Commission regulations require all political committees to abide by certain organizational, record-keeping, and reporting requirements.[1] This includes maintaining records of contribution receipts and disbursements, reporting independent expenditures, and filing periodic disclosure reports that identify the source of each contribution exceeding $200.[2] Commission regulations also require every person who makes electioneering communications aggregating in excess of $10,000 in a calendar year and every person (other than a political committee) that makes independent expenditures in excess of $250 with respect to a given election in a calendar year to report certain information to the Commission.[3]

On May 14, 2015, the Federal Election Commission received a Petition for Rulemaking from Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. (''Petition''). The Petition asked the Commission to modify its regulations requiring disclosure of contributions from corporations and other organizations to political committees. The Petition requested that the Commission establish a new rule requiring that ''any person, other than a natural person, contributing an aggregate of more than $1,000 in any calendar year to any political committee, whether directly or indirectly'' (emphasis omitted), must do so from an account subject to certain reporting requirements. Specifically, the Petition asked the Commission to require that these accounts disclose ''the original source of all election-related contributions and expenditures, traceable through all intermediary entities to a natural person, regardless of the amounts or entities involved'' (emphasis omitted). The Petition also asked the Commission to apply to these accounts the identification requirements of 11 CFR 100.12; the Act's prohibition on foreign national contributions, 52 U.S.C. 30121; allocation rules for administrative expenses; and, in some circumstances, the Act's limitations on contributions to political committees.

The Petition argued that for disclosure requirements to be effective, disclosure must be required for ''the *original* source of *all* election-related contributions and expenditures, traceable through *all* intermediary entities to a natural person, regardless of the amounts or entities involved'' (footnote omitted).[4] The Petition asserted that under existing regulations independent expenditure only political committees can hide the ''original source'' of contributions because they are permitted to receive contributions from corporations, including 501(c)(4) corporations, that are not subject to reporting obligations under the Act.[5] The Petition argued that these sources can make political contributions while hiding the ''true source'' of contributions because ''the FEC only requires political committees to report the identity of the *proximate* source of a contribution, rather than the *original* source.'' [6] Furthermore, the Petition asserted that foreign nationals could circumvent the prohibition on indirect political contributions by foreign nationals by making contributions to 501(c)(4) corporations knowing that their funds will be used to make contributions to political committees.[7]

The Commission published a Notice of Availability (''NOA'') on July 29, 2015, asking for public comment on the Petition.[8] The Commission received 13 substantive comments on the Petition and one non-substantive comment (from an individual commenting on a tangential matter). Of the 13 substantive comments, three were from individuals supporting the Petition and 10 were from commenters who opposed the Petition. The three comments supporting the Petition included a broad statement of support for the Petition, and two of those individual commenters expressed general concern about the influence of corporate contributions on the political process.

The 10 comments opposed to initiating a rulemaking were received from four individuals and six organizations/professionals. Of the four comments from individuals opposing the Petition, one was from an individual who broadly opposed the proposed rulemaking, two were from individuals who contended that the proposed rules were beyond the Commission's statutory authority, and one was from an individual who believed the proposed rules did not address the issue raised by the Petition of identifying the original source of funds contributed to independent expenditure-only political committees. The primary and common

[23] 52 U.S.C. 30101(8)(A)(i); 11 CFR 100.52(a). *See also* Petition at 2, which acknowledges that ''valuable information'' is already covered by the Act (''To be absolutely clear, we believe that the information covered in this amendment is already a ''contribution'' within the meaning of the Act, whether or not it is adopted.'').

[1] *See* 52 U.S.C. 30102, 30103, 30104; 11 CFR 102.1, 102.2, 102.7, 104.3.

[2] *See* 11 CFR 104.3(a)(4)(i), 104.4, 104.5(c).

[3] 11 CFR 104.20(b) and (c), 109.10(b), (e); 52 U.S.C. 30104(c)(1) and (2), (f).

[4] Petition at 4.

[5] Petition at 2.

[6] *Id.*

[7] *See id.*

[8] *See* Notice of Availability, 80 FR 45115 (July 29, 2015).

themes of the organizational/professional comments were that the Petition sought to address a problem that does not exist, that promulgating new regulations would lead to confusion and burdens that would unnecessarily implicate the First Amendment, and that the Commission lacked the statutory authority to promulgate the proposed regulations.

In deciding whether to initiate a rulemaking in response to a petition, the Commission generally considers five factors: (1) the Commission's statutory authority; (2) policy considerations; (3) the desirability of proceeding on a case-by-case basis; (4) the necessity or desirability of statutory revision; and (5) available agency resources.[9] After considering these factors and reviewing the comments received on the petition, the Commission has decided not to initiate a rulemaking at this time.

First, and most significantly, the Commission lacks the statutory authority to promulgate a rule sought by the Petition. The Act empowers the Commission to ''make, amend, or repeal such rules . . . as are necessary to carry out the provisions of [the] Act.'' [10] And as the Petition acknowledges, the Act does not require corporations and other organizations (except for political committees) to make contributions from a separate account subject to the prohibitions and reporting requirements of the Act.[11] Nor does the Act require such entities to disclose, as the Petition proposes, ''the original source of all election-related contributions and expenditures, traceable through all intermediary entities to a natural person.'' The Commission may not impose such requirements without a statutory mandate to do so.

Second, the vast majority of the commenters, across the political spectrum, opposed the Petition. Given the public opposition to the Petition, and the fact that the Commission lacks statutory authority to implement the Petition's proposal, there is no policy interest in pursuing a rulemaking, nor would it be a good use of Commission resources.

Furthermore, declining to pursue the proposed rulemaking will not require the Commission to proceed on a case-by-case-basis because the information sought by the petition is not required to be disclosed under the Act and Commission regulations.[12]

Lastly, the ''necessity or desirability of statutory revision'' weighs against pursuing the proposed rulemaking because the changes sought by Petitioners would require a statutory revision given that the Commission lacks the statutory authority to promulgate the rules proposed by Petitioners.[13] Accordingly, after considering the comments received regarding the Petition and in consideration of each of the factors discussed, the Commission declines to initiate a rulemaking in response to the Petition.

Copies of the comments and the Petition for Rulemaking are available on the Commission's website, *https://www.fec.gov/fosers/* (REG 2015–03 Contributions from Corporations and Other Organizations to Political Committees (2015)) and at the Commission's Public Records Office, 1050 First Street NE, Washington, DC 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m.

Dated: April 18, 2024.

On behalf of the Commission.

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–08695 Filed 4–23–24; 8:45 am]

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[9] 11 CFR 200.5.

[10] 52 U.S.C. 30107(a)(8).

[11] Corporations and labor organizations are prohibited from making contributions to candidates and party committees. 52 U.S.C. 30118(a), (b)(2); 11 CFR 114.2(b). Corporations may, however, make contributions to nonconnected political committees that make only independent expenditures and to non-contribution accounts of hybrid political committees. *See, e.g., Citizens United* v. *FEC,* 558 U.S. 310 (2010); *SpeechNow.org* v. *FEC,* 599 F.3d 686 (D.C. Cir. 2010) (*en banc*); Advisory Opinion 2011–11 (Colbert).

[12] 52 U.S.C. 30104, 30116, 30118, 30119, 30121, 30122; *see also* 11 CFR part 104, 11 CFR 110.1, 110.4, 110.20, 114.2, 115.2.

[13] 11 CFR 200.5.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 749

[NCUA–2024–0026]

RIN 3133–AF61

Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The NCUA Board (Board) is issuing this advance notice of proposed rulemaking (ANPR) to solicit comments on ways the agency can improve and update its records preservation program regulation and accompanying guidelines in the NCUA regulations. The Board is particularly interested in obtaining stakeholder input on the content of the regulation, which has not been updated in 15 years and may be outdated or at odds with current best practices. The Board is also interested in feedback on the structure of the part which may be confusing as it currently contains a combination of regulatory requirements and guidance.

DATES: Comments must be received on or before June 24, 2024.

ADDRESSES: You may submit written comments by any of the following methods identified by RIN (Please send comments by one method only):

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments for Docket Number NCUA–2024–0026.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the Federal eRulemaking Portal at *https://www.regulations.gov* as submitted, except when impossible for technical reasons. Public comments will not be edited to remove any identifying or contact information. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518–6540 or emailing *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: *Policy:* Matt Huston, Policy Officer, Office of Examination and Insurance, at (571) 309–7684 or *jhuston@ncua.gov; Legal:* Gira Bose, Senior Staff Attorney, Office of General Counsel, at (703) 518–6562 or *gbose@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Standards and Request for Comment
III. Legal Authority

I. Background

In 2023, the NCUA received feedback that part 749 and its appendices are burdensome and unclear. Based on this feedback and other factors described below, the NCUA has identified the need to review part 749 to see if any changes or improvements are necessary. The Board recognizes the NCUA's regulations in this area, which were last updated many years ago, may be outdated or unclear for some credit unions, which ultimately may have adverse effects on their members. Thus, the Board is seeking advance comment on whether there is a need to update

part 749, and if so, what should be updated and how, to ensure that credit unions continue to properly preserve records vital to their business operations, the NCUA's supervisory needs, and the needs of their members.

II. Current Standards and Request for Comment

Part 749 requires all federally insured credit unions (credit unions) to maintain a records preservation program to identify, store, and reconstruct vital records in the event that a credit union's records are destroyed.[1]

Part 749 requires a vital records preservation program to be in writing and contain certain procedures for maintaining duplicate vital records at an offsite vital records center.[2] The regulation defines the term 'vital records' as: (a) a list of share, deposit, and loan balances for each member's account as of the close of the most recent business day that shows each balance individually identified by a name or number; lists multiple loans of one account separately; and contains information sufficient to enable the credit union to locate each member, such as address and telephone number; (b) a financial report, which lists all of the credit union's asset and liability accounts and bank reconcilements, current as of the most recent month-end; (c) a list of the credit union's accounts at financial institutions, insurance policies, and investments along with related contact information, current as of the most recent month-end; and (d) emergency contact information for employees, officials, regulatory offices, and vendors used to support vital records.[3]

At the same time, appendix A—which is included in part 749 as suggested guidelines for record retention—advises that the following additional sets of records should be retained permanently: 1. Official records of the credit union: (a) Charter, bylaws, and amendments; (b) Certificates or licenses to operate under programs of various government agencies, such as a certificate to act as issuing agent for the sale of U.S. savings bonds. 2. Key operational records: (a) Minutes of meetings of the membership, board of directors, credit committee, and supervisory committee; (b) One copy of each financial report, NCUA Form 5300 or 5310, or their equivalent, and the Credit Union Profile report, NCUA Form 4501, or its equivalent as submitted to the NCUA at the end of each quarter; (c) One copy of each supervisory committee comprehensive annual audit report and attachments; (d) Supervisory committee records of account verification; (e) Applications for membership and joint share account agreements; (f) Journal and cash record; (g) General ledger; (h) Copies of the periodic statements of members, or the individual share and loan ledger; (i) Bank reconcilements; and (j) Listing of records destroyed.[4]

Credit unions have expressed confusion regarding the interaction between part 749's requirements and appendix A, and between part 749 and other parts of the NCUA's regulations that have record retention requirements not referenced in part 749. Under part 749, certain supervisory committee documents are not vital records and are subject to periodic destruction; yet under § 715.8 the supervisory committee must retain the records of each verification of members' passbooks and accounts until the completion of the next member account verification.[5]

The Board seeks comment on all aspects of part 749 and the appendices, including how they can be modernized, streamlined, and clarified, and other provisions in the NCUA's regulations that contain record retention requirements. The Board also encourages credit unions and other stakeholders that have developed well-functioning records preservation programs to comment on what works for them and share their best practices in response to this document. In addition, the Board specifically requests feedback addressing the following areas: [6]

A. Part 749 Definitions

Questions:

(1) Does the definition of vital records in 12 CFR 749.1 contain all, and only those, records you would consider to be vital for credit unions?

(2) Are there additional types of documents not listed as a ''vital record'' that you think should be as they are critical for business operations and to properly serve members?

(3) Are there other industry standards or methodologies outside of part 749 that the agency should consider for preserving vital records, for defining what vital records are, and for determining minimum retention periods?

(4) The primary focus of the records retention guidance in appendix B relates specifically to catastrophic act preparedness. Are there any terms, definitions, or standards that the Board should consider updating in appendix B?

(5) Are there any other changes to appendix B that you would recommend?

B. Records Retention Practices

Understanding current credit union retention practices would be helpful in determining whether part 749 is properly serving its purpose which is for a credit union to identify, store, and reconstruct vital records in the event that the credit union's records are destroyed.[7]

Questions:

(6) How long, and in what format, does your credit union store its vital records?

(7) Does your credit union maintain and store any vital records in a physical format due to a regulatory requirement or supervisory expectation?

(8) What impediments, including estimated costs, does your credit union encounter with storing vital records?

(9) What records do you deem vital for business operations that a credit union should be required to keep permanently for the purpose of restoring vital member services?

(10) Other than for records that must be kept permanently, are there specific timeframes you would recommend that other vital records be retained?

(11) What are the pros and cons of storing vital records physically, electronically, or in other formats, such as cloud computing storage?

(12) Does your credit union rely on third-party vendors to accurately maintain vital records, and if so, what are some of the challenges that these arrangements present?

(13) How would you suggest the agency create a more effective framework for credit unions to preserve vital records?

(14) What are some challenges for smaller credit unions, defined as credit unions with total assets of $100 million or less, in maintaining vital records, and what has worked? [8]

(15) What additional support, training, or technical assistance could the NCUA provide, if any, to assist credit unions with both understanding and implementing records retention requirements?

[1] 12 CFR 749.0.

[2] 12 CFR 749.2 and 749.3.

[3] 12 CFR 749.1.

[4] 12 CFR part 749, appendix A.

[5] 12 CFR 715.8(c).

[6] In responding to the questions below, the NCUA recommends respondents consider the totality of their vital records, including any such records a credit union has acquired, come into possession of, or retained through operational or organizational changes, such as a merger.

[7] 12 CFR 749.0(a).

[8] See NCUA Interpretive Ruling and Policy Statement 15–1, available at *https://ncua.gov/files/publications/regulations/IRPS2015-1.pdf.*

C. Additional Guidance

The issuance of guidance in this area has been a long-standing agency practice to assist credit unions with their record preservation obligations. As noted in an earlier rulemaking on part 749, ''there is a need for guidance in the area of record retention based on the frequency of requests for assistance from credit unions.'' [9] Additionally, clearer guidance in this area would also allow NCUA to better execute its supervisory duties. As part of meeting this need, the agency has taken steps over the years to clearly state the difference between regulations and guidance. In a prior rulemaking on part 749, the Board attempted to clarify this issue by stating, ''The Board has weighed the fact that guidance is available from other sources and the potential for confusion regarding enforceability of a regulation versus guidance. The Board believes the benefit to credit unions in having the guidance in the appendix to the regulatory requirement will enhance access to the guidance and will facilitate compliance.'' [10] In the part 749 rulemaking, the Board further noted that ''including specific words like 'recommended' and 'guidance' means, as a legal matter, that the guidance is just that—guidance—and is not enforceable as a regulation. These words clarify and minimize, to the extent linguistically possible, the potential for misinterpretation.'' [11] The NCUA recently codified this position in an interagency rulemaking clarifying the distinction between a rule and guidance whereby the former creates binding legal obligations, and the latter does not.[12]

Questions:

(16) What provisions of appendix A or appendix B do not align with the requirements of part 749, or are otherwise outdated or unclear examples of the types of records that should be retained? For records you consider outdated, please explain why.

(17) In terms of the content of any future guidance, what guidance would be helpful to better reflect the types of records that must be retained under part 749?

(18) What guidance would be helpful for catastrophic act or other disaster preparedness?

(19) Is there confusion among stakeholders regarding the enforceability of regulation versus guidance concerning part 749? If so, what should be revised?

D. Other NCUA Regulations

Questions:

(20) Are there other provisions in the NCUA's regulations that contain record retention requirements that should be incorporated into part 749?

III. Legal Authority

The Board issues this ANPR pursuant to its authority under the Federal Credit Union Act (FCUA) to prescribe rules and regulations as it deems appropriate for administering the FCUA, including its recordkeeping requirements for Federal credit unions.[13] Maintaining vital records is central to a credit union's ability to properly service its members and to the NCUA's ability to fulfill its supervisory and enforcement duties. Section 209 of the FCUA is a plenary grant of regulatory authority to the Board to examine and require information and reports from credit unions as well as issue rules and regulations necessary or appropriate to carry out its roles as regulator and share insurer.[14] Section 206 of the FCUA requires the agency to impose corrective measures whenever, in the opinion of the Board, any credit union is engaged in or has engaged in unsafe or unsound practices in conducting its business.[15] Accordingly, the FCUA grants the Board broad rulemaking authority to ensure that credit unions, their member owners, and the National Credit Union Share Insurance Fund remain safe, sound and protected.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024–08680 Filed 4–23–24; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF STATE

22 CFR Parts 122 and 129

[Public Notice: 12236]

RIN 1400–AF78

International Traffic in Arms Regulations: Registration Fees

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) by increasing and specifying the fees required for registration with the Directorate of Defense Trade Controls (DDTC).

DATES: Send comments on or before June 10, 2024.

ADDRESSES: Interested parties may submit comments by one of the following methods:

- *Email: DDTCPublicComments@state.gov*. Include the subject line: ''Registration Fees—RIN 1400–AF78''
- *Federal eRulemaking Portal: http://www.regulations.gov*. Identify by the Department docket number DOS–2023–0034 or RIN 1400–AF78. Follow the instructions for sending comments.

Comments received after that date may be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted, because any such claim will be deemed waived and comments and/or transmittal emails may be made publicly available. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Per 5 U.S.C. 553(b)(4), a concise summary of this proposed rule may be found at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Allison Smith, PM/DDTC Director of Management, Bureau of Political-Military Affairs, U.S. Department of State, telephone 202–647–1282; email: *DDTCCustomerService@state.gov*. Subject: Registration Fee Change.

SUPPLEMENTARY INFORMATION:

Overview

For the first time in fifteen years, the State Department proposes to revise and increase the registration fees (also referred to as ''fees'') charged to those required to register with DDTC. In accordance with section 38(b) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(b)), every person who engages in the business of manufacturing, exporting, temporarily importing, or brokering any defense articles or defense services is required to register with DDTC, the agency charged with administering the relevant sections of the AECA. Section 38(b) of the AECA also requires that every person required to register pay a registration fee. As the ITAR implements section 38 of the AECA, and as its parts 122 and 129 (22

[9] 66 FR 11239 (Feb. 23, 2001).

[10] 72 FR 42271 (Aug. 2, 2007).

[11] 12 U.S.C. 1766(e).

[12] 12 U.S.C. 1766(e).

[13] 12 U.S.C. 1766(e).

[14] 12 U.S.C. 1789(a)(8) and (11).

[15] 12 U.S.C. 1786(b)(1). There are several references to ''safety and soundness'' in the FCUA. See 12 U.S.C. 1757(5)(A)(vi)(I), 1759(d & f), 1781(c)(2), 1782(a)(6)(B), 1786(b), 1786(e), 1786(f), 1786(g), 1786(k)(2), 1786(r), 1786(s), and 1790d(h).

CFR parts 122 and 129) address registration, the Department proposes to revise those provisions to restate registration requirements without substantive change, to revise the Department's methodology for determining the fees paid by certain registrants, to increase registration fees, and to reinsert the actual amount of fees within the ITAR itself.

Uses of Registration Fees

Registration fees required under section 38 of the AECA are, by a separate statute (22 U.S.C. 2717), used to fund a large share of DDTC and the many functions it provides to exporters, importers, brokers, manufacturers, and the general public. The Department briefly outlines some of these functions here so that registrants can have more context for how their fees help DDTC's mission. Services like the DDTC Response Team, Help Desk, commodity jurisdiction determinations, advisory opinions, guidance on brokering, and support for registration all offer assistance for the approximately 14,500 current DDTC registrants and the general public. Moreover, DDTC often conducts outreach, visits, webinars, speaking engagements and other educational services to help people understand the ITAR and its requirements and exemptions. For fiscal year 2022, for example, DDTC experts attended over 60 outreach events and engaged with over 6,000 industry attendees in online webinars.

Issuing licenses or other authorizations under the ITAR is also a core and large part of DDTC's work. In fiscal year 2022, DDTC received approximately 22,500 license applications and issued authorizations that were valued at just over $153.7 billion. Although licensing officials currently are some of the only DDTC officials paid through congressional appropriations, contractor support and other technologies impacting the processing, adjudication. and monitoring of licenses are funded by fees.

DDTC also provides crucial public services in investigating possible ITAR violations to maintain U.S. foreign policy and national security imperatives. Again, using the last fiscal year as an illustrative example, DDTC received over 600 disclosures, either voluntary or directed, and conducted over 300 end-use monitoring checks. Because investigations and compliance actions can be complex and span several months or years, the monetary value that DDTC's Compliance office secured is best viewed as a three-year rolling average for FY 2020–2023, where an average of over $7.6M per year in settlement funds were obtained for alleged ITAR violations, all of which was deposited into the Treasury Department's General Fund and does not go to DDTC. DDTC also assists Department of Justice (DOJ) officials in certain criminal proceedings related to the ITAR, including by providing testimony.

These services provide broad protection to industry and the public alike, ensuring that a uniform set of rules are enforced for all, that one business or exporter does not have an unfair advantage over the other, and that exports, temporary imports, or brokering of defense articles and defense services are consistent with the national security and foreign policy of the United States.

Apart from these ongoing crucial services, DDTC has also recently made significant advancements in processes for registration statements and license applications, and for those members of the public seeking advisory opinions or commodity jurisdiction determinations. One of those is the creation, maintenance, and enhancement of the Defense Export Control and Compliance System (DECCS). Launched in February 2020, DECCS simplifies the submission processes for applicants and allows applicants to track electronic forms submitted to DDTC. DDTC's Information Technology Modernization Team also supports enhanced security and operations features and regularly connects with DECCS users through the DECCS Users Group where industry users can provide direct feedback and suggest enhancements to DECCS. In the area of improved customer service and response, since February 2020, DDTC has used DECCS to implement a fully electronic case-management system, receiving and resolving 81,604 Help Desk tickets and 29,653 Response Team tickets. DECCS users can engage directly with DDTC Help Desk and Response Team customer service experts to resolve their issue. DDTC also implemented a customer satisfaction survey to engage with industry, and DDTC's average survey rating is 4.6 out of 5.

Other enhancements and improvements have also been made specifically to the registration processes. Since 2022, registration processing times have dropped from an average of around 45 days to 30 days. DDTC implemented automated email reminders and status updates for industry to track registration applications. The DECCS application also automatically calculates the registration fee for all registrants, and now registrants can download their renewal fees calculation letter. Additionally, there is enhanced communication between industry and DDTC through DECCS. DDTC has instituted additional improvements, including providing a list of approved licenses and other authorizations and registration guides for DECCS and FAQs.

How DDTC Calculated the New Proposed Registration Fees

The Department assessed that after fifteen years of inflation, increasing technological improvements, and improved services (which are described in further detail below), that an increase in the amount of registration fees is necessary for the continued and modernized operations of DDTC. DDTC has engaged in some public engagement on this issue, previewing that it was considering increasing its registration fees in multiple industry engagement events over the last twelve months. No questions or comments on the topic were raised by the public at those events. Separately, different industry representatives have suggested to DDTC that increased fees would be worthwhile to continue receiving improved services.

To compute the new fees proposed here, the Department looked at DDTC's past and projected fee collections projected against future operating costs. It found that although DDTC's operating budget has remained mostly the same over the past few years, apart from inflation, increasing expenses are resulting in operating costs that currently exceed the amount of revenue generated by fees. While DDTC has been able to draw from its collections over the past few years to meet its costs, these funds and the current registration fee amounts will not cover DDTC's increased operational expenses. The need to increase fees to keep up with inflation and increased costs related to enhanced services has therefore become particularly pressing and DDTC would have to cut back on certain services if registration fees are not adjusted in the near future. Similarly, obtaining more funds from other sources may not be feasible. DDTC operates with only limited congressionally appropriated funds, comprising under 17% of its total operating costs, and the congressional sense and presidential national security directive is that DDTC be mostly fee funded.

Since 2008, the time of the last registration fee increase, DDTC has structured registration fees into three basic tiers, based on groupings of registrants that approximate their potential interactions with DDTC. The tier groupings also turn on whether

persons have submitted a license application or other request for authorization and have received any favorable determinations in response during a look-back period prescribed in the regulations. Although the DDTC website's section on registration fees and tier groups currently makes reference to ''favorable authorizations,'' DDTC aims to use the term ''favorable determinations'' in the future to more accurately reflect that its licensing officials adjudicate and make determinations on license applications and other authorization types described in § 120.57. There is no practical change intended in using the updated term. Favorable determinations include an approval, an approval with provisos (sometimes also referred to as an approval with conditions), or written authorization from DDTC to conduct an activity regulated by the ITAR. An application that is returned without action or denied, on the other hand, is not a type of favorable determination. Persons who do not submit a license application or other request for authorization during the look-back period are included in the first tier at the lowest amount.

Tier 1 registrants are currently comprised of persons in the business of manufacturing who either do not export, or who rely on ITAR exemptions for export authorizations. Persons who have submitted a license application or other request for an authorization, but who did not receive any favorable determination qualify for this tier. Additionally, persons engaged in the business of brokering activities also register under Tier 1, regardless of the number of brokering authorizations sought or obtained; however, if these persons have already registered with DDTC and obtained an M-code as a manufacturer, exporter, or temporary importer, and if these persons are identified as a broker within that registration, a separate registration fee for brokering activities is not currently required. In contrast, if brokers register separately (sometimes referred to as ''stand-alone brokers''), then they are required to pay the Tier 1 fee.

Tier 2 registrants currently include those who have submitted and received a favorable determination on ten or fewer license applications or requests for authorization during the twelve-month period ending 90 days prior to the expiration of their current registration.

Tier 3 registrants have more frequent interactions with DDTC and thus require more DDTC services. These are registrants who have submitted and received a favorable determination on more than ten license applications or requests for authorization during the twelve-month period ending 90 days prior to the expiration of their current registration.

The Department now proposes to increase the existing fees of Tier 1 and Tier 2 roughly in line with inflation over the last fifteen years. This represents the Department's goal of not asking these registrants to pay an increased amount relative to 2008 costs adjusted to today's dollars. As detailed more below, the Tier 1 annual flat fee would increase from $2,250 to $3,000. This would be a 33% increase over current amounts, but just below the amount of inflation over that same period, which was approximately 40.1%, as calculated by the Department of Labor's Consumer Price Index (CPI). Using the CPI calculator on the Department of Labor's Bureau of Labor Statistics website (*https://www.bls.gov/data/inflation_calculator.htm*), $2,250 in August 2008 would have the same buying power today as around $3,153.40.

Similarly, the Tier 2 annual flat fee would increase from $2,750 to $4,000. This would be about a 45% increase over current amounts, just over the roughly 40% inflation since the amount was last adjusted. The CPI calculator shows that $2,750 in August 2008 would be about $3,854.15 today. Tier 2 registrants are proposed to have a slightly higher percentage increase than Tier 1 registrants because Tier 2 registrants receive additional services and benefits, and because they actually submit license applications or requests for authorization that require review. Whereas Tier 1 registrants do not interact as often with DDTC, and generally require less direct services, and may not engage in as much exporting or temporarily importing of defense articles or defense services.

The conditions for Tier 2, however, are proposed to be adjusted. Whereas currently, this tier is for registrants who have submitted and received a favorable determination on ten or fewer license applications or requests for authorization, the Department now proposes that the number of favorable determinations decreases from ten to five. This change was based in part on an analysis of DDTC data over the last five years, which found that the average Tier 2 registrant received three favorable determinations on license applications or requests for authorization. Consequently, the majority of registrants previously in Tier 2 would remain in this tier under the newly proposed conditions. However, those registrants who have received more than five favorable determinations in the look-back period would become Tier 3 registrants under this proposal.

Tier 3 registrants, in contrast to the other tiers, would see an increase beyond the adjusted amount of inflation. Both the calculated fee and the baseline for that fee would increase. The baseline would rise from $2,750 to $4,000, and the additional fee multiplier for favorable determinations, proposed to now be over five instead of over ten, would rise from $250 to $1,100 for each. Thus, as an example, if an exporter has applied for and obtained seven licenses or other authorizations within the look-back period, this exporter would pay the registration fee prescribed in Tier 3, which would be a baseline of $4,000, plus $2,200 (because there were two favorable determinations obtained above the baseline of five), for a total fee of $6,200.

The Department has concluded that Tier 3 registrants have benefited the most from DDTC's improvements, specifically DECCS and customer service improvements, they are best positioned to contribute from their export-derived revenue to continue and improve DDTC's services.

Because these improvements would primarily benefit Tier 3 registrants, it is those registrants that will be asked to contribute more.

DDTC currently has discounts available for exporters and temporary importers of low-value items who fall under Tier 3. This low-value discount formula is currently available on the DDTC website. Under this proposed change, this discount would remain as currently structured and would be referenced in a new paragraph (b) in § 122.3, directing the public to the DDTC website for the conditions and formula. Similarly, registrants who fall under Tier 2 and Tier 3, but who are wholly exempt from income taxation pursuant to 26 U.S.C. 501(c)(3) may be eligible for a discount to the Tier 1 fee. The DDTC website has and will continue to have information relevant to this non-profit discount as well. The new paragraph (b) would include mention of the non-profit discount alongside the Tier 3 low-value discount and direct the public to the DDTC website for more information on both. Once on the DDTC website at *https://www.pmddtc.state.gov,* relevant information can be found by clicking on the ''Conduct Business'' link on the top menu bar, and then by clicking ''Registration'' on the next page's left-hand menu.

New Proposed Registration Fees

Accordingly, the Department proposes amendments to the three registrant tiers as follows:

1. *Tier 1:* The first tier is a set fee of $3,000 per year. This applies to new registrants. It also applies to those who are renewing their registration and for whom the Department did not issue a favorable determination on a license application or other request for authorization, or who did not submit a license application or other request for authorization, during the twelve-month period ending 90 days prior to the expiration of the current registration.

2. *Tier 2:* The second tier is a set fee of $4,000 for those who are renewing their registration and have submitted license applications or other requests for authorization and received five or fewer favorable determinations during the twelve-month period ending 90 days prior to the expiration of their current registration.

3. *Tier 3:* The third tier is a calculated fee for those who are renewing their registration and have submitted license applications or other requests for authorization and received more than five favorable determinations during the twelve-month period ending 90 days prior to the expiration of their current registration. For these registrants, the fee calculation is $4,000 plus $1,110 times the total number of favorable authorizations above five.

Registration fees for persons who engage in brokering activities would remain tied to Tier 1, regardless of authorizations submitted or determinations received. If a person has already registered with DDTC as a manufacturer or exporter, and if that person is listed and identified as a broker within their manufacturer or exporter registration, then no additional fee is currently required to also register as a broker. But if a broker registers separately (*i.e.,* as a ''stand-alone broker''), then they are required to pay the Tier 1 fee, as is the case for the current registration fee structure.

DDTC has also maintained a discount for registrants who would otherwise fall in Tiers 2 or 3, but who are wholly exempt from income taxation pursuant to 26 U.S.C. 501(c)(3). The discount is proposed to still be available; however, guidance on how to apply for the discount will remain on the DDTC website. Currently, and with no proposed change, the qualifying registrant must attach proof of such status (*i.e.,* IRS certification form) for their fee to be reduced to the Tier 1 amount. Importantly, for this discount, the IRS certification must apply to all entities/subsidiaries/affiliates listed in the registration submission.

DDTC will be prepared to assist registrants with the proposed change to registration fees. If adopted in a final rule, the DECCS application will be updated to auto-calculate the revised fees once they go into effect. The DDTC public website will also have up-to-date information, and the Help Desk and the Response Team will be available to field questions. As is the case now, approximately 90 days prior to the expiration of a registration, DECCS will calculate the registration's renewal fee and post it to the DECCS Registration Dashboard. DDTC will also continue to send registration renewal notification emails 90 days and 30 days prior to a registration expiration date. And registrants will still be able to view a ''Renewal Fee Details'' button on their Registration Dashboard, which will display the total number of favorable determinations in the look-back period used to calculate the registrant's upcoming tier and total registration fee. Finally, as always, if a registrant feels the amount calculated is incorrect, they may submit a written request to DDTC explaining the basis for their request. Other frequently asked questions (FAQs) about registration fees and the registration process are available on the DDTC website, including by searching for ''registration fee'' and will be updated after any changes to the registration fees occur.

Returning the Registration Fee Amounts to the ITAR

Prior to October 2013, registration fees were outlined within the regulations themselves. Effective October 25, 2013 (78 FR 52680), the amounts of the registration fees and the tier groupings were removed from the ITAR and placed on the DDTC website. To ensure that the registration fees amounts are easily available, the Department proposes to return them to the text of the regulations in § 122.3, entitled ''Registration fees.'' Similarly, with respect to registration fees for stand-alone brokering registrations (*i.e.,* brokers who are not otherwise registered as a manufacturer or exporter, see § 129.3(d)), the Department proposes to amend § 129.8 to specify the fee amount for stand-alone broker registrations by specific reference to the Tier 1 amount prescribed in § 122.3(a)(1). Registration fee amounts and related guidance would still also remain available on the DDTC website.

ITAR Reorganization

In addition to the registration-fee-specific proposals discussed above, the Department takes this opportunity to propose additional revisions in keeping with the Department's ITAR reorganization efforts initiated by 87 FR 16396, Mar. 23, 2022. That rule restructured part 120 of the ITAR to better organize the definitions previously found in that part and other locations throughout the ITAR and consolidated provisions that provide background information or otherwise apply throughout the regulations. In keeping with those aims, the Department further proposes to remove those parts of § 122.3 that are not specific to fees, but are more generally related to registration (*i.e.,* paragraphs (b) and (c) regarding frequency and lapse of registration, respectively), and relocate them to § 122.2, which more generally describes registration. The changes proposed would not substantively alter registration requirements, but rather would reword existing provisions for clarity and relocate them from one adjoining section of the ITAR to another. The Department proposes to make related, non-substantive, changes to § 122.1 through § 122.3. The ITAR Reorganization proposed changes are as follows:

In § 122.1:

—Revising the section heading to better describe the content from ''Registration requirements'' to ''Registration: requirements, exemptions, and purpose.''

—Adding a paragraph heading to paragraph (a) to read: ''*Requirement to register.*''

In § 122.2:

—Revising the section heading to better describe the content from ''Submission of registration statement.'' to ''Registration: submission of registration statement, certification, frequency, renewal, and lapse.''

—In paragraph (a), revising the introductory heading to read ''*Submission of registration statement.*'' and streamlining the remaining text by breaking out of the introductory text, and placing into level 2 paragraphs, the two required elements of the statement: that it be signed by a U.S. person officer, and that it include documentation of incorporation or authorization.

—Adding new paragraph (c) to provide greater clarity regarding incomplete submissions, by removing and relocating text from the general requirement in paragraph (a).

—Adding new paragraph (d) by relocating text from § 122.3 regarding frequency of registration.

—Adding new paragraph (e) by relocating and revising text from § 122.3 regarding renewal of registration.

—Adding new paragraph (f) by relocating and revising text from § 122.3 regarding lapses in registration.

Because the Department proposes to remove all non-fee related text from § 122.3 by revising and relocating the text of current paragraphs § 122.3(b) and (c), it proposes to limit registration fee related text to paragraph (a) of § 122.3 and to revise paragraph (b) to direct readers to the DDTC website for certain discounts and for further guidance on the process of registration.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department has historically determined that rulemakings implementing the Arms Export Control Act or amending the ITAR involve a military or foreign affairs function of the United States under 5 U.S.C. 553(a). However, due to Department's interest in seeking public comment on this rule, the Department is soliciting comments during a 45-day comment period, to which it will respond in a final rule, should the Department choose to finalize all or part of this proposal.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 14094, and 13563

Executive Orders 12866 (as amended by Executive Order 14094) and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as a significant regulatory action by the Office of Information and Regulatory Affairs under Executive Order 12866, as amended.

In FY 2023, roughly 14,500 registrants contributed registration fees to DDTC's FY23 collections amounting to $33.8 million. Based on projections made from registrant data from recent years, the new registration structure, which presumes roughly the same number of registrants, is expected to bring in an overall total of roughly $67.2 million per year, which would be an overall increase of $33.4 million per year. Although this is a 99% projected increase in collections overall from current registration fees, the largest increase, on a per-registrant basis, would fall on Tier 3 registrants. On average, Tier 3 registrants would see their individual fee amounts increase by over 250%. The Department believes this increase is justified for the reasons discussed previously in the preamble, but specifically due to the fact that more than fifteen years have passed since DDTC last adjusted fees, and Tier 3 registrants derive greater benefits from engaging in regulated activities while also consuming a disproportionate amount of DDTC support services. Because we project registrants in Tier 3 to account for over 22,000 of the roughly 26,000 applications expected to be favorably determined by DDTC, the Department believes that this would be a more equitable distribution of financial costs. Tier 1 and Tier 2 registrants, on the other hand, will see a 33% and 45% increase, respectively, not far from the near 40% inflation rate in the over fifteen years since the registration fees were last adjusted. For FY 2025, DDTC's projected operational budget will be nearly $60 million, and that amount is expected to increase based on inflation and other increases in expenses. Setting a registration fee structure that aims to offer a stable price for a number of years is also expected to be a benefit to registrants, so that they may better know what fees to expect for future years. Additionally, the proposed registration fee structure benefits DDTC by meeting its budget demands in a way that also reasonably accounts for unknown variables such as changes in the number of registrants, or potential exemptions that would not require specific license applications or approvals and would therefore decrease the expected collections from Tiers 2 and 3. It also allows for DDTC to address unexpected contingencies as it did in 2020, when it temporarily lowered registration fee amounts as a relief measure during the pandemic. DDTC welcomes public comment on the impact of this proposed rule.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 122

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 129

Arms and munitions, Brokers, Exports, Technical assistance.

Amendatory Instructions

For the reasons discussed in the preamble and under the authority of 22 U.S.C. 2778, the Department of State proposes to revise title 22, chapter I, subchapter M, parts 122 and 129 to read as follows:

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 1. The authority citation for part 122 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

■ 2. Amend § 122.1 by revising the section heading and adding a heading to paragraph (a) to read as follows:

§ 122.1 Registration: requirements, exemptions, and purpose.

(a) *Requirement to register.* * * * * * * * * * *

■ 3. Revise § 122.2 to read as follows:

§ 122.2 Registration: submission of registration statement, certification, frequency, renewal, and lapse.

(a) *Submission of registration statement.* An intended registrant must submit a Statement of Registration (Department of State form DS–2032) to the Office of Defense Trade Controls Compliance by following the electronic filing instructions available on the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov*. The Statement of Registration may include subsidiaries and affiliates when more than 50 percent of the voting securities are owned by the registrant or the subsidiaries and affiliates are otherwise controlled by the registrant (see § 120.66 of this subchapter). Registrants may not establish new entities for the purpose of reducing registration fees. The Statement of Registration must:

(1) Be signed by a U.S. person senior officer (*e.g.,* chief executive officer, president, secretary, partner, member, treasurer, general counsel) who has been empowered by the intended registrant to sign such documents; and

(2) Include documentation that demonstrates the registrant is incorporated or otherwise authorized to do business in the United States.

(b) *Statement of Registration Certification.* The Statement of Registration of the intended registrant shall include a certification by an authorized senior officer of the following:

(1) Whether the intended registrant or its parent, subsidiary, or other affiliate listed in the Statement of Registration, or any of its chief executive officers, presidents, vice presidents, secretaries, partners, members, other senior officers or officials (*e.g.,* comptroller, treasurer, general counsel), or any member of the board of directors of the intended registrant, or of any parent, subsidiary, or other affiliate listed in the Statement of Registration:

(i) Has ever been indicted or otherwise charged (*e.g.,* charged by criminal information in lieu of indictment) for or has been convicted of violating any U.S. criminal statutes enumerated in § 120.6 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government; and

(2) Whether the intended registrant is foreign owned or foreign controlled (see § 120.65 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall include an explanation of such ownership or control, including the identities of the foreign person or persons who ultimately own or control the registrant. This requirement applies to a registrant who is a U.S. person and is owned or controlled by a foreign person. It also applies to a registrant who is a foreign person and is owned or controlled by a foreign person from the same country or a foreign person from another country.

(c) *Incomplete registration submission.* The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package.

(d) *Frequency.* A person who is required to register and pay a registration fee must renew the registration and pay a registration fee on an annual basis after initial registration.

(e) *Renewal of registration.* A registrant must submit its request for registration renewal at least 30 days but no earlier than 60 days prior to the expiration date. Notice of the fee due for the next year's registration will be sent to the registrant of record at least 60 days prior to its expiration date.

(f) *Lapse in registration.* A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

■ 4. Revise § 122.3 to read as follows:

§ 122.3 Registration fees.

(a) *Registration fee.* A person who is required to register must submit payment of a fee following the payment guidelines available on the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov.* The fee to be paid shall be one of the following:

(1) *Tier 1:* The first tier is a set fee of $3,000 per year. This applies to new registrants. It also applies to those who are renewing their registrations and for whom the Department did not issue a favorable determination on a license application or other request for authorization during the twelve-month period ending 90 days prior to the expiration of the current registration.

(2) *Tier 2:* The second tier is a set fee of $4,000 for registrants renewing their registrations who have submitted license applications or other requests for authorization and received five or fewer favorable determination during the twelve-month period ending 90 days prior to the expiration of their current registration.

(3) *Tier 3:* The third tier is a calculated fee for registrants who have submitted license applications or other requests for authorization and received more than five favorable determinations during the twelve-month period ending 90 days prior to the expiration of their current registration. For these registrants, the fee calculation is $4,000 plus $1,110 times the total number of favorable authorizations over five.

(b) *Website, discounts, and further guidance.* Information on certain discounts for registrants who are wholly exempt from income tax pursuant to 26 U.S.C. 501(c)(3), and for Tier 3 registrants who are low-value exporters or temporary importers are available on the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov* by selecting ''Conduct Business'' on the top heading bar, then selecting ''Registration'' from the left menu bar, and finally selecting ''Payment of Registration'' from the subsequent left menu bar. Other guidance and information relevant to the payment of registration fees is also available on the website.

PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 5. The authority citation for part 129 continues to read as follows:

Authority: Section 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778); E.O. 13637, 78 FR 16129.

§ 129.8 [Amended]

■ 6. Amend § 129.8(b)(1), in the first sentence, by removing the phrase ''and a fee following the fee guidelines available on the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov*.'' and adding in its place ''and the Tier 1 fee specified in § 122.3(a)(1) of this subchapter, regardless of how many favorable determinations the person received during the twelve-month period ending 90 days prior to the expiration of their current registration.''

The Under Secretary, Arms Control and International Security, Bonnie D. Jenkins, having reviewed and approved this document, has delegated the authority to electronically sign this document to Jessica Lewis, Assistant Secretary, Bureau of Political-Military Affairs, for purposes of publication in the **Federal Register**.

Jessica A. Lewis,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2024–08627 Filed 4–23–24; 8:45 am]

BILLING CODE 4710–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 24–112; RM–11981; DA 24–358; FR ID 215164]

Television Broadcasting Services Jacksonville, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed January 19, 2024 and amended on January 30, 2024, by Multimedia Holdings Corporation (Petitioner). The Petitioner requests the substitution of channel 33 for channel 13 at Jacksonville, Florida (Jacksonville), in the Table of TV Allotments.

DATES: Comments must be filed on or before May 24, 2024 and reply comments on or before June 10, 2024.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Michael Beder, Esq., Associate General Counsel, TEGNA Inc., 8350 Broad Street, Suite 2000, Tysons, Virginia 22102.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov*.

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Petitioner states that its proposed channel substitution would serve the public interest by resolving persistent reception complaints it has received from viewers, and substantially improve the Jacksonville community's access to the Station's local news, emergency, NBC network, and other programming. The Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances.

Additionally, the Petitioner notes that the Commission has observed ''large variability in the performance (especially intrinsic gain) of indoor antennas available to consumers, with most antennas receiving fairly well at UHF and the substantial majority not so well to very poor at high-VHF.'' Petitioner further states that the Commission has recognized that although VHF reception issues are not universal, environmental noise blockages affecting VHF signal strength and reception exist and vary widely from service area to service area.

An engineering statement provided by the Petitioner confirms that the proposed channel *33 contour would provide full principal community coverage to Jacksonville and would not cause impermissible interference to any station. Although an analysis provided by the Petitioner using the Commission's *TVStudy* software tool indicates that the Station's move to channel 33 will result in 274,303 persons no longer being located within the station's noise limited service contour (NLSC), there are three other NBC affiliated TV stations whose NLSC overlaps with WTLV's proposed NLSC. These stations serve all but 16,737 persons in the predicted loss area. Furthermore, according to the Petitioner, when the Commission's *TVStudy* software is run for the Station's licensed and proposed facilities with the Study Area Mode set to unrestricted to predict coverage outside the proposed NLSC, all viewers in the predicted loss area would continue to receive over-the-air NBC network programming. Thus, according to the Petitioner, although the proposed channel 33 facility would result in a reduction in the predicted population served, once service provided by other NBC stations and terrain-limited coverage predictions are taken into account, the proposed channel 33 facility will result in no loss of NBC service.

We believe that the Petitioner's channel substitution proposal for WTLV warrants consideration. Channel 33 can be substituted for channel 13 at Jacksonville as proposed, in compliance with the principal community coverage requirements of § 73.618(a) of the Commission's Rules, at coordinates 30-16′-25″ N and 81-33′-12″ W. In addition, we find that this channel change meets the technical requirements set forth in § 73.622(a) of the rules. Although the proposal is predicted to result in a loss of service to 274,303 persons, all of those persons would continue to receive over-the-air NBC network service either from other existing stations or while being located outside of WTLV's NLSC.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking* (NPRM,) MB Docket No. 24–112; RM–11981; DA 24–358, adopted April 16, 2024, and released April 16, 2024. The full text of this document is available for download at *https://www.fcc.gov/edocs*. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking (NPRM) is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking is available at *https://www.fcc.gov/proposed-rulemakings.*

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in the table in paragraph (j), under Florida, by amending the entry for Jacksonville to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
Florida	
* * * * *	
Jacksonville	*9, 14, 18, 19, 20, *21, 33
* * * * *	

* * * * *

[FR Doc. 2024–08743 Filed 4–23–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 80
Wednesday, April 24, 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 will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by May 24, 2024. Written comments and recommendations for the proposed information collection should be submitted, identified by docket number 0535–0264, within 30 days of the publication of this notice by any of the following methods:

- *Email: omboffi cer@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.

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.

National Agricultural Statistics Service

Title: Hawaii Agricultural Theft Survey.

OMB Control Number: 0535–0264.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. NASS will conduct a survey of agricultural operations in Hawaii. Each selected farmer or rancher will be asked to provide data on (1) Number and value of theft, vandalism, and trespassing incidents in 2024, (2) How many incidents were reported and acted on, and (3) How much was spent to reduce future incidents along with effectiveness.

General authority for these data collection activities is granted under U.S.C. Title 7, Section 2204. This survey will be conducted on a full cost recovery basis with the Hawaii Department of Agriculture.

Need and Use of the Information: Interest in this topic has been expressed by producers along with a possible program to reduce agricultural theft/vandalism/trespassing. Hawaii farmers and ranchers will benefit from this survey by having statistically defensible estimates of theft/vandalism/trespassing from 2024 at the local level. The Hawaii Department of Agriculture (HDOA) has entered into a cooperative agreement with NASS to conduct an Agricultural Theft Survey. The purpose of this survey is to ascertain the extent of loss from theft or vandalism in calendar year 2024.

Description of Respondents: Farmers.

Number of Respondents: 1,500.

Frequency of Responses: Reporting: Once a year.

Total Burden Hours: 420.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–08694 Filed 4–23–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by May 24, 2024. 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.

National Agricultural Statistics Service (NASS)

Title: Vegetable Surveys—Substantive Change.

OMB Control Number: 0535–0037.

Summary of Collection: The primary function of the National Agricultural Statistics (NASS) is to prepare and issue current official state and national estimates of crop and livestock production, prices and disposition. The Vegetable Surveys Program obtains basic agricultural statistics for fresh market and processing vegetables in major producing States. The vegetable program has two types of utilization: some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). The vegetable program surveys growers, who are contacted in November and asked to report acres planted and harvested, quantity of vegetables produced, and how much of their crop was sold through fresh markets or for processing along with the correlating prices.

The National Agricultural Statistics Service (NASS) is requesting a substantive change to the Vegetable Surveys information collection request (OMB No. 0535–0037) for program changes. Every five years NASS conducts a program review following the completion of the Census of Agriculture. The program changes balance resources across all of the programs included in the annual estimating program, which represents over 400 individual reports across multiple Information Collection Requests (ICRs). This substantive change is to accommodate the vegetable program changes that affect this ICR. The methodology, publication dates, burden and data collection plan do not change as result of these program changes.

Need and Use of the Information: NASS will collect information to estimate acreage intended to plant, acreage planted, acreage harvested, yield/production, price, and utilization for the various crops. The estimates provide vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms.

Number of Respondents: 11,140.

Frequency of Responses: Annually; Other (seasonally).

Total Burden Hours: 4,998.

National Agricultural Statistics Service (NASS)

Title: Objective Yield Surveys—Substantive Change.

OMB Control Number: 0535–0088.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code title 7, section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The primary functions of the National Agricultural Statistics Services' (NASS) are to prepare and issue State and national estimates of crop and livestock production, disposition, and prices and to collect information on related environmental and economic factors. The Field Crops Production Program consists of probability field crops surveys and supplemental panel surveys. These surveys are extremely valuable for commodities where acreage and yield are published at the county level. NASS will use surveys to collect information through a combination of the internet, mail, telephone, and personnel interviews. The general authority for these data collection activities is granted under U.S. Code title 7, section 2204.

The National Agricultural Statistics Service (NASS) is requesting a substantive change to the Field Crops Production information collection request (OMB No. 0535–0088) for program changes. Every five years NASS conducts a program review following the completion of the Census of Agriculture. The program changes in this change request balance resources across all of the programs included in the annual estimating program ensuring NASS' annual statistical program aligns with its appropriation. This substantive change is to accommodate the field crop program changes that affect this ICR. The changes in this request decreases burden hours.

Need and Use of The Information: Sample fields are randomly selected for these crops, plots are laid out, and periodic counts and measurements are taken and then used to forecast production during the growing season. Production forecasts are published in USDA crop reports. The estimates provide vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms.

Number of Respondents: 12,550.

Frequency of Responses: Reporting: Annually, Monthly.

Total Burden Hours: 4,062.

National Agricultural Statistics Service (NASS)

Title: Agricultural Surveys Program—Substantive Change.

OMB Control Number: 0535–0213.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code title 7, section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The National Agricultural Statistics Service (NASS) is requesting a substantive change to the Agricultural Surveys Program information collection request (OMB No. 0535–0213) for program changes. Every five years NASS conducts a program review following the completion of the Census of Agriculture. The program changes in this change request balance resources across all of the programs included in the annual estimating program ensuring NASS' annual statistical program aligns with its appropriation. This substantive change is to accommodate the livestock program changes that affect this ICR. The changes in this request decreases burden hours.

Need and Use of the Information: The surveys provide the basis for estimates of the current season's crop and livestock production and supplies of grain in storage. Crop and livestock statistics help develop a stable economic atmosphere and reduce risk for production, marketing, and distribution operations. These commodities affect the well being of the nation's farmers, commodities markets, and national and global agricultural policy. Users of agricultural statistics are farm organizations, agribusiness,

state and national farm policy makers, and foreign buyers of agricultural products but the primary user of the statistical information is the producer. Agricultural statistics are also used to plan and administer other related federal and state programs in such areas as school lunch program, conservation, foreign trade, education, and recreation. Collecting the information less frequent would eliminate needed data to keep the government and agricultural industry abreast of changes at the state and national levels.

Description of Respondents: Farms and Ranches.

Number of Respondents: 491,600.

Frequency of Responses: Reporting: Quarterly; Semi-annually; Monthly; Annually.

Total Burden Hours: 178,479.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–08704 Filed 4–23–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena-Lewis and Clark Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Helena-Lewis and Clark Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Helena-Lewis and Clark National Forest within Broadwater, Teton, Lewis and Clark, Fergus, Judith Basin, Pondera, Meagher, and Wheatland counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on May 9, 2024, 2:00 p.m. to 5:00 p.m., Mountain Daylight Time (MDT).

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. MDT on May 3, 2024. Written public comments will be accepted by 11:59 p.m. MDT on May 3, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person at Camp Rotary, located at 19 Camp Rotary Rd., Neihart, Montana 59465. The public may also join virtually via video conference using the Microsoft Teams meeting link: *https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting,* Meeting ID: 293 075 016 517, Passcode: 4oPBh9. More information and meeting details can be found on the Helena-Lewis and Clark National Forest Advisory Committees web page at *https://www.fs.usda.gov/main/hlcnf/workingtogether/advisorycommittees* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *chiara.cipriano@usda.gov* or via mail (postmarked) to Chiara Cipriano, 2880 Skyway Drive, Helena, Montana 59602. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. MDT, May 3, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *chiara.cipriano@usda.gov* or via mail (postmarked) to Chiara Cipriano, 2880 Skyway Drive, Helena, MT 59602.

FOR FURTHER INFORMATION CONTACT: Molly Ryan, Designated Federal Officer, by phone at 406–949–9766 or by email at *molly.ryan@usda.gov;* or Chiara Cipriano, RAC Coordinator by phone at 406–594–6497 or by email at *chiara.cipriano@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Elect a chairperson;
2. Create a local charter;
3. Hear from Title II project proponents and discuss Title II project proposals;
4. Make funding recommendations on Title II projects;
5. Approve meeting minutes;
6. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. To be scheduled on the agenda, individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family and parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: April 8, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–07669 Filed 4–23–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2024–0005]

Notice of Intent To Prepare an Environmental Impact Statement for the GreenThumb Gardens Water Supply Project, New York, NY for Bronx, Kings, New York, Queens, and Richmond Counties

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) New York State Office announces its intent to prepare an environmental impact statement for the GreenThumb Gardens Water Supply Project watershed plan, under the jurisdiction of New York City (NYC) Parks and Recreation Department GreenThumb Network, located within the Five Borough Watershed in New York City, New York. The proposed watershed plan will examine alternative solutions to address insufficient agricultural water supply to support the food production needs of the identified community gardens. The GreenThumb Community Gardens includes 254 food producing community gardens within the jurisdiction of the NYC Parks and Recreation Department. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the proposed action from all interested individuals, Federal and State agencies, and Tribes.

DATES: We will consider comments that we receive by May 24, 2024. We will consider comments received after close of the comment period to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for docket ID NRCS–2024–0005. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Dennis DeWeese, Assistant State Conservationist USDA, NRCS, New York State Office, 441 S. Salina Street, Syracuse New York 13202. In your comments, specify the docket ID NRCS–2024–00005.

All comments received will be posted without change and made publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dennis DeWeese; telephone: (315) 477–6527; email: *dennis.deweese@usda.gov.* Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose for the watershed plan is to supply dependable and accessible water to the GreenThumb Community Gardens that produce food.

Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83–566), as amended, and the Flood Control Act of 1944 (Pub. L. 78–534). The sponsoring local organization is the NYC Parks and Recreation Department GreenThumb Network, which supports the creation and maintenance of volunteer led community gardens within the NYC Parks and Recreation Department jurisdiction.

The GreenThumb Gardens Water Supply Project is essential for the establishment of secure and reliable on-site agricultural water supply to address deficiencies in the existing water delivery systems. Improving on-site water infrastructure within community gardens would strengthen the local food system, improve efficiency, contribute to the conservation and enhancement of natural resources and lower barriers to water access. Additionally, on-site agricultural water supply for community gardens would improve public health and safety through the enrichment of food quality and quantity, increased community engagement opportunities, and the reduction of fire hydrant related safety and efficiency concerns. This action would implement water conservation activities on existing agricultural lands and would address solutions to insufficient water supply and quality for the community gardens. The primary beneficiaries of the GreenThumb Gardens Water Supply Project are urban food producing community gardens under the NYC Parks and Recreation Department GreenThumb jurisdiction that do not have accessible and safe permanent access to a dependable water supply.

Estimated Federal funds required for the construction of the proposed action may exceed $25 million and the proposed action will, therefore, require congressional approval per the 2018 Agriculture Appropriations Act amended funding threshold. In accordance with the regulation in 7 CFR 650.7(a)(2), an EIS is required for projects requiring congressional approval.

Preliminary Proposed Action and Alternatives

The EIS objective is to formulate and evaluate alternatives for the agricultural water management in the NYC Parks and Recreation Department GreenThumb community gardens Project area. The EIS is expected to evaluate two alternatives: one action alternative and one no action alternative. The alternatives that may be considered for detailed analysis include:

- *Alternative 1—No Action Alternative:* Taking no action would consist of activities conducted if no Federal action or funding were provided. If the No Action Alternative is selected on-site water supply would continue at its current pace. No Federal action or funding would be associated with the No Action Alternative.
- *Alternative 2—Proposed Action—Reduced Pressure Zone (RPZ) System:* The proposed action would include the installation of on-site water supply using a RPZ system at eligible food producing GreenThumb community gardens throughout NYC.

Summary of Expected Impacts

The EIS will be prepared as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and NRCS regulations that implement NEPA in 7 CFR part 650.

Resource concerns for scoping were identified and categorized as relevant or not relevant to the proposed action. The NYC Parks and Recreation Department GreenThumb Network and NRCS are evaluating the GreenThumb Gardens Water Supply Project's existing conditions along with relevant resource concerns for each proposed solution. Environmental resources in the GreenThumb Gardens Water Supply Project area consist of both natural and man-made resources.

Resource concerns include the following: insufficient agricultural water supply, plant productivity and health, and human economic considerations of labor and risk. A special environmental concern is environmental justice.

An NRCS evaluation of this federally assisted action indicates the proposed alternatives may have local effects on the environment. Potential negative effects include short-term disruption in pedestrian and traffic movement at individual community gardens during

GreenThumb Gardens Water Supply Project installation. Long-term beneficial effects associated with the establishment of on-site water supply at food producing community gardens include: increased produce quality and quantity of food; increased water efficiency; and improved safety and equity. Broader community-oriented benefits range from a reduction in the urban heat island effect to improved community connectedness and social capital.

Anticipated Permits and Authorizations

The following permit is anticipated to be required:

• *NYC Department of Environmental Protection.* The GreenThumb Gardens Water Supply Project would require a site connection permit for all connections made to the city's water mains.

Schedule of Decision-Making Process

A Draft EIS (DEIS) will be prepared and circulated for review and comment by agencies, Tribes, consulting parties, and the public for 45 days as required by the regulations in 40 CFR 1503.1, 1502.20, 1506.11, and 1502.17, and 7 CFR 650.13. The DEIS is anticipated to be published in the **Federal Register**, approximately 9 months after publication of this NOI. A Final EIS is anticipated to be published within 6 months of completion of the public comment period for the DEIS.

NRCS will decide whether to implement one of the action alternatives as evaluated in the EIS. A Record of Decision will be completed after the required 30-day waiting period and will be publicly available. The responsible Federal official and decision maker for NRCS is the New York NRCS State Conservationist.

Public Scoping Process

The date, time, and location for a public scoping meeting will be announced on the GreenThumb Gardens Water Supply Project website. Comments received, including the names and addresses of those who comment, will be part of the public record. Scoping meeting presentation materials will be available for review and comment for 30 days after the meeting.

Federal, State, Tribal, local agencies and representatives, and the public are invited to take part in the watershed plan scoping period. The NYC Parks and Recreation Department GreenThumb Network and NRCS will organize a public scoping meeting to provide an opportunity to review and evaluate the GreenThumb Gardens Water Supply Project alternatives, express concern or support, and gain further information regarding the GreenThumb Gardens Water Supply Project. To determine the most viable alternatives for the EIS, the NYC Parks and Recreation Department GreenThumb Network will use input obtained during public scoping discussions to focus on relevant resource concerns and issues and eliminate those that are not relevant from further detailed study.

NRCS will coordinate the scoping process to correspond with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) as allowed in 36 CFR 800.2(d)(3) and 800.8.

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies, Tribes, consulting parties, and individuals that have special expertise, legal jurisdiction, or interest in the GreenThumb Gardens Water Supply Project to provide written comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action.

The information about historic and cultural resources within the area potentially affected by the proposed GreenThumb Gardens Water Supply Project will assist NRCS in identifying and evaluating impacts to such resources in the context of both NEPA and NHPA.

NRCS will consult with Native American tribes on a government-to-government basis in accordance with the regulations in 36 CFR 800.2 and 800.3, Executive Order 13175, and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources and historic properties, will be given due consideration.

Authorities

This document is published as specified by the NEPA regulations regarding publication of an NOI to issue an EIS (40 CFR 1501.9(d)). Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended and the Flood Control Act of 1944.

Federal Assistance Programs

The title and number of the Federal Assistance Program as found in the Assistance Listing [1] to which this document applies is 10.904, Watershed Protection and Flood Prevention.

[1] *See https://sam.gov/content/assistance-listings.*

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. The GreenThumb Gardens Water Supply Project is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and telephone) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 6329992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department

of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) Fax: (202 690–7442; or (3) email: *program.intake@usda.gov.*

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Blake Glover,

New York State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2024–08725 Filed 4–23–24; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

USDA Generic Clearance for Fellowships, Scholarships, Internships, and Training

AGENCY: Office of Partnerships and Public Engagement (OPPE).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces OPPE's intention to request a new, generic information collection.

DATES: Comments on this notice must be received within 60 days of publication in the **Federal Register** to be assured of consideration.

ADDRESSES: OPPE invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Electronic Submission of Comments:* Submit comments identified by Docket ID: USDA–xxxx–xxxx, via the Federal eRulemaking Portal.
- *Submission of Comments by Mail, Hand Delivery, or Courier:* U.S. Department of Agriculture, Office of Partnerships and Public Engagement, Docket Clerk, 1400 Independence Ave. SW, Mailstop 0601, Washington, DC 20250–3700.

All items submitted by mail or electronic mail must include the Agency name and docket number Office of Partnerships and Public Engagement and USDA–xxxx–xxxx. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to: *http://www.regulations.gov.*

For access to background documents or comments received, go to the Office of Partnerships and Public Engagement at 1400 Independence Ave. SW, Washington, DC 20250–3700, Mail Stop 0601 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kim Okahara, Performance Improvement Officer, at *kim.okahara@usda.gov* or U.S. Department of Agriculture, Office of Partnerships and Public Engagement, Attention: Kim Okahara, 1400 Independence Ave. SW, Washington, DC 20250–3700 Mail Stop 0601, via telephone at 202–720–6350.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(C)(2)(A)), this notice announces the intention of The Office of Partnerships and Public Engagement to request comments concerning the USDA Generic Clearance for Fellowships, Scholarships, Internships, and Training information collection request.

Comments are invited on: (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 including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments, including any personal information contained therein, will become a matter of public record.

Agency: USDA Office of Partnerships and Public Engagement.

Proposed Collection Title: Generic Clearance for Application Information and Follow-up Information for Fellowships, Scholarships, Internships, and Training Programs.

OMB Number: 0503–New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New generic information collection.

Abstract: OPPE coordinates outreach activities, including fellowship programs, scholarship programs, internship programs, and new initiatives that the Secretary of Agriculture deems appropriate on behalf of the Department's agencies, offices, divisions, and units (7 U.S.C. 6934(c)). OPPE collects application information to effectively coordinate selection and placement for agency fellowship, scholarship, internship, and training programs. In addition, OPPE collects feedback from participants upon completion of their respective programs. This generic collection will enable USDA to streamline application processes and collect participant feedback in an efficient, timely manner, in accordance with the Administration's commitment to providing career pathways to Federal positions.

Affected Public: Individuals.

Estimated Number of Respondents: 50,000.

Frequency: Biannual, Annual.

Total Estimated Annual Responses: 45,000.

Estimated Average Time per Response: 1.7 hours.

Estimated Total Annual Burden Hours: 30,833.

Total Estimated Annual Other Cost Burden: $0.

The respondents of this information collection will incur no costs other than the investment of their time.

Anton X. Malkowski,

Chief of Staff, USDA Office of Partnerships and Public Engagement.

[FR Doc. 2024–08724 Filed 4–23–24; 8:45 am]

BILLING CODE 3412–88–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–16–2024]

Foreign-Trade Zone 123—Denver, Colorado; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the World Trade Center Denver, grantee of FTZ 123, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on April 18, 2024.

FTZ 123 was approved by the FTZ Board on August 16, 1985 (Board Order 311, 50 FR 34729, August 27, 1985) and expanded on April 10, 2007 (Board Order 1509, 72 FR 19879–19880, April 20, 2007) and on October 23, 2009 (Board Order 1649, 74 FR 57629, November 9, 2009).

The current zone includes the following sites: *Site 3* (760 acres)—Great Western Industrial Park, Eastman Park Drive and County Rd 23, Windsor; *Site 4* (79 acres)—Denver International Airport, Denver; and, *Site 7* (12 acres)—Aspen Distribution Inc., 19503 E. 34th Drive, Aurora.

The grantee's proposed service area under the ASF would be Adams, Arapahoe, Broomfield, Denver, Douglas, Elbert, and Morgan Counties and a portion of Larimer and Weld Counties, Colorado, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Denver Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include Sites 3 and 4 as ''magnet'' sites and Site 7 as a ''usage-driven'' site. The application would have no impact on FTZ 123's previously authorized subzones.

In accordance with the FTZ Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 24, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 8, 2024.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Qahira El-Amin at *Qahira.El-Amin@trade.gov.*

Dated: April 19, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–08752 Filed 4–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–861, C–834–813, C–557–829, C–821–839]

Ferrosilicon From Brazil, Kazakhstan, Malaysia, and the Russian Federation: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 17, 2024.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Laurel Smalley (Brazil), Lana Nigro (Kazakhstan), John McGowan or Suresh Maniam (Malaysia), and Mark Hoadley (the Russian Federation (Russia)), AD/CVD Operations, Offices VIII, VII, and I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9068, (202) 482–3456, (202) 482–1779, (202) 482–0461, (202) 482–1603, and (202) 482–3148, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 28, 2024, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia filed in proper form on behalf of CC Metals and Alloys, LLC and Ferroglobe USA, Inc. (the petitioners).[1] The CVD petitions were accompanied by antidumping duty (AD) petitions concerning imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia.[2]

Between April 1 and 2, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[3] Between April 3 and 8, 2024, the petitioners filed timely responses to these requests for additional information.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of Brazil (GOB), the Government of Kazakhstan (GOK), the Government of Malaysia (GOM), and the Government of Russia (GOR) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing ferrosilicon in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.[5]

Periods of Investigation

Because the Petitions were filed on March 28, 2024, the periods of investigation (POI) for Brazil, Kazakhstan, Malaysia, and Russia are January 1, 2023, through December 31, 2023.[6]

Scope of the Investigations

The merchandise covered by these investigations is ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia. For a full description of the scope of these investigations, *see* the appendix to this notice.

[1] *See* Petitioners' Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated March 28, 2024 (the Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petition for the Imposition of Countervailing Duties on Imports of Ferrosilicon from Brazil: Supplemental Questions,'' dated April 1, 2024; ''Petition for the Imposition of Countervailing Duties on Imports of Ferrosilicon from Kazakhstan: Supplemental Questions Regarding Volume V,'' dated April 2, 2024; ''Petition for the Imposition of Countervailing Duties on Imports of Ferrosilicon from Malaysia: Supplemental Questions,'' dated April 1, 2024; ''Petition for the Imposition of Countervailing Duties on Imports of Ferrosilicon from the Russian Federation: Supplemental Questions regarding Volume IX,'' dated April 1, 2024; and ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ferrosilicon from Brazil, Kazakhstan, Malaysia, and the Russian Federation: Supplemental Questions,'' dated April 1, 2024.

[4] *See* Petitioners' Letters, ''Petitioners' Response to Supplemental Questions—General Issues,'' dated April 3, 2024 (General Issues Supplement); ''Ferrosilicon from Brazil: Response to Supplemental Questionnaire for Volume III of the Petition,'' dated April 5, 2024; ''Ferrosilicon from Kazakhstan: Response to Supplemental Questionnaire for Volume V of the Petition,'' dated April 8, 2024; ''Ferrosilicon from Malaysia: Response to Supplemental Questions for Volume VII of the Petition,'' dated April 3, 2024; and ''Ferrosilicon from the Russian Federation: Response to Supplemental Questions Regarding Volume IX of the Petition,'' dated April 5, 2024.

[5] *See* section on ''Determination of Industry Support for the Petitions,'' *infra.*

[6] *See* 19 CFR 351.204(b)(2).

Comments on the Scope of the Investigations

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[7] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information, all such factual information should be limited to public information.[8] To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on May 7, 2024, which is 20 calendar days from the signature date of this notice.[9] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 17, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during that time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[10] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.[11] Commerce held consultations with the GOB on April 10, 2024,[12] the GOK on April 17, 2024,[13] the GOM on April 16, 2024,[14] and the GOR on April 9, 2024.[15]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[16] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[17]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[18] Based on our analysis of the information submitted on the record, we have determined that ferrosilicon, as described in the domestic like product definition set forth in the Petitions, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[19]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the

[7] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[8] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[9] *See* 19 CFR 351.303(b)(1).

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[11] *See* Commerce's Letters, ''Countervailing Duty Petition on Ferrosilicon from Brazil: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated April 1, 2024; ''Invitation for Consultations to Discuss the Countervailing Duty Petition on Ferrosilicon from Kazakhstan,'' dated March 29, 2024; ''Countervailing Duty Petition on Ferrosilicon from Malaysia: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated March 28, 2024; and ''Invitation for Consultations to Discuss the Countervailing Duty Petition on Ferrosilicon from the Russian Federation,'' dated March 28, 2024.

[12] *See* Memorandum, ''Consultations with Officials from the Government of Brazil,'' dated April 11, 2024.

[13] *See* Memorandum, ''Consultations with Officials from the Government of Kazakhstan,'' dated April 17, 2024.

[14] *See* Memorandum, ''Consultations with the Government of Malaysia,'' dated April 16, 2024.

[15] *See* Memorandum, ''Consultations with the Government of Russia Regarding the Countervailing Duty Petition on Ferrosilicon from the Russian Federation,'' dated April 9, 2024.

[16] *See* section 771(10) of the Act.

[17] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[18] *See* Petitions at Volume I (pages 15–18 and Exhibits I–1 and I–9).

[19] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* CVD Investigation Initiation Checklists: Ferrosilicon from Brazil, Kazakhstan, Malaysia, and the Russian Federation, dated concurrently with, and hereby adopted by, this notice (Country-Specific CVD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Ferrosilicon from Brazil, Kazakhstan, Malaysia, and the Russian Federation (Attachment II). These checklists are on file electronically via ACCESS.

appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2023.[20] The petitioners stated that there are no other known producers of ferrosilicon in the United States and provided information to support their claim; therefore, the Petitions are supported by 100 percent of the U.S. industry.[21] We relied on data provided by the petitioners for purposes of measuring industry support.[22]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[23] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action to evaluate industry support (*e.g.,* polling).[24] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[25] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[26] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[27]

[20] *See* Petitions at Volume I (page 3 and Exhibit I–4); *see also* General Issues Supplement at 5.

[21] *See* Petitions at Volume I (pages 2–3 and Exhibit I–3); *see also* General Issues Supplement at 4 and Attachment 2.

[22] *See* Petitions at Volume I (pages 2–3 and Exhibits I–3 and I–4); *see also* General Issues Supplement at 4–5 and Attachment 2. For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

[23] *See* Petitions at Volume I (pages 2–3 and Exhibits I–3 and I–4); *see also* General Issues Supplement at 4–5 and Attachment 2. For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

[24] *See* Attachment II of the Country-Specific CVD Initiation Checklists; *see also* section 702(c)(4)(D) of the Act.

[25] *See* Attachment II of the Country-Specific CVD Initiation Checklists.

[26] *Id.*

[27] *Id.*

Injury Test

Because Brazil, Kazakhstan, Malaysia, and Russia are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Brazil, Kazakhstan, Malaysia, and/or Russia materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports from Brazil, Kazakhstan, Malaysia, and Russia exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[28]

The petitioners contend that the industry's injured condition is illustrated by the significant and increasing volume of subject imports; underselling and price depression and/or suppression; low capacity utilization rates; lost sales and revenues; and adverse effect on financial performance.[29] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[30]

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia benefit from countervailable subsidies conferred by the GOB, GOK, GOM, and the GOR, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

[28] *See* Petitions at Volume I (page 20 and Exhibit I–10).

[29] *See* Petitions at Volume I (pages 20–47 and Exhibits I–1, I–2, I–4, and I–8 through I–44).

[30] *See* Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Ferrosilicon from Brazil, Kazakhstan, Malaysia, and the Russian Federation.

Brazil

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 19 of the programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate on each program, *see* the Brazil CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Kazakhstan

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all 21 of the programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate on each program, *see* the Kazakhstan CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Malaysia

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all 13 programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate on each program, *see* the Malaysia CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Russia

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all 23 of the programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate on each program, *see* the Russia CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioners identify 11 companies in Brazil, five companies in Kazakhstan, two companies in Malaysia, and 11 companies in Russia as producers and/or exporters of ferrosilicon.[31] With respect to Malaysia, the GOM provided comments in which it stated that there are four producers of ferrosilicon in

[31] *See* Petitions at Volume I (page 10 and Exhibit I–6).

Malaysia.[32] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based on Commerce's resources, where appropriate, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of ferrosilicon during the POI under the appropriate Harmonized Tariff Schedule of the United States subheadings listed within the ''Scope of the Investigations'' in the appendix.

On April 11, 2024, Commerce released the CBP data for imports of ferrosilicon from Russia and, on April 12, 2024, from Brazil, Kazakhstan, and Malaysia under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.[33] Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOB, GOK, GOM, and GOR via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and/or Russia are materially injuring, or threatening material injury to, a U.S. industry.[34] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[35] Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [36] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[37] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[38] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[39]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[40] Parties must use the certification formats provided in 19 CFR 351.303(g).[41] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letters of appearance). Note that

[32] *See* Memorandum, ''Countervailing Duty Petition on Ferrosilicon from Malaysia: Government of Malaysia Statements for the Consultations,'' dated April 16, 2024.

[33] *See* Memoranda, ''Countervailing Duty Petition on Ferrosilicon from Brazil: Release of Data from U.S. Customs and Border Protection,'' dated April 12, 2024; ''Countervailing Duty Petition on Ferrosilicon from Kazakhstan: Release of Data from U.S. Customs and Border Protection,'' dated April 12, 2024; ''Countervailing Duty Petition on Imports of Ferrosilicon from Malaysia: Release of U.S. Customs and Border Protection Entry Data,'' dated April 12, 2024; and ''Ferrosilicon from the Russian Federation: Release of Data from U.S. Customs and Border Protection,'' dated April 10, 2024.

[34] *See* section 703(a)(1) of the Act.

[35] *Id.*

[36] *See* 19 CFR 351.301(b).

[37] *See* 19 CFR 351.301(b)(2).

[38] *See* 19 CFR 351.302.

[39] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[40] *See* section 782(b) of the Act.

[41] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[42]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 17, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The scope of these investigations covers all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any grinding or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the ferrosilicon.

Ferrosilicon is currently classifiable under subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

[FR Doc. 2024–08675 Filed 4–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–860, A–834–812, A–557–828, A–821–838]

Ferrosilicon From Brazil, Kazakhstan, Malaysia, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 17, 2024.

FOR FURTHER INFORMATION CONTACT: Jaron Moore (Brazil) at (202) 482–3640; Samantha Kinney (Kazakhstan) at (202) 482–2285; Peter Farrell (Malaysia) at (202) 482–2104; and Jacob Saude (the Russian Federation (Russia)) at (202) 482–0981, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 28, 2024, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia filed in proper form on behalf of CC Metals and Alloys, LLC and Ferroglobe USA, Inc. (the petitioners).[1] These AD Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia.[2]

On April 1, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in supplemental questionnaires.[3] The petitioners responded to Commerce's supplemental questionnaires on April 3 and 4, 2024.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the ferrosilicon industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested LTFV investigations.[5]

Periods of Investigation

Because the Petitions were filed on March 28, 2024, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Brazil, Kazakhstan, and Malaysia LTFV investigations is January 1, 2023, through December 31, 2023. Because Russia is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for the Russia LTFV investigation is July 1, 2023, through December 31, 2023.

Scope of the Investigations

The product covered by these investigations is ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[6] Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[7] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on May 7, 2024, which is 20 calendar days from the signature date of this notice.[8] Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on May 17, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party

[42] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

[1] *See* Petitioners' Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated March 28, 2024 (the Petitions).

[2] *Id.*

[3] *See* Commerce's Letter, ''Supplemental Questions,'' dated April 1, 2024 (General Issues Questionnaire); *see also* Country-Specific Supplemental Questionnaires: Brazil Supplemental, Kazakhstan Supplemental, Malaysia Supplemental, and Russia Supplemental, dated April 1, 2024.

[4] *See* Petitioners' Letters, ''Petitioner's Responses to Supplemental Questions—General Issues,'' dated April 3, 2024 (General Issues Supplement); *see also* Country-Specific AD Supplemental Responses: Brazil AD Supplement, Kazakhstan AD Supplement, Malaysia AD Supplement, and Russia AD Supplement, dated April 4, 2024.

[5] *See* section on ''Determination of Industry Support for the Petitions,'' *infra.*

[6] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

[7] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[8] *See* 19 CFR 351.303(b)(1).

must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[9] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of ferrosilicon to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe ferrosilicon, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on May 7, 2024, which is 20 calendar days from the signature date of this notice.[10] Any rebuttal comments must be filed by 5:00 p.m. ET on May 17, 2024, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic-like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[13] Based on our analysis of the information submitted on the record, we have determined that ferrosilicon, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2023.[15] The petitioners stated that there are no other known producers of ferrosilicon in the United States and provided information to support their claim; therefore, the Petitions are supported by 100 percent of the U.S. industry.[16] We have relied

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[10] *See* 19 CFR 351.303(b)(1).

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd.* v. *United States,* 865 F.2d 240 (Fed. Cir. 1989)).

[13] *See* Petitions at Volume I (pages 15–18 and Exhibits I–1 and I–9).

[14] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklists: Ferrosilicon from Brazil, Kazakhstan, Malaysia, and the Russian Federation, dated concurrently with, and hereby adopted by, this notice (Country-Specific AD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Ferrosilicon from Brazil, Kazakhstan, Malaysia, and the Russian Federation (Attachment II). These checklists are on file electronically via ACCESS.

[15] *See* Petitions at Volume I (page 3 and Exhibit I–4); *see also* General Issues Supplement at 5.

[16] *See* Petitions at Volume I (pages 2–3 and Exhibit I–3); *see also* General Issues Supplement at 4 and Attachment 2.

on the data provided by the petitioners for purposes of measuring industry support.[17]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[18] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[21] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[22]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports from Brazil, Kazakhstan, Malaysia, and Russia exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioners contend that the industry's injured condition is illustrated by the significant and increasing volume of subject imports; underselling and price depression and/or suppression; low capacity utilization rates; lost sales and revenues; and adverse impact on financial performance.[24] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For Brazil, Kazakhstan, Malaysia, and Russia, the petitioners based export price (EP) on the POI average unit values derived from official U.S. import statistics for imports of ferrosilicon produced in and exported from each country.[26] For each country, the petitioners made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.[27]

Normal Value[28]

For Brazil, the petitioners based NV on home market prices obtained through market research for ferrosilicon produced in and sold, or offered for sale, in Brazil during the applicable time period.[29] The petitioners made certain adjustments to home market price to calculate a net ex-factory home market price, where applicable.[30]

For Kazakhstan and Malaysia, the petitioners stated that they were unable to obtain home market or third country pricing information for ferrosilicon to use as a basis for NV.[31] Therefore, for Kazakhstan and Malaysia, the petitioners calculated NV based on CV.[32] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value,'' below.

Commerce considers Russia to be an NME country.[33] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat Russia as an NME country for purposes of the initiation of the Russia LTFV investigation. Accordingly, we base NV on FOPs valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioners claim that Malaysia is an appropriate surrogate country for Russia because it is a market economy that is at a level of economic development comparable to that of Russia and is a significant producer of comparable merchandise.[34] The petitioner provided publicly available information from Malaysia to value all FOPs except labor.[35] Consistent with Commerce's recent practice in cases involving Malaysia as a surrogate country,[36] to value labor, the petitioner provided labor statistics from another surrogate country, Romania.[37] Based on the information provided by the petitioner, we believe it is appropriate to use Malaysia as a surrogate country

[17] *See* Petitions at Volume I (pages 2–3 and Exhibits I–3 and I–4); *see also* General Issues Supplement at 4–5 and Attachment 2. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[18] *See* Petitions at Volume I (pages 2–3 and Exhibits I–3 and I–4); *see also* General Issues Supplement at 4–5 and Attachment 2. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[19] *See* Attachment II of the Country-Specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[20] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[21] *Id.*

[22] *Id.*

[23] *See* Petitions at Volume I (page 20 and Exhibit I–10).

[24] *Id.* at 20–47 and Exhibits I–1, I–2, I–4, I–8 through I–44; *see also* General Issues Supplement at 5–6.

[25] *See* Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Ferrosilicon from Brazil, Kazakhstan, Malaysia, and the Russian Federation.

[26] *See* Country-Specific AD Initiation Checklists.

[27] *Id.*

[28] In accordance with section 773(b)(2) of the Act, for the Brazil, Kazakhstan, and Malaysia investigations, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[29] *See* Brazil AD Initiation Checklist.

[30] *Id.*

[31] *See* Kazakhstan AD Initiation Checklist; *see also* Malaysia AD Initiation Checklist.

[32] *Id.*

[33] *See, e.g., Emulsion Styrene-Butadiene Rubber from the Russian Federation: Final Affirmative Determination of Sales at Less Than Fair Value and Classification of the Russian Federation as a Non-Market Economy,* 87 FR 69002 (November 17, 2022), and accompanying ''Reconsideration of Russia's Status as a Market Economy'' Decision Memorandum.

[34] *See* Russia AD Initiation Checklist.

[35] *Id.*

[36] See, *e.g.,* Certain Collated Steel Staples from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; and Final Determination of No Shipments; 2021–2022, 88 FR 85242 (December 7, 2023), and accompanying Issues and Decision Memorandum (IDM) at Comment 2; and *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 88 FR 15671 (March 14, 2023), and accompanying IDM at Comment 2.

[37] *See* Russia AD Initiation Checklist.

for Russia to value all FOPs except labor and to value labor using labor statistics from Romania for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by Russian producers/exporters was not reasonably available, the petitioners used product-specific consumption rates from a U.S. producer of ferrosilicon as a surrogate to value Russian manufacturers' FOPs (except labor).[38] Additionally, the petitioners calculated factory overhead, selling, general, and administrative (SG&A) expenses, and profit based on the experience of a Malaysian producer of identical merchandise.[39]

Normal Value Based on Constructed Value

As noted above for Kazakhstan and Malaysia, the petitioners stated that they were unable to obtain home market or third-country prices for ferrosilicon to use as a basis for NV. Therefore, for Kazakhstan and Malaysia, the petitioners calculated NV based on CV.[40]

Pursuant to section 773(e) of the Act, the petitioners calculated CV as the sum of the cost of manufacturing, SG&A expenses, financial expenses, and profit.[41] For Kazakhstan and Malaysia, in calculating the cost of manufacturing, the petitioners relied on the production experience and input consumption rates of a U.S. producer of ferrosilicon, valued using publicly available information applicable to the respective countries.[42] In calculating SG&A expenses, financial expenses, and profit ratios, the petitioners relied on the fiscal year 2022 financial statements of producers of identical merchandise domiciled in Kazakhstan and Malaysia, respectively.[43]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for ferrosilicon for each of the countries covered by this initiation are as follows: (1) Brazil—21.78 percent; (2) Kazakhstan—237.75 percent; (3) Malaysia—162.66 percent; and (4) Russia—283.27 percent.[44]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Respondent Selection

Brazil, Kazakhstan, and Malaysia

In the Petitions, the petitioner identified 11 companies in Brazil, five companies in Kazakhstan, and two companies in Malaysia as producers/exporters of ferrosilicon.[45] With respect to Malaysia, the Government of Malaysia provided comments on the record of the companion CVD case, which have been placed on the record of the Malaysia AD case, in which it stated that there are four producers of ferrosilicon in Malaysia.[46] Following standard practice in LTFV investigations involving market economy countries, in the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the ''Scope of the Investigations,'' in the appendix.

On April 12, 2024, Commerce released CBP data on imports of ferrosilicon from Brazil, Kazakhstan, and Malaysia under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.[47] Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

Russia

In the Petitions, the petitioner named 11 companies in Russia as producers and/or exporters of ferrosilicon.[48] Our standard practice for respondent selection in AD investigations involving NME countries is to select respondents based on quantity and value (Q&V) questionnaires in cases where Commerce has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petitions, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 11 Russian producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioners have provided a complete address.

Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at

[38] *Id.*

[39] *Id.* As noted above, the petitioner calculated labor using information specific to Romania.

[40] *See* Kazakhstan AD Initiation Checklist; *see also* Malaysia AD Initiation Checklist.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *See* Country-Specific AD Initiation Checklists.

[45] *See* Petitions at Volume I (page 10 and Exhibit I–6); *see also* General Issues Supplement at 3–4.

[46] *See* Memorandum, ''Antidumping Duty Petition on Ferrosilicon from Malaysia: Placement of Document on the Record,'' dated April 16, 2024.

[47] *See* Memoranda, ''Antidumping Duty Investigation of Ferrosilicon from Brazil AD Petition: Release of U.S. Customs and Border Protection Data,'' dated April 12, 2024; ''Antidumping Duty Petition on Ferrosilicon from Kazakhstan: Release of Data from U.S. Customs and Border Protection,'' dated April 12, 2024; and ''Antidumping Duty Petition on Ferrosilicon from Malaysia: Release of Data from U.S. Customs and Border Protection,'' dated April 12, 2024.

[48] *See* Petitions at Volume I (page 10 and Exhibit I–6).

https://www.trade.gov/ec-adcvd-case-announcements. Producers/exporters of ferrosilicon from Russia that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Russian producers/exporters no later than 5:00 p.m. ET on May 1, 2024, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html.* The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from Russia submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[49]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Brazil, Kazakhstan, Malaysia, and Russia via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of ferrosilicon from Brazil, Kazakhstan, Malaysia, and/or Russia are materially injuring, or threatening material injury to, a U.S. industry.[50] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[51] Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [52] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[53] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act (*i.e.,* a cost-based PMS allegation), Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a cost-based PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of cost-based PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a cost-based PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

[49] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005), at 6 (emphasis added), available on Commerce's website at *https://access.trade.gov/Resources/policy/bull05-1.pdf.*

[50] *See* section 733(a) of the Act.

[51] *Id.*

[52] *See* 19 CFR 351.301(b).

[53] *See* 19 CFR 351.301(b)(2).

We note that a PMS allegation filed pursuant to sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act (*i.e.,* a sales-based PMS allegation) must be filed within 10 days of submission of a respondent's initial section B questionnaire response, in accordance with 19 CFR 301(c)(2)(i) and 19 CFR 351.404(c)(2).

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[54] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[55]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[56] Parties must use the certification formats provided in 19 CFR 351.303(g).[57] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[58]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 17, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The scope of these investigations covers all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any grinding or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the ferrosilicon.

Ferrosilicon is currently classifiable under subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

[FR Doc. 2024–08674 Filed 4–23–24; 8:45 am]

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[54] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[55] *See* 19 CFR 351.302; *see also, e.g., Time Limits Final Rule.*

[56] *See* section 782(b) of the Act.

[57] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at *https://access.trade.gov/Resources/filing/index.html.*

[58] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD885]

Marine Fisheries Advisory Committee Meeting

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined under **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be May 14–15, 2024 from 12:30 p.m. to 5:30 p.m. Eastern Time.

ADDRESSES: Meeting is by webinar and teleconference. Conference call and webinar access information are available at: *https://www.fisheries.noaa.gov/topic/partners/marine-fisheries-advisory-committee*.

FOR FURTHER INFORMATION CONTACT: Katie Zanowicz, MAFAC Assistant; 301–427–8038; email: *Katie.zanowicz@noaa.gov*.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The charter and summaries of prior meetings are located online at *https://www.fisheries.noaa.gov/topic/partners/marine-fisheries-advisory-committee*.

Matters To Be Considered

The meeting time and agenda are subject to change. The meeting is convened to hear presentations and discuss policies and guidance on the following topics: climate science and management for climate-ready fisheries, trade and seafood promotion activities, recreational fisheries, budget outlook, and other program updates. MAFAC will also discuss various administrative and organizational matters.

Time and Date

The meeting will be May 14–15, 2024 from 12:30 p.m. to 5:30 p.m. Eastern

Time. Information to join the webinar will be posted at *https://www.fisheries.noaa.gov/national/partners/marine-fisheries-advisory-committee-meeting-materials-and-summaries* by April 30, 2024.

Dated: April 16, 2024.

Heidi Lovett,

Acting Designated Federal Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2024–08755 Filed 4–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

The 48th Meeting of the U.S. Coral Reef Task Force

AGENCY: The Coral Reef Conservation Program, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of meeting; request for comments.

SUMMARY: NOAA and the Department of Interior (DOI) will hold the 48th meeting of the U.S. Coral Reef Task Force (USCRTF). NOAA and DOI will be accepting oral and written comments.

DATES: NOAA and DOI will hold a public meeting on Thursday, May 2, 2024, from 8:30 a.m. to 5 p.m. Eastern Time (ET) at the NOAA Auditorium located at 1305 East-West Highway, Silver Spring, Maryland 20910. Written comments must be received before 8 a.m. ET on May 1, 2024.

ADDRESSES: Comments may be submitted by the following methods:

Oral Comments: NOAA and DOI will accept oral comments at the meeting on Thursday, May 2, 2024, from 2:00 p.m. to 2:30 p.m. ET.

Email: Please direct written comments to Michael Lameier, NOAA, USCRTF Steering Committee Point of Contact, NOAA Coral Reef Conservation Program, via email at *michael.lameier@noaa.gov.* In the subject heading of your email, please include ''Written comments for the 48th U.S. Coral Reef Task Force Meeting''.

The oral and written comments NOAA and DOI receive are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. Comments that are not related to the U.S. Coral Reef Task Force or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Michael Lameier, NOAA USCRTF Steering Committee Point of Contact, NOAA Coral Reef Conservation Program, (410) 267–5673, *michael.lameier@noaa.gov,* or Liza Johnson, DOI USCRTF Steering Committee Executive Secretary, U.S. Department of Interior, (202) 255–9843, *Liza_M_Johnson@ios.doi.gov,* or visit the USCRTF website at *http://www.coralreef.gov.*

SUPPLEMENTARY INFORMATION: The meeting provides a forum for coordinated planning and action among Federal agencies, State and territorial governments, and non-governmental partners. Registration is requested to participate in the meeting. This meeting has time allotted for public oral comment from 2:00 p.m. to 2:30 p.m. ET. A written summary of the meeting will be posted on the USCRTF website within two months of occurrence. For more information about the meeting, registering for the meeting, and submitting public comments, visit *http://www.coralreef.gov.* During the oral comment period, commenters are encouraged to address the meeting, the role of the USCRTF, or general coral reef conservation issues.

Authority: 16 U.S.C. 6451 *et seq.;* E.O. 13089, 63 FR 32701.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–08764 Filed 4–23–24; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Applications for Trademark Registration

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0009 (Applications for Trademark Registration). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before June 24, 2024.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0009 comment'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8946; or by email at *Catherine.Cain@uspto.gov* with ''0651–0009 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act (Act), 15 U.S.C. 1051 *et seq.,* which provides for the federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO. Registered marks may remain on the register indefinitely, so long as the owner of the registration files the necessary maintenance documents.

This information collection addresses submissions required by the regulations at 37 CFR part 2 for initial applications regarding the registration of trademarks, service marks, collective trademarks and

service marks, collective memberships marks, and certification marks. Trademarks can be registered on either the Principal or Supplemental Register. The Trademark Act and rules mandate that each certificate of registration include the mark, the goods and/or services in connection with which the mark is used, ownership information, dates of use, and certain other information. The USPTO also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual or by businesses to determine the availability of a mark. By accessing the USPTO's information, parties may reduce the possibility of initiating use of a mark previously adopted by another. The federal trademark registration process may thereby reduce the number of filings between both litigating parties and the courts.

II. Method of Collection

Items in this information collection must be submitted electronically. In limited circumstances, applicants may also be permitted to submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Control Number: 0651–0009.

Forms:

- PTO–1478 (Trademark/Service Mark Application, Principal Register)
- PTO–1479 (Trademark/Service Mark Form, Supplemental Register)
- PTO–1480 (Certification Mark Form, Principal Register)
- PTO–1481 (Collective Membership Mark Form, Principal Register)
- PTO–1482 (Collective Trademark/Service Mark Form, Principal Register)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 581,377 respondents.

Estimated Number of Annual Responses: 581,377 responses.

Frequency: On occasion.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 45 minutes (0.75 hours) and 1 hour to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 508,394 hours.

Estimated Total Annual Respondent Hourly Cost Burden: $227,252,118.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated Burden (hour/year) (c) × (d) = (e)	Rate [1] ($/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	Use-Based Trademark/Service Mark Applications (TEAS Standard).	71,914	1	71,914	0.83 (50 minutes)	59,689	$447	$26,680,983
1	Use-Based Trademark/Service Mark Applications (TEAS Plus).	217,872	1	217,872	1	217,872	447	97,388,784
1	Use-Based Trademark/Service Mark Applications (Paper).	1	1	1	1	1	447	447
2	Intent to Use Trademark/Service Mark Application (TEAS Standard).	121,227	1	121,227	0.75 (45 minutes)	90,920	447	40,641,240
2	Intent to Use Trademark/Service Mark Application (TEAS Plus).	142,832	1	142,832	0.83 (50 minutes)	118,551	447	52,992,297
2	Intent to Use Trademark/Service Mark Application (Paper).	1	1	1	1	1	447	447
3	Application for Registration of Trademark/Service Mark under 37 CFR 44 (TEAS Standard).	18,632	1	18,632	0.75 (45 minutes)	13,974	447	6,246,378
3	Application for Registration of Trademark/Service Mark under 37 CFR 44 (TEAS Plus).	8,897	1	8,897	0.83 (50 minutes)	7,385	447	3,301,095
3	Application for Registration of Trademark/Service Mark under 37 CFR 44 (Paper).	1	1	1	1	1	447	447
Totals		581,377		581,377		508,394		227,252,118

Estimated Total Annual Respondent Non-hourly Cost Burden: $166,906,580. There are no capital start-up, maintenance costs, or recordkeeping costs associated with this information collection. However, the USPTO estimates that the total annual non-hour cost burden for this information collection, in the form of filling fees, processing fees, and postage costs, is $166,906,580.

Filing Fees

A complete application must include a filing fee for each class of goods and services. Therefore, the total filing fees associated with this information collection can vary depending on the number of classes in each application. The total filing fees shown in the table below reflect the minimum filing fees associated with this information collection.

[1] 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F–41. The USPTO uses the average billing rate for intellectual property work in all firms which is $447 per hour (*https://www.aipla.org/home/news-publications/economic-survey*).

TABLE 2—FILING FEES

Item No.	Fee code	Item	Estimated annual responses (a)	Filing fee ($) (b)	Non-hourly cost burden (a) × (b) = (c)
1	7009	Use-Based Trademark/Service Mark Applications (TEAS Standard)	71,914	$350	$25,169,900
1	7007	Use-Based Trademark/Service Mark Applications (TEAS Plus)	217,872	250	54,468,000
1	6001	Use-Based Trademark/Service Mark Applications (Paper)	1	750	750
2	7009	Intent to Use Trademark/Service Mark Application (TEAS Standard)	121,227	350	42,429,450
2	7007	Intent to Use Trademark/Service Mark Application (TEAS Plus)	142,832	250	35,708,000
2	6001	Intent to Use Trademark/Service Mark Application (Paper)	1	750	750
3	7009	Applications for Registration of Trademark/Service Mark under 37 CFR 44 (TEAS Standard).	18,632	350	6,521,200
3	7007	Applications for Registration of Trademark/Service Mark under 37 CFR 44 (TEAS Plus).	8,897	250	2,224,250
3	6001	Applications for Registration of Trademark/Service Mark under 37 CFR 44 (Paper).	1	750	750
Totals			581,377		166,523,050

Processing Fees

The USPTO charges a processing fee of $100 per class for TEAS Plus applications that do not meet the TEAS Plus filing requirements. The total processing fees associated with this information collection can vary depending on the number of classes in each application.

The total processing fees shown in the table below reflect the minimum processing fees associated with this information collection.

TABLE 3—PROCESSING FEES

Item No.	Item	Estimated annual responses (a)	Filing Fee ($) (b)	Non-hourly cost burden (a) × (b) = (c)
1	Processing fee for use-based application that fails to meet the additional filing requirements for reduced filing fee (TEAS Plus).	1,911	$100	$191,100
2	Processing fee for intent-to-use application that fails to meet the additional filing requirements for reduced filing fee (TEAS Plus).	1,742	100	174,200
3	Processing fee for Section 44 application that fails to meet the additional filing requirements for reduced filing fee (TEAS Plus).	182	100	18,200
Totals		3,835		383,500

Postage Costs

In limited circumstances, applicants may be permitted to submit the information in paper form by mail, fax, or hand delivery. Applicants and registrants incur postage costs when submitting information to the USPTO by mail through the United States Postal Service. The USPTO estimates that 3 items will be submitted in the mail. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat rate envelope, will be $10.15. Therefore, the USPTO estimates the total mailing costs for this information collection at $30.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate 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) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024–08756 Filed 4–23–24; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on a Commercial Availability Request Under the United States-Mexico-Canada Agreement

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Notice; request for public comments.

SUMMARY: On February 20, 2024, the Government of the United States (''United States'') received a request from the Government of Canada

(''Canada'') to initiate consultations under Article 6.4.1 of the United States-Mexico-Canada Agreement (''USMCA''). Canada is requesting that the United States and Mexico (with Canada, collectively ''the Parties'') consider changing the rules of origin for certain end-use fabrics used in the production of fire hose based on the lack of commercial availability for certain high-tenacity polyester yarns in the territories of the Parties. The yarns are described as high-tenacity polyester yarn, single or multiple, multifilament, untwisted, untextured, and measuring more than 920 decitex, used in the production of fire hose, with or without lining, armor or accessories of other materials. The President of the United States may proclaim a modification to the USMCA rules of origin for textile and apparel products if the United States reaches an agreement with Canada and Mexico on a modification under Article 6.4.3 of the USMCA to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. The President authorized, in Presidential Proclamation 10053 (July 1, 2020), the Committee for the Implementation of Textile Agreements (''CITA'') to review requests for modifications to a rule of origin for textile and apparel goods based on a change in the availability of the textile or apparel good in the territory of the Parties, and to make a recommendation as to whether a requested modification is warranted. CITA hereby solicits public comments on this request to modify the USMCA rules of origin, particularly regarding whether certain high-tenacity polyester yarns used in the production of fire hose can be supplied by the U.S. domestic industry in commercial quantities in a timely manner.

DATES: Comments must be submitted by May 24, 2024.

ADDRESSES: Submit public comments electronically to the Chairman, Committee for the Implementation of Textile Agreements at *OTEXA.USMCA@trade.gov.* Please see the instructions below for information on other means of submission and/or the submission of comments containing business confidential information.

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel (''OTEXA''), U.S. Department of Commerce, *Laurie.Mease@trade.gov* or (202) 482–2043.

For Further Information Online: https://www.trade.gov/fta-commercial-availability-usmca.

SUPPLEMENTARY INFORMATION:

Authority: Article 6.4 of the USMCA; Section 103(c)(5)(B)(ii) of the United States–Mexico–Canada Agreement Implementation Act (''USMCA Implementation Act''); Executive Order 11651 of March 3, 1972, as amended; Presidential Proclamation 10053 of July 1, 2020 (85 FR 39826).

Background: Under the USMCA, the Parties are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the USMCA rules of origin, which are set out in Annex 4–B of the USMCA. Article 6.4.1 of the USMCA provides that, on the request of a Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. In the consultations, pursuant to Article 6.4.2 of the USMCA, each Party shall consider the data presented by the other Parties demonstrating substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner.

The USMCA Implementation Act provides the President with the authority to proclaim, as part of the Harmonized Tariff Schedule of the United States, such modifications to the USMCA rules of origin set out in Annex 4–B of the USMCA as are necessary to implement an agreement with Canada and Mexico under Article 6.4.3 of the USMCA, subject to the consultation and layover requirements of Section 104 of the USMCA Implementation Act. (*See* section 103(c)(5)(B)(ii) of the United States–Mexico–Canada Agreement Implementation Act, Pub. L. 116–113.)

Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that appropriate officials or agencies of the United States take actions necessary to implement textile trade agreements. (*See* 37 FR 4699 (March 3, 1972), reprinted as amended in 7 U.S.C. 1854 note.). The President authorized CITA to ''review requests for modifications to a rule of origin for textile and apparel goods based on a change in the availability in the territories of the [Parties] of a particular fiber, yarn, or fabric'' and to recommend to the President ''whether a requested modification to a rule of origin for a textile good based on a change in the availability of a particular fiber, yarn, or fabric is warranted'' in Presidential Proclamation 10053.

The President may use this recommendation from CITA as part of the consultations with the Parties regarding the proposed change to the USMCA rules of origin.

On February 20, 2024, Canada submitted a request to the United States and Mexico to consult on whether the USMCA rule of origin for certain end-use fabrics for use in fire hose should be modified to allow the use of certain high-tenacity polyester yarns that are not originating under the USMCA. The yarns subject to this request and their specific end uses are described below.

Input product description	Input product classification, harmonized tariff schedule of the U.S. (HTSUS)	End use product description	End-use product classification (HTSUS)
High-tenacity polyester yarn, single or multiple, multi-filament, untwisted, untextured, and measuring more than 920 decitex.	5402.20	Fire hose, with or without lining, armor or accessories of other materials.	5909

CITA is soliciting public comments on this request, particularly with respect to whether the yarns described above can be supplied by the U.S. domestic industry in commercial quantities in a timely manner. If a comment alleges that the yarn described above can be supplied by a U.S. supplier in commercial quantities in a timely manner, OTEXA, which provides staff support to CITA, will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is the subject of this request,

information on quantities that can be supplied and the time necessary to fill an order, as well as any relevant information on past production.

Complete comments, including any attachments and submissions containing confidential business information (CBI), must be received no later than May 24, 2024.

Interested persons are invited to submit comments not containing CBI electronically to the Chairman of the Committee for the Implementation of Textile Agreements at *OTEXA.USMCA@trade.gov.* If interested persons are unable to submit comments electronically, please contact Laurie Mease at *Laurie.Mease@trade.gov* or 202–482–2043 for instructions on other means of submission.

For those seeking to submit comments with CBI for government use only, please clearly mark such submissions as CBI and submit an accompanying version redacting the CBI to be made public. Submissions containing CBI may be submitted electronically through the Department of Commerce's secure online file sharing tool. Access to the secure electronic system will be by invitation only. Interested persons planning to file a submission containing CBI should contact Laurie Mease at *Laurie.Mease@trade.gov* for instructions before submitting any documents (either public or confidential versions) to CITA.

CITA will protect any information that is marked business confidential from disclosure to the full extent permitted by law. Information marked as business confidential will be shared with OTEXA staff tasked with reviewing responses to this request for comment, and may be shared with CITA members, at the request of the CITA member, as they consider making a recommendation with respect to a modification of the USMCA rules of origin. CBI will not be shared with representatives of the Governments of Canada and Mexico during consultation among the Parties as they consider whether to modify the USMCA rules of origin, as discussed above.

Public versions of all comments received will be posted on OTEXA's website for commercial availability proceedings under the USMCA: *https://www.trade.gov/fta-commercial-availability-usmca.*

Jennifer Knight,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2024–08691 Filed 4–23–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0040]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is modifying and reissuing a current system of records titled, ''DCAA Management Information System (DMIS), RDCAA 590.8.'' This system of records was originally established by the Defense Contract Audit Agency (DCAA) to collect and maintain records on audit requirements, programs, and performance and to provide timekeepers with access to time and attendance records. This system of records notice (SORN) is being updated to change the SORN title from ''DCAA Management Information System (DMIS)'' to ''DCAA Portfolio Management System Records.'' 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 May 24, 2024. 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 08D09, 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: Keith Mastromichalis, FOIA, Privacy, and Civil Liberties Officer, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, *keith.o.mastromichalis.civ@mail.mil,* (571) 448–3153.

SUPPLEMENTARY INFORMATION:

I. Background

The DCAA Management Information System is used to collect and maintain records on audit requirements, programs, and performance as well as to plan, perform, and oversee non-audit projects supporting Agency mission and initiatives. This system of records name is changing from ''DCAA Management Information System'' to ''DCAA Portfolio Management System Records.'' Subject to public comment, the DoD is updating this SORN to add the standard DoD routine uses (A through J). Additionally, the following sections of this SORN are being modified as follows: (1) to the System Manager and System Location sections to update system name and Location to reflect the cloud environment; (2) to the Authority for Maintenance of the System to update citations and add additional authorities; (3) to the Purpose of the System section to clarity the scope of the system; (4) to the Categories of Records in the System to add additional categories and to remove Social Security Number; (5) to the Purpose to provide clarity on the scope of collection; (6) to the Records Source Categories to add additional sources; (7) to the Records Storage Section to update storage medium in which records are maintained; to Retrievability to reduce the identifiers listed for records retrieval; (8) to the Record Access, Notification, and Contesting Record Procedures section, to reflect the need for individuals to identify the appropriate DoD office and/or component to direct their request and to update the appropriate citation for contesting records. and (9) to the Record Source Categories to list the appropriate Federal information systems.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Privacy and Civil Liberties Directorate website at *https://dpcld.defense.gov.*

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: April 19, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

DCAA Portfolio Management System Records, RDCAA 590.8.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Defense (Department or DoD), located at 1000 Defense Pentagon, Washington, DC 20301–1000, and other Department installations, offices, or mission locations. Information may also be stored within a government-certified cloud, implemented and overseen by the Department's Chief Information Officer (CIO), 6000 Defense Pentagon, Washington, DC 20301–6000.

SYSTEM MANAGER(S):

The system manager is Chief Digital and AI Office, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DoDD 5105.36, Defense Contract Audit Agency, and DoDI 7640.02, Policy for Follow-Up on Contract Audit Reports.

PURPOSE(S) OF THE SYSTEM:

To provide managers, supervisors, and team members with timely, online information regarding audit requirements, programs, and performance as well as to plan, perform, and oversee non-audit projects supporting Agency mission and initiatives.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Contract Audit Agency (DCAA) employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, audit activity codes, and net savings to the government as a result of those exceptions; records containing employee data; name, DOD ID Number, position/title, rank/grade, work email address, official duty telephone number, time and attendance, and work schedule; and records containing office information, *e.g.,* duty station address, office symbol and telephone number.

RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from: Individuals; existing DoD information systems, such as Defense Civilian Personnel Data System (DCPDS), Defense Agencies Initiative (DAI), Learning Management System (LMS), and System for Award Management (SAM); Procurement Integrated Enterprise Environment (PIEE); audit reports and working papers.

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.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or 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 individuals' name and DoD ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records Schedule DAA–0372–2024–0001 is being reviewed by NARA pending approval. NARA appraiser had some recommended changes which we are re-submitting for review and approval. Records will be maintained as

permanent until NARA approves the retention and disposition of these records.

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 Agency facilities.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should address written inquiries to the Defense Contract Audit Agency, FOIA Requester Service Center, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219. Signed written requests should contain the name and number of this system of records notice along with full name, current address, and email address of the individual. 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).''

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:

November 9, 2005, 70 FR 67995.

[FR Doc. 2024–08760 Filed 4–23–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0041]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service (DFAS), Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is modifying and reissuing a current system of records titled, ''MyPay System,'' T7336. This system of records was originally established by the DFAS to collect and maintain records on individual payroll accounts. This system of records notice (SORN) is being updated to expand the 'Categories of Individuals Covered' section to cover non-appropriate personnel, and to add the standard DoD routine uses (routine uses A through J). 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 May 24, 2024. 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 08D09, Alexandria, VA 22350–1700.

Comments should be sent electronically to the docket listed above.

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: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS-ZCF/N, 8899 E 56th Street, Indianapolis, IN 46249–0150 or by phone at (317) 212–4591.

SUPPLEMENTARY INFORMATION:

I. Background

The MyPay system of records is used to track and allow authorized individuals the ability to retrieve, review, and update payroll information. It is an innovative, automated system that puts the authorized individual in control of processing certain discretionary pay items without using paper forms. Subject to public comment, the DoD is adding the standard DoD routine uses (routine uses A through J). Additionally, the following sections of this SORN are being modified as follows: (1) to the System Manager and System Location sections to update the addresses and office names; (2) to the Authority for Maintenance of the System section to add additional authorities; (3) to the Purpose of the System section to clarity the scope of the system; (4) to the Categories of Individuals to expand the individuals covered; (5) to the Categories of Records in the System to add additional categories; (6) to the Records Source Categories to add additional sources; (7) to the Records Storage Section to update storage medium in which records are maintained; (8) to the Administrative, Technical, and Physical Safeguards to

update the individual safeguards protecting the personal information; (9) to the Record Access, Contesting, and Notification Record Procedures section, to reflect the need for individuals to identify the appropriate DoD office and/or component to direct their request and to update the appropriate citation for contesting records. 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 Office of the Assistant to the Secretary for Privacy and Civil Liberties Directorate website at *https://dpcld.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: April 19, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

MyPay System, T7336.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

A. Defense Finance and Accounting Service—Indianapolis, 8899 East 56th St., Indianapolis, IN 46249.

B. Office of Personnel Management, 4685 Log Cabin Drive, Macon, GA 31204–6317.

SYSTEM MANAGER(S):

MyPay System Manager, Defense Finance and Accounting Service—Indianapolis, (DFAS–IN/ZTBD), 8899 East 56th Street, Indianapolis, IN 46249, *dfas.foia@mail.mil.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 53, Pay Rates and Systems; 5 U.S.C. Chapter 55, Pay Administration; 5 U.S.C. Chapter 81, Compensation For Work Injuries; 10 U.S.C. 113, Secretary of Defense; 10 U.S.C. Chapter 11, Reserve Components; 10 U.S.C. Chapter 61, Retirement Or Separation For Physical Disability; 10 U.S.C. Chapter 63, Retirement For Age; 10 U.S.C. Chapter 65, Retirement Of Warrant Officers For Length Of Service; 10 U.S.C. Chapter 67, Retired Pay for Non-Regular Service; 10 U.S.C Chapter 69, Retired Grade; 10 U.S.C. Chapter 71, Computation Of Retired Pay; 10 U.S.C. Chapter 73, Annuities Based on Retired or Retainer Pay; 37 U.S.C., sections 101–1015, Pay And Allowances Of The Uniformed Services; and E.O. 9397 (SSN) as amended.

PURPOSE(S) OF THE SYSTEM:

To track and allow authorized individuals the ability to retrieve, review and update payroll information from their specific payroll system(s). Records are also used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by DoD or other government agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Active Duty and Reserve military personnel, Military service academy cadets, Naval Reserve Officer Training Corps students; Reserve/National Guard retiree not yet eligible for retired pay, Armed Forces Health Professions Scholarship Program (AFHPSP) students.

B. DoD Civilian employees, to include Non-Appropriated Funds (NAF) employees.

C. Military retirees, their former spouses (Former Spouse Protection Act (FSPA) Claimants), and annuitants.

D. Other Federal agencies employees, to include Executive Office of the President employees, Department of Health and Human Services, Department of Energy, Department of Veterans Affairs, and United States Agency for Global Media.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Personal Information, to include name, Social Security Number (SSN), DoD ID number, military branch of service, employment status (as appropriate), pay plan/grade/step, and home address and email.

B. Financial Information, to include pay, wage, benefits, earnings, and allowances; additional pay (bonuses, special and incentive pays); allotments and other withholdings, such as taxes withheld/paid, debts, and retirement contributions; banking information; leave balances and leave history.

C. Transaction Information, to include records of transactions initiated by the individual using the MyPay system, such as mailing address, allotments, tax withholdings, direct deposit, and health savings account.

RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from: Individual; Defense Joint Military Pay System (DJMS), Defense Civilian Pay System (DCPS), Defense Manpower Data Center (DMDC), Health and Human Services (HHS), Veteran Affairs (VA), Executive Office of the President, Department of Energy and United States Agency for Global Media.

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 some other review as authorized by the Inspector General Act.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically 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 and SSN.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records may be temporary in nature and destroyed when actions are completed, they are superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, destroyed up to 6 years and 3 months 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 their records should address written inquiries to the Defense Finance and Accounting, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E 56th Street, Indianapolis, IN 46249–0150. Signed written requests should contain the name and number of this system of records notice along with full name, SSN for verification, current address, and email address of the individual. 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).''

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:

June 16, 2006, 71 FR 34898.

[FR Doc. 2024–08762 Filed 4–23–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—State Charter School Facilities Incentive Grant (SFIG) Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2024 for the SFIG Program, Assistance Listing Number (ALN) number 84.282D. This notice relates to the approved information collection under OMB control number 1855–0012.

DATES:

Applications Available: April 24, 2024.

Notice of Intent to Apply: Applicants are strongly encouraged but not required to submit a notice of intent to apply by June 24, 2024. Applicants who do not meet this deadline may still apply.

Deadline for Transmittal of Applications: July 23, 2024.

Deadline for Intergovernmental Review: September 23, 2024.

Pre-Application Webinar Information: The SFIG Program intends to hold a webinar designed to provide technical

assistance to interested applicants. Detailed information regarding this webinar will be provided on the SFIG Program web page at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/state-charter-school-facilities-incentive-grants/.*

Note: For new potential grantees unfamiliar with grantmaking at the Department, please consult our ''Getting Started with Discretionary Grant Applications web page at *https://www2.ed.gov/fund/grant/about/discretionary/index.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Clifton Jones, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 205–2204. Email: *charter.facilities@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SFIG Program is authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by Every Student Succeeds Act (ESEA) (20 U.S.C. 7221k). Through the SFIG Program, the Department provides grants to eligible *States* to help them establish or enhance, and administer, a *per-pupil facilities aid program* for *charter schools* in the *State,* that is specified in *State* law, and provides annual financing, on a per-pupil basis, for *charter school* facilities.

Background:

Lack of access to adequate facilities is one of the biggest obstacles to creating and expanding *charter schools* as cited by *charter school* leaders.[1] In 2021, the Government Accountability Office (GAO) issued a report identifying the challenges *charter schools* encounter with locating and securing *charter school* facilities and government assistance that can address these challenges, such as per-pupil allowances, which provide extra funds to help cover facility expenses. In this report, the GAO identified the following four challenges unique to charter schools when trying to secure *charter school* facilities and funding: (1) affordability and limited access to State and local funding, and affordable private loans as well as rising real estate costs and renovation expenses; (2) availability of safe and secure building space and lack of amenities (*e.g.,* a cafeteria or playground) and limited access to buildings; (3) inconsistent assistance for charter school facilities' needs and, (4) limited staff expertise in facilities management.[2]

The Secretary has encouraged all stakeholders to ''Raise the Bar: Lead the World'' in education to provide opportunities for students to reach new heights in the classroom, in their careers, and in their lives and communities, making a positive difference in the world for generations to come. Ensuring students have access to safe, healthy, sustainable, and equitable physical learning environments is a critical component of the ''Raise the Bar: Lead the World'' initiative. The SFIG Program can support charter schools that serve students from low-income backgrounds and students of color located in low-resourced, underfunded areas in providing access to high-quality facilities.[3] [4] The Secretary also seeks to address challenges novice applicants may face, including supporting States in their efforts to establish and enhance or administer a *per-pupil facilities aid program* for charter schools.

Priority: This notice includes a competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from 34 CFR 226.14(b).

Competitive Preference Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority.

Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to those applicants that meet this priority.

This priority is:

Applicants that have not previously received a grant under the program.

Definitions:

The following definitions are from sections 4310(1), 4310(2), 4304(k)(1), and 8101(48) of the ESEA (20 U.S.C. 7221i(1), 7221i(2), 7221c(k)(1), 7801)), and 34 CFR 77.1(c).

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target,* whether a *performance target* is *ambitious* depends upon the context of the relevant *performance measure* and the baseline for that measure. (34 CFR 77.1)

Authorized public chartering agency means a *State* educational agency, local educational agency, or other public entity that has the authority pursuant to *State* law and approved by the Secretary to authorize or approve a *charter school.* (Section 4310(1) of the ESEA)

Charter school means a public school that—

(a) In accordance with a specific *State* statute authorizing the granting of charters to schools, is exempt from significant *State* or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements in section 4310 of the ESEA;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the *authorized public chartering agency;*

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the

[1] *https://facilitycenter.publiccharters.org/school-leaders.*

[2] K–12 Education: Challenges Locating and Securing Charter School Facilities and Government Assistance—Briefing to the Republican Leader, House Committee on Education and Labor—August 2, 2021.

[3] National Alliance for Public Charter Schools (2018). Strengthening Federal Investment in Charter School Facilities.

[4] National Charter School Resource Center (2020). A Synthesis of Research on Charter School Facilities. Bethesda, MD: Manhattan Strategy Group.

''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*);

(h) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA (20 U.S.C. 7221b(c)(3)(A)), if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated *charter school* (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated *charter school* and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated *charter school* and the enrolling school, admits students on the basis of a lottery as described in paragraph (h)(i);

(i) Agrees to comply with the same Federal and *State* audit requirements as do other elementary schools and secondary schools in the *State,* unless such *State* audit requirements are waived by the *State*;

(j) Meets all applicable Federal, *State,* and local health and safety requirements;

(k) Operates in accordance with *State* law;

(l) Has a written performance contract with the *authorized public chartering agency* in the *State* that includes a description of how student performance will be measured in *charter schools* pursuant to *State* assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the *authorized public chartering agency* and the *charter school*; and

(m) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA)

Note: Pursuant to the definition of *authorized public chartering agency* in section 4310(1) of the ESEA, for a school to qualify as a charter school under section 4310(2) and receive Federal CSP funds, the grantee must assure that each charter school served was authorized by an ''authorized public charter agency'' as defined in section 4310(1) of the ESEA. Section 4310(1) of the ESEA defines an ''authorized public charter agency'' as''a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school.''

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Per-pupil facilities aid program means a program in which a *State* makes payments, on a per-pupil basis, to *charter schools* to provide the schools with financing—

(a) That is dedicated solely to funding *charter school* facilities; or

(b) A portion of which is dedicated for funding *charter school* facilities. (20 U.S.C. 7221c(k)(1))

Public means as applied to an agency, organization, or institution that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government. (34 CFR 77.1)

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. (section 8101(48) of the ESEA)

Program Authority: Title IV, Part C Section 4304 of the ESEA, as amended (20 U.S.C. 7221(c)).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474 and 2 CFR part 184. (d) The regulations for this program in 34 CFR part 226.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: For FY 2024, the Administration received $440,000,000 for the CSP, of which we would use an estimated $30,000,000 for awards under this competition.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $1,000,000 to $10,000,000.

Estimated Average Size of Awards: $10,000,000.

Estimated Number of Awards: 1–3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants: States.* In order to be eligible to receive a grant, a *State* shall establish or enhance, and administer, a per-pupil facilities aid program for *charter schools* in the *State,* that—

(a) Is specified in *State* law; and

(b) Provides annual financing, on a per-pupil basis, for *charter school* facilities.

Note: A *State* that is required under *State* law to provide *charter schools* with access to adequate facility space, but that does not have a *per-pupil facilities aid program* for *charter schools* specified in *State* law, is eligible to receive a grant if the *State* agrees to use the funds to develop a *per-pupil facilities aid program* consistent with the requirements in this notice inviting applications.

2. a. *Cost Sharing or Matching:* Under section 4304(k)(2)(C) of the ESEA, a *State* must provide a *State* share of the total cost of the project. The minimum *State* share of the total cost of the project increases each year of the grant, from:

- 10 percent in the first year
- 20 percent in the second year
- 40 percent in the third year
- 60 percent in the fourth year
- 80 percent in the fifth year.

Note: A *State* may partner with one or more organizations, and such organizations may provide up to 50 percent of the *State* share of the cost of establishing or enhancing, and administering, the *per-pupil facilities aid program.*

Applicants that are provisionally selected to receive grants will not receive grant funds unless they demonstrate, by September 1, 2024, that they are, or will be able to, provide the *State* share required under this program.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 4110 of the ESEA (20 U.S.C. 7120), program funds must be used to supplement, and not supplant, *State* and local public funds expended to provide *per-pupil facilities aid programs,* operations financing programs, or other programs, for *charter*

schools. Therefore, the Federal funds provided under this program, as well as the matching funds provided by the grantee, must be in addition to the *State* and local funds that would otherwise be used for this purpose in the absence of this Federal program. The Department generally considers that *State* and local funds would be available for this purpose at least in the amount of the funds that was available in the preceding year and that the Federal funds and matching funds under this program would supplement that amount.

c. I*ndirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* State grantees may use up to five percent of their grant award for administrative expenses that include: indirect costs, evaluation, technical assistance, dissemination, personnel costs, and any other costs involved in administering the State's per-pupil facilities aid program. (34 CFR 226.22)

Charter school subgrantees may use grant funds for administrative costs that are necessary and reasonable for the proper and efficient performance and administration of this Federal grant. This use of funds, as well as indirect costs and rates, must comply with EDGAR and the Office of Management and Budget Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments).

Consistent with the requirements in 34 CFR 75.564(c)(2), any *charter school* subgrantees that use grant funds for construction activities may not be reimbursed for indirect costs for those activities. (34 CFR 226.23)

3. *Build America, Buy America Act:* This program is subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements. Accordingly, under this program, grantees and contractors may not use their grant funds for infrastructure projects or activities (*e.g.,* construction, remodeling, and broadband infrastructure) unless—

(a) All iron and steel used in the infrastructure project or activity are produced in the United States;

(b) All manufactured products used in the infrastructure project or activity are produced in the United States; and

(c) All construction materials are manufactured in the United States.

Grantees may request waivers to these requirements by submitting a Build America, Buy America Act Waiver Request Form. For more information, including a link to the Waiver Request Form, see the Department's Build America Buy America Waiver website at: *https://www2.ed.gov/policy/fund/guid/buy-america/index.html.*

4. Other: The *charter schools* that a grantee selects to benefit from this program must meet the definition of *charter school* in in section 4310(2) of the ESEA (20 U.S.C. 7221i(2)). The definitions of *charter school, per-pupil facilities aid programs,* and *authorized public chartering agency* are in sections 4310(2), 4304(k)(1), and 4310(1) of the ESEA (20 U.S.C. 7221) and included in this notice. Additionally, with respect to component (B) of the definition of ''charter school,'' which requires that a school be a public school operated under public supervision and direction, each charter school selected to benefit from this program must assure the grantee that is has not relinquished full or substantial control of the charter school to a for-profit management organization (also referred to as an education management organization) or other for-profit entity; and each charter school must assure the grantee that it is fiscally responsible and transparent, particularly with respect to contractual relationships with for-profit management organizations. To fulfill this requirement, in selecting each *charter school* that it will serve under the State Incentive program, the grantee must obtain an assurance from the school that it meets each of the components of the definition of ''charter school''in section 4310(2) of the ESEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the State Charter School Facilities Incentive Grants Program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* Under section 4304(k)(3)(B) of the ESEA, from the amount made available to a *State* through a grant under this program for a fiscal year, the *State* may reserve not more than five percent to carry out evaluations, to provide technical assistance, and to disseminate information. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″ , on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name, a contact person's name and email address, and the Assistance Listing Number. Applicants that do not submit a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 226.12. The maximum score for addressing all of the selection criteria is 100 points. The maximum score for addressing each criterion is indicated in parentheses and are as follows:

(a) *Need for facility funding* (30 points).

(1) The need for per-pupil *charter school* facility funding in the State.

(2) The extent to which the proposal meets the need to fund *charter school* facilities on a per-pupil basis.

(b) *Quality of plan* (40 points).

(1) The likelihood that the proposed grant project will result in the State either retaining a new per-pupil facilities aid program or continuing to enhance such a program without the total amount of assistance (State and Federal) declining over a five-year period.

(2) The flexibility *charter schools* have in their use of facility funds for the various authorized purposes.

(3) The quality of the plan for identifying charter schools and determining their eligibility to receive funds.

(4) The per-pupil facilities aid formula's ability to target resources to charter schools with the greatest need and the highest proportions of students in poverty.

(5) For projects that plan to reserve funds for evaluation, the quality of the applicant's plan to use grant funds for this purpose.

(6) For projects that plan to reserve funds for technical assistance, dissemination, or personnel, the quality of the applicant's plan to use grant funds for these purposes.

(c) *The grant project team* (10 points).

(1) The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including employees not paid with grant funds, consultants, and subcontractors.

(2) The adequacy and appropriateness of the applicant's staffing plan for the grant project.

(d) *The budget* (10 points).

(1) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

(2) The extent to which the costs are reasonable in relation to the number of students served and to the anticipated results and benefits.

(3) The extent to which the non-Federal share exceeds the minimum percentages (which are based on the percentages under section 4304(k)(2)(C) of the ESEA), particularly in the initial years of the program.

(e) *State Experience* (10 points).

(1) The experience of the State in addressing the facility needs of charter schools through various means, including providing per-pupil aid and access to State loan or bonding pools.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Note: As described in 34 CFR 226.14(c), the Secretary may elect to consider the points awarded under the competitive preference priority only for proposals that exhibit sufficient quality to warrant funding under the selection criteria.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer

effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice. We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works.

Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

4. *Reporting:*

(a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The performance measures for this program are established for purposes of Department reporting under 34 CFR 75.110.

(a) *Program Performance Measures.* The *performance measure* for this program is the ratio of funds leveraged by *States* for *charter school* facilities to funds awarded by the Department under the program. Grantees must provide information that is responsive to this measure as part of their annual performance reports.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific *performance measures* and *performance targets* consistent with the objectives of the project and program. Applicants must provide the following information as directed under 34 CFR 75.110(b):

(1) *Project Performance Measures.* How each proposed project-specific *performance measure* would accurately measure the performance of the project and how the proposed project-specific *performance measure* would be consistent with the *performance measures* established for the program funding the competition.

(2) *Project Performance Targets.* Why each proposed *performance target* is *ambitious* yet achievable compared to the baseline for the *performance measure* and when, during the project period, the applicant would meet the *performance target(s).*

Note: The Secretary encourages applicants to consider measures and targets tied to their grant activities during the grant period. For instance, if an applicant is using eligibility for free and reduced-price lunch to measure the number of low-income families served by the project, the applicant could provide a percentage for students qualifying for free and reduced-price lunch. The measures should be sufficient to gauge the progress throughout the grant period and show results by the end of the grant period.

(3) *Data Collection and Reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If applicants do not have experience with collection and reporting of performance data through other projects or research, they should provide other evidence of their capacity to successfully carry out data collection and reporting for their proposed project.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the *performance targets* in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors at a location to be determined in the continental United States during each year of the project. Applicants may include the cost of attending this meeting as an administrative cost in their proposed budgets.

8. *Technical Assistance:* Grantees under this competition must participate in all program technical assistance offerings provided by the Department and its contractual technical assistance providers and partners throughout the life of the project.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority To Perform the Functions and Duties of the Assistant Secretary for the Office Elementary and Secondary Education.

[FR Doc. 2024–08731 Filed 4–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0028]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Safer Schools and Campuses Best Practices Clearinghouse

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 24, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Victoria Hammer, (202) 260–1438.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Safer Schools and Campuses Best Practices Clearinghouse.

OMB Control Number: 1810–0753.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 300.

Total Estimated Number of Annual Burden Hours: 450.

Abstract: This is a request for approval of an extension without change of the OMB approved collection, 1810–0753 Safer Schools and Campuses Best Practices Clearinghouse. The U.S. Department of Education (Department) collects lessons learned and best practices from the field to populate the Safer Schools and Campuses Best Practices Clearinghouse (Clearinghouse) in response to the directive to do so in Executive Order 14000 issued on January 21, 2021, by the President. This extension will allow the Department to continue collecting lessons learned and best practices for the Clearinghouse.

The purpose for this collection is to ensure that the Department has sufficient information to review and, if appropriate, approve submissions to include in the Clearinghouse.

Dated: April 18, 2024.

Kate Mullan,

PRA Coordinator,Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–08714 Filed 4–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0027]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Personal Authentication Service (PAS) for FSA ID

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 24, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate;

(4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Personal Authentication Service (PAS) for FSA ID.

OMB Control Number: 1845–0131.

Type of Review: Extension without chnage of a currently approved ICR.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 6,671,000.

Total Estimated Number of Annual Burden Hours: 1,667,750.

Abstract: Federal Student Aid (FSA) requests extension without change of the Person Authentication Service (PAS) which creates an FSA ID, a standard username and password solution. In order to create an FSA ID to gain access to certain FSA systems (the Free Application for Federal Student Aid (FAFAFSA) on the Web, National Student Loan Data System (NSLDS), *StudentLoans.gov,* etc.) a user must register on-line for an FSA ID account. The FSA ID allows the customer to have a single identity, even if there is a name change or change to other personally identifiable information. The information collected to create the FSA ID enables electronic authentication and authorization of users for FSA web-based applications and information and protects users from unauthorized access to user accounts on all protected FSA sites.

Dated: April 18, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–08678 Filed 4–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for two types of grants: CSP Developer Grants, Assistance Listing Numbers 84.282B (for the opening of new charter schools) and 84.282E (for the replication and expansion of high-quality charter schools). This notice relates to the approved information collection under OMB control number 1810–0767.

DATES:

Applications Available: April 24, 2024.

Notice of Intent to Apply: Applicants are strongly encouraged but not required to submit a notice of intent to apply by May 24, 2024. Applicants that do not meet this deadline may still apply.

Deadline for Transmittal of Applications: June 24, 2024.

Deadline for Intergovernmental Review: August 22, 2024.

Pre-Application Webinar Information: The Department will hold a pre-application meeting via webinar to provide technical assistance to prospective applicants. Detailed information regarding this webinar will be provided at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-schools-program/charter-schools-program-non-state-educational-agencies-non-sea-planning-program-design-and-initial-implementation-grant/.*

Note: For prospective new applicants unfamiliar with grantmaking at the Department, please consult our funding basics resource at *https://www2.ed.gov/fund/grant/about/discretionary/index.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Stephanie S. Jones, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 453–5563. Email: *DeveloperCompetition2024@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The major purposes of the CSP are to expand opportunities for all students, particularly for *children with disabilities,*[1] *English learners,* and other traditionally *underserved students,* to attend *charter schools* and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of *high-quality charter schools* available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; aid States in providing facilities support to charter schools; support efforts to strengthen the charter school authorizing process; and support quality, accountability, and transparency in the operational performance of all *authorized public chartering agencies,* including State educational agencies (SEAs) and local educational agencies (LEAs) (section 4301 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA)).

The CSP Developer Grant program (Assistance Listing Numbers 84.282B and 84.282E) is authorized under Title IV, Part C of the ESEA (20 U.S.C. 7221–7221j). Through CSP Developer Grants, the Department provides financial assistance to charter school *developers* to enable them to open and prepare for the operation of new or *replicated* charter schools or to *expand* high-quality charter schools in States that do not currently have a CSP State Entity grant under the ESEA. Charter schools that receive financial assistance through CSP Developer Grants provide elementary or secondary education

[1] Terms defined in this notice are italicized the first time each term is used.

programs, or both, and may also serve students in *early childhood education programs* or postsecondary students, consistent with the terms of their charter.

Background: This notice invites applications from eligible applicants for two types of grants: (1) Grants to Charter School Developers for the Opening of New Charter Schools (Assistance Listing Number 84.282B) and (2) Grants to Charter School Developers for the Replication and Expansion of High-Quality Charter Schools (Assistance Listing Number 84.282E). Under this competition, each Assistance Listing Number constitutes its own funding category. The Secretary intends to award grants under each Assistance Listing Number for applications that are sufficiently high quality.

''Raise the Bar: Lead the World'' (RTB) is the Department's call to action to all stakeholders to transform pre-kindergarten through postsecondary education and unite around *evidence-based* strategies that advance educational equity and excellence for all students.[2] When we raise the bar in education, all our Nation's students will be able to build the skills to thrive inside and outside of school. As part of the RTB initiative, the Department is focusing on six strategies aimed at promoting academic excellence and wellness for every learner and better preparing our Nation for global competitiveness.[3] The competitive preference and invitational priorities selected for this program are intended to help advance several RTB strategies, most notably those intended to deliver a comprehensive and rigorous education for every student and provide every student with a pathway to multilingualism.

Further, in July 2022, the Department published in the **Federal Register** a notice of final priorities, requirements, definitions, and selection criteria for this program (87 FR 40406) (2022 NFP), which supplements the program statute and notice of final priorities, requirements, definitions, and selection criteria for CSP Developer Grants published in the **Federal Register** on July 3, 2019 (84 FR 31726) (2019 NFP). The 2022 NFP is intended to support the creation, replication, and expansion of high-quality charter schools.

This notice includes one competitive preference priority and two invitational priorities. The first invitational priority is designed to encourage collaboration between charter schools and traditional public schools or traditional school districts that benefit students and families across schools and was taken from the 2022 NFP. The types of collaborations sought under this priority can support improved opportunities and outcomes for students in both charter schools and traditional public schools, including by sharing instructional materials, creating joint professional learning opportunities, and developing principal pipeline programs. The second invitational priority for this competition encourages high-quality charter schools to create pathways to multilingualism for students, particularly underserved students. High-quality multilingual programming provides English learners and native English speakers with the opportunity to become bilingual and biliterate and may support Native American language education and preservation. It also celebrates the assets of English learners while supporting English language acquisition and promoting academic excellence, and may support efforts to promote school and classroom diversity.[4] Using invitational priorities allows the Department to encourage beneficial collaborations and pathways to multilingualism that can better prepare all students for a global society and economy without giving applications that meet this priority preference over other applications.

The priorities, application requirements, assurances, selection criteria, and definitions in this notice are designed to increase access to high-quality, diverse, and equitable learning opportunities, which is consistent with the RTB initiative and the Department's goals for all public schools.

Priorities: This competition includes one competitive preference priority and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priority is from the 2022 NFP.

Competitive Preference Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority.

For Assistance Listing Numbers 84.282B and 84.282E, under 34 CFR 75.105(c)(2)(i), we will award up to an additional 5 points to an application that meets the competitive preference priority, depending on how well the application meets the priority.

The priority is:

Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students (up to 5 points).

(a) Under this priority, an applicant must propose to open a new charter school, or to replicate or expand a high-quality charter school, that is developed and implemented—

(1) With meaningful and ongoing engagement with current or former teachers and other educators; and

(2) Using a community-centered approach that includes an assessment of *community assets,* informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a) of this priority, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school. (2022 NFP)

Invitational Priorities: For FY 2024, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Collaborations between Charter Schools and Traditional Public Schools or Districts that Benefit Students and Families across Schools.

(a) The Secretary is particularly interested in learning more about how applicants propose a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, is designed to lead to increased or improved educational opportunities for students served by at least one member of the collaboration, and includes implementation of one or more of the following—

[2] *https://www.ed.gov/raisethebar/.*

[3] The six strategies of Raise the Bar include: accelerating learning, developing a well-rounded education, eliminating the educator shortage, investing in mental health, ensuring every student has a postsecondary pathway, and a pathway to multilingualism.

[4] Kotok, Stephen, and David DeMatthews. ''Challenging School Segregation in the Twenty-First Century: How Districts Can Leverage Dual Language Education to Increase School and Classroom Diversity.'' Clearing House: A Journal of Educational Strategies, Issues and Ideas 91.1 (2018): 1–6.

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other educators, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with educator preparation programs to support teaching residencies.

(3) Evidence-based practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for at least one member of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic and developmental outcomes and services for students with disabilities (as defined in section 8101 of the ESEA).

(8) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for English learners.

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for all students served by members of the collaboration.

(b) In its application, an applicant must provide a description of the collaboration that—

(1) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(2) States the purpose and duration of the collaboration;

(3) Describes the anticipated roles and responsibilities of each member of the collaboration;

(4) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased educational opportunities for students, and meet specific and measurable, if applicable, goals;

(5) Describes the resources members of the collaboration will contribute; and

(6) Contains any other relevant information.

(c) Within 120 days of receiving a grant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, the grantee provides evidence of participation in the collaboration (which may include, but is not required to include, a memorandum of understanding).

Invitational Priority 2—Promoting Pathways to Multilingualism.

The Secretary is particularly interested in learning more about how applicants propose to replicate or expand high-quality charter schools with multilingual programming that is centered on the needs and assets of the community the schools serve and is designed to provide students, particularly underserved students, with pathways to multilingualism through any of the following—

(a) Dual language programs that offer academic instruction in two languages and are designed to enroll both English learners and native English speakers on an equitable basis and ensure all students become bilingual and biliterate in both languages.

(b) A mission and focus on supporting Native American language education and development, such as through dual language programs or other instructional models and teaching methods that reflect and preserve Native American language, culture, and history.

(c) A mission and focus on meeting the unique educational needs and celebrating the assets of English learners using evidence-based practices to support English language acquisition and promote academic excellence.

(d) Other innovative or evidence-based strategies to promote multilingualism, including approaches to recruit, support, and retain multilingual educators.

Definitions:

The following definitions are from sections 4310 (20 U.S.C. 7221i) and 8101 (20 U.S.C. 7801) of the ESEA, 34 CFR 77.1, and the 2019 and 2022 NFPs.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target,* whether a performance target is *ambitious* depends upon the context of the relevant *performance measure* and the *baseline* for that measure. (34 CFR 77.1)

Authorized public chartering agency means a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school. (Section 4310(1) of the ESEA)

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

Charter management organization means a nonprofit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight. (Section 4310(3) of the ESEA)

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution; [5]

[5] The Department will apply this element of the definition of ''charter school'' consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia,*

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which *parents* choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA)

Note: Pursuant to section 4310(1) of the ESEA, for a school to qualify as a *charter school* under this definition and receive Federal CSP funds, the authorized public chartering agency that issues the charter or performance contract must be an SEA, LEA, or other *public* entity with authority pursuant to State law to approve a charter school. Under 34 CFR 77.1, *public,* ''as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.''

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as ''emotional disturbance''), orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities; and (ii) who, by reason thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the LEA, include a child (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (ii) who, by reason thereof, needs special education and related services. (Section 8101(4) of the ESEA)

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and local community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities. (2022 NFP)

Demonstrates a rationale means a key *project component* included in the project's *logic model* is informed by research or evaluation findings that suggest the project component is likely to improve *relevant outcomes.* (34 CFR 77.1)

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. (Section 4310(5) of the ESEA)

Disconnected youth means an individual, between the ages of 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution. (2022 NFP)

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated child care program;

(3) A program that—

(i) Serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(ii) Is (A) a State prekindergarten program; (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA; or (C) a program operated by an LEA. (ESEA section 8101(16))

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, students who are children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care. (2019 NFP)

Educator means an individual who is an early learning educator, teacher, principal or other school or district leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty. (2022 NFP)

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has

Inc. v. *Comer,* 582 U.S. 449 (2017), *Espinoza* v. *Montana Department of Revenue,* 140 S. Ct. 2246 (2020), and *Carson* v. *Makin,* 142 S. Ct. 1987 (2022).

had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society. (Section 8101(20) of the ESEA)

Evidence-based means—

(1) In general.—The term 'evidence-based', when used with respect to a State, local educational agency, or school activity, means an activity, strategy, or intervention that—

(i) Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(A) Strong evidence from at least one well-designed and well-implemented experimental study;

(B) Moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or

(C) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(ii)(A) *Demonstrates a rationale* based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(B) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention. (Section 8101(21) of the ESEA)

Expand, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school. (Section 4310(7) of the ESEA)

High-quality charter school means a charter school that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4310(8) of the ESEA)

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1)

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare). (Section 8101(38) of the ESEA)

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1)

Public as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal government. (34 CFR 77.1)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1)

Replicate, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law. (Section 4310(9) of the ESEA)

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An *English learner.*

(5) A *child or student with a disability.*

(6) A *disconnected youth.*

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level. (2022 NFP)

Application Requirements:

Applications for CSP Developer Grant funds must address the following application requirements. These requirements are from section 4303(f) [6] of the ESEA and the 2019 and 2022 NFPs. The source of each requirement is provided in parentheses following each requirement. The Department will not fund an application that does not meet each applicable application requirement.

In addressing the application requirements, applicants must clearly identify which application requirement they are addressing. Except as otherwise provided, an applicant may choose to respond to each requirement separately or in the context of the applicant's responses to the selection criteria in section V.1 of this notice.

Grants to Charter School Developers for the Opening of New Charter Schools (Assistance Listing Number 84.282B) and for the Replication and Expansion of High-Quality Charter Schools (Assistance Listing Number 84.282E).

Applicants for grants under Assistance Listing Numbers 84.282B or 84.282E must address the following

[6] Under section 4305(c) of the ESEA, CSP Developer Grants must have the same terms and conditions as grants awarded to State entities under section 4303. For clarity, with respect to requirements that derive from section 4303, the Department has, as applicable, omitted the term ''State entity'' or replaced it with ''eligible applicant.'' In addition, the Department has replaced ''State entity's program'' and ''subgrant,'' respectively, with ''program'' and ''grant.''

application requirements. An applicant must respond to the requirements in paragraph (a) in a stand-alone section of the application or in an appendix.

(a) Describe the eligible applicant's objectives in running a quality charter school program and how the objectives of the program will be carried out, including—

(1) How the eligible applicant will ensure that charter schools receiving funds under this program meet the educational needs of their students, including children with disabilities and English learners (Section 4303(f)(1)(A)(x) of the ESEA);

(2) A description of the roles and responsibilities of eligible applicants, partner organizations, and *charter management organizations,* including the administrative and contractual roles and responsibilities of such partners (Section 4303(f)(1)(C)(i)(I) of the ESEA);

(3) A description of the quality controls agreed to between the eligible applicant and the authorized public chartering agency involved, such as a contract or performance agreement, how a school's performance in the State's accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school's charter, and how the authorized public chartering agency involved will reserve the right to revoke or not renew a school's charter based on financial, structural, or operational factors involving the management of the school (Section 4303(f)(1)(C)(i)(II) of the ESEA);

(4) A description of how the autonomy and flexibility granted to a charter school is consistent with the definition of a charter school in section 4310 of the ESEA (Section 4303(f)(1)(C)(i)(III) of the ESEA);

(5) A description of how the eligible applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each charter school that will receive funds under the grant (Section 4303(f)(1)(C)(i)(IV) of the ESEA);

(6) A description of the eligible applicant's planned activities and expenditures of grant funds to support the activities described in section 4303(b)(1) of the ESEA, and how the eligible applicant will maintain financial sustainability after the end of the grant period (Section 4303(f)(1)(C)(i)(V) of the ESEA);

(7) A description of how the eligible applicant will support the use of effective parent, family, and community engagement strategies to operate each charter school that will receive funds under the grant (Section 4303(f)(1)(C)(i)(VI) of the ESEA); and

(8) A description of how the eligible applicant will ensure that each charter school receiving funds under this program has considered and planned for the transportation needs of the school's students (Section 4303(f)(1)(E) of the ESEA).

(b) Describe the educational program that the applicant will implement in the charter school receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used. (2019 NFP)

(c) Describe how the applicant will ensure that the charter school that will receive funds will recruit, enroll, and retain students, including *educationally disadvantaged students,* which include children with disabilities and English learners. (2019 NFP)

(d) Describe the lottery and enrollment procedures that the applicant will use for the charter school if more students apply for admission than can be accommodated and, if the applicant proposes to use a weighted lottery, how the weighted lottery complies with section 4303(c)(3)(A) of the ESEA. (2019 NFP)

(e) Provide a complete logic model (as defined in 34 CFR 77.1) for the grant project. The logic model must include the applicant's objectives for implementing a new charter school or replicating or expanding a high-quality charter school with funding under this competition. (2019 NFP)

(f) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities. (2019 NFP)

(g) If the applicant proposes to open a new charter school (Assistance Listing Number 84.282B) or proposes to replicate or expand a high-quality charter school (Assistance Listing Number 84.282E) that provides a single-sex educational program, demonstrate that the proposed single-sex educational programs are in compliance with the title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) (''Title IX'') and its implementing regulations, including 34 CFR 106.34. (2019 NFP)

(h) Provide the applicant's most recent available independently audited financial statements prepared in accordance with generally accepted accounting principles. (2019 NFP)

(i) Provide—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the eligible entity believes are necessary for the successful operation of the charter school to be opened or to be replicated or expanded; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived or otherwise not apply to the school that will receive funds. (2019 NFP)

(j) Describe how each school that will receive funds meets the definition of charter school under section 4310(2) of the ESEA. (2019 NFP)

(k) Provide a needs analysis and describe the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the charter school intends to serve. The needs analysis, which may consist of information and documents previously submitted to an authorized public chartering agency to address need, must include, but is not necessarily limited to, the following—

(1) Descriptions of the local community support, including information that demonstrates interest in, and need for, the charter school; benefits to the community; and other evidence of demand for the charter school that demonstrates a strong likelihood the charter school will achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed charter school or existing charter schools or traditional public schools, data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students, or evidence of family interest in specialized instructional approaches proposed to be implemented at the charter school.

(2) Information on the proposed charter school's projected student enrollment, and evidence to support the projected enrollment based on the needs analysis and other relevant data and factors, such as the methodology and calculations used.

(3) An analysis of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the proposed charter school would be located and the school districts from which students are, or would be, drawn to attend the charter school; a description of how the applicant plans to establish and maintain a racially and socioeconomically diverse student body, including proposed strategies

(that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to establish and maintain a racially and socioeconomically diverse student body at the proposed charter school because the charter school would be located in a racially or socioeconomically segregated or isolated community, or due to the charter school's specific educational mission, must describe—

(i) Why it is unlikely to establish and maintain a racially and socioeconomically diverse student body at the proposed charter school;

(ii) How the anticipated racial and socioeconomic makeup of the student body would promote the purposes of the CSP, including to provide high-quality educational opportunities to underserved students, which may include a specialized educational program or mission; and

(iii) The anticipated impact of the proposed charter school on the racial and socioeconomic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

(4) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following—

(i) How families and the community were, are, or will be engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the charter school.

(ii) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(iii) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(iv) How the charter school's recruitment, admissions, enrollment, and retention policies and practices will engage and accommodate students and families from diverse backgrounds, including English learners, students with disabilities, and students of color, including holding enrollment and recruitment events on weekends or during nonstandard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages; as appropriate, large print or braille for visually impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).

(v) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(5) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including consideration of district or community assets and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(6) A description of the steps the applicant has taken or will take to ensure that the proposed charter school (1) would not hamper, delay, or negatively affect any desegregation efforts in the local community in which the charter school would be located or in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools; and (2) to ensure that the proposed charter school would not otherwise increase racial or socioeconomic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school (2022 NFP);

(l) For any existing or proposed contract with a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercise full or substantial administrative control over the charter school or the CSP project, provide the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(1) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's total funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(3) The name and contact information for each member of the governing board of the charter school and list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(4) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization);

(5) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(6) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance

with section 4308 of the ESEA (2022 NFP).

(m) Provide—

(1) The name and address of the authorized public chartering agency that issued the applicant's approved charter or, in the case of an applicant that has not yet received an approved charter, the authorized public chartering agency to which the applicant has applied;

(2) A copy of the approved charter or, in the case of an applicant that has not yet received an approved charter, a copy of the charter application that was submitted to the authorized public chartering agency, including the date the application was submitted, and an estimated date by which the authorized public chartering agency will issue its final decision on the charter application;

(3) Documentation that the applicant has provided notice to the authorized public chartering agency that it has applied for a CSP grant; and

(4) A proposed budget, including a detailed description of any post-award planning costs and, for an applicant that does not yet have an approved charter, any planning costs expected to be incurred prior to the date the authorized public chartering agency issues a decision on the charter application. (2022 NFP)

Grants for the Replication and Expansion of High-Quality Charter Schools (Assistance Listing Number 84.282E).

In addition to the preceding application requirements, applicants for grants under Assistance Listing Number 84.282E must—

(a) For each charter school currently operated or managed by the applicant, provide—

(1) Information that demonstrates that the school is treated as a separate school by its authorized public chartering agency and the State, including for purposes of accountability and reporting under title I, part A of the ESEA;

(2) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2) of the ESEA;C

(3) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available four-year adjusted cohort graduation rates and extended year adjusted cohort graduation rates; and

(4) Information on any significant compliance and management issues encountered within the last three school years by the existing charter school being operated or managed by the eligible entity, including in the areas of student safety and finance. (2019 NFP)

Assurances:

All applicants for CSP Developer Grants must provide the following assurances. These assurances are from section 4303(f)(2) of the ESEA and the 2022 NFP. The source of each assurance is provided in parentheses following each assurance.

Applicants for funds under this program must provide assurances that—

(a) Each charter school receiving funds through this program will have a high degree of autonomy over budget and operations, including autonomy over personnel decisions (Section 4303(f)(2)(A) of the ESEA);

(b) The eligible applicant will support charter schools in meeting the educational needs of their students, as described in section 4303(f)(1)(A)(x) of the ESEA (Section 4303(f)(2)(B) of the ESEA); and

(c) The eligible applicant will ensure that each charter school receiving funds under this program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(i) Information on the educational program;

(ii) Student support services;

(iii) Parent contract requirements (as applicable), including any financial obligations or fees;

(iv) Enrollment criteria (as applicable); and

(v) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4303(f)(2)(G) of the ESEA)

(d) Each applicant must provide an assurance that it has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization or its related entities exercises full or substantial administrative control over the charter school and, thereby, the CSP project. (2022 NFP)

(e) Each applicant must provide an assurance that any management contract between a charter school and a for-profit management organization, including a nonprofit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(1) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the grant;

(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (*e.g.,* food or payroll services) and that otherwise comply with statutory and regulatory requirements;

(3) The charter school's governing board has access to financial and other data pertaining to the charter school, the management organization, and any related entities; and

(4) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization. (2022 NFP)

(f) Each applicant must provide an assurance that it will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the Department, including—

(1) A copy of the existing contract with the for-profit management organization or description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such costs, and the percentage such cost represents of the charter school's total funding; the duration, roles and responsibilities of the management organization; the steps the charter will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization; and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(3) The names and contact information for each member of the governing boards of the charter school and a list of management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(4) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter school to close. (2022 NFP)

(g) Each applicant must provide an assurance that it will disclose, as part of the enrollment process, any policies and requirements (*e.g.,* purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program). (2022 NFP)

(h) Each applicant must provide an assurance that it will hold or participate in a public hearing in the local community in which the proposed charter school would be located to obtain information and feedback regarding the potential benefit of the charter school, which shall at least include how the proposed charter school will increase the availability of high-quality public school options for underserved students, promote racial and socio-economic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socioeconomic segregation or isolation in the school districts from which students would be drawn to attend the charter school (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.,* provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.,* hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided it meets the requirements above. (2022 NFP)

(i) Each applicant must provide an assurance that it will not use any implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources. (2022 NFP)

Note: The Department recognizes that the charter approval process may exceed the 18-month planning period prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, a grantee may request a waiver from the Department under section 4303(d)(5) to enable the grantee to amend its approved application to extend the 18-month planning period prescribed by section 4303(d)(1)(B). Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of ''charter school'' in section 4310(2) of the ESEA, provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. A grantee also may request approval from the Department, as appropriate, to amend its approved application and budget to cover additional planning costs that it may incur due to an unexpected delay in the charter approval process.

Program Authority: Title IV, part C of the ESEA, as amended.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2019 and 2022 NFPs.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $150,000 to $400,000 per year.

Estimated Average Size of Awards: $350,000 per year.

Maximum Award: See Reasonable and Necessary Costs in section III.4 for information regarding the maximum amount of funds that may be awarded per charter school.

Estimated Number of Awards: 10–14.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use available funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

A grant awarded by the Secretary under this competition may be for a period of not more than 5 years, of which the grantee may use not more than 18 months for planning and program design. (Section 4303(d)(1)(B) of the ESEA)

III. Eligibility Information

1. *Eligible Applicants:*

Eligible applicants are developers that have—

(a) Applied to an authorized public chartering authority to operate a charter school; and

(b) Provided adequate and timely notice to that authority. (Section 4310(6) of the ESEA).

Additionally, the charter school must be located in a State with a State statute

specifically authorizing the establishment of charter schools (as defined in section 4310(2) of the ESEA) and in which a State entity currently does not have a CSP State Entity grant (Assistance Listing Number 84.282A) under section 4303 of the ESEA.[7] (Section 4305(a)(2) of the ESEA).

As a general matter, the Secretary considers charter schools that have been in operation for more than five years to be past the initial implementation phase and, therefore, ineligible to receive CSP funds under Assistance Listing Number 84.282B to support the opening of a new charter school or under Assistance Listing Number 84.282E for the replication of a high-quality charter school; however, such schools may receive CSP funds under Assistance Listing Number 84.282E for the expansion of a high-quality charter school.

Note: Under 34 CFR 75.51, an applicant may show that it is a nonprofit organization by any of the following means: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition does not involve supplement-not-supplant funding requirements.

c. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of grant funds that may be awarded for a new charter school, or replicated, or expanded, high-quality charter school.

For this competition, the maximum limit of grant funds that may be awarded for a new, replicated, or expanded charter school is $2,000,000.

In accordance with 2 CFR 200.404, applicants must ensure that all costs included in the proposed budget are reasonable and necessary in light of the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

5. *Other CSP Grants:* A charter school that previously has received CSP funds for replication or expansion or for planning or initial implementation of a charter school under Assistance Listing Number 84.282A or 84.282M (under the ESEA) may not use funds under this grant for the same purpose. However, such charter school may be eligible to receive funds under this competition to expand the charter school beyond the existing grade levels or student count and beyond the grade levels or projected student count provided in the previous CSP award.

Likewise, a charter school that receives funds under this competition is ineligible to receive funds for the same purpose under section 4303(b)(1) or 4305(b) of the ESEA, including opening and preparing for the operation of a new charter school, opening and preparing for the operation of a replicated high-quality charter school, or expanding a high-quality charter school (*i.e.,* Assistance Listing Number 84.282A or 84.282M).

6. *Build America, Buy America Act:* This program is not subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements.

[7] States in which a State entity currently has an approved CSP State Entity grant application under section 4303 of the ESEA that is actively running subgrant competitions are Alabama, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Washington, West Virginia, and Wisconsin. We will not consider applications from applicants in these States under either Assistance Listing Number 84.282B or 84.282E.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for this competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* Grantees must use the grant funds to open and prepare for the operation of a new charter school, to open and prepare for the operation of a replicated high-quality charter school, or to expand a high-quality charter school, as applicable. Grant funds must be used to carry out allowable activities, described in section 4303(h) of the ESEA, which include the following:

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(1) Providing professional development; and

(2) Hiring and compensating, during the eligible applicant's planning period specified in the application for funds, one or more of the following:

(i) Teachers.

(ii) School leaders.

(iii) Specialized instructional support personnel.

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials).

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school.

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

(f) Providing for other appropriate, non-sustained costs related to the opening of new charter schools, or the replication or expansion of high-quality charter schools, as applicable, when such costs cannot be met from other sources.

A grant awarded by the Secretary under this competition may be for a period of not more than 5 years, of which the grantee may use not more than 18 months for planning and program design. (Section 4303(d)(1)(B) of the ESEA). Applicants may propose to support only one charter school per grant application.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit and English Language Requirement:* The project narrative is where you, the applicant, address the priorities, selection criteria, and application requirements that peer reviewers use to evaluate your application. We recommend that you (1) limit the project narrative to no more than 50 pages, and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; any request to waive requirements and the justification; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the project narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name, a contact person's name and email address, the Assistance Listing Number, and the city and State in which the applicant proposes to open, replicate, or expand a charter school. Applicants that do not submit a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for applicants submitting applications under Assistance Listing Numbers 84.282B and 84.282E are listed in paragraphs (a) and (b) of this section, respectively. The maximum possible score for addressing all the selection criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion. These selection criteria are from the 2019 and 2022 NFPs and 34 CFR 75.210.

In evaluating an application for a CSP Developer Grant, the Secretary considers the following criteria:

(a) *Selection Criteria for Grants for the Opening of New Charter Schools (Assistance Listing Number 84.282B).*

(1) *Quality of the Charter School's Management Plan (up to 40 points).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 10 points). (34 CFR 75.210(g)(2)(i))

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 5 points). (34 CFR 75.210(f)(2)(iv))

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points). (34 CFR 75.210(g)(2)(iv))

(iv) The qualifications, including relevant training and experience, of key project personnel (up to 5 points). (34 CFR 75.210(e)(3)(ii))

(v) The adequacy of the applicant's plan to maintain control over all CSP grant funds (up to 5 points). (2022 NFP)

(vi) The adequacy of the applicant's plan to make all programmatic decisions (up to 5 points). (2022 NFP)

(vii) The adequacy of the applicant's plan to administer or supervise the administration of the grant, including maintaining management and oversight responsibilities over the grant (up to 5 points). (2022 NFP)

(2) *Quality of the Continuation Plan (up to 20 points).*

In determining the quality of the continuation plan, the Secretary considers the extent to which the eligible applicant is prepared to continue to operate the charter school that would receive grant funds in a manner consistent with the eligible applicant's application once the grant funds under this program are no longer available. (2019 NFP)

(3) *Quality of the Project Design (up to 10 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale (as defined in 34 CFR 77.1(c)) (up to 5 points). (34 CFR 75.210(c)(2)(xxix))

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 5 points). (34 CFR 75.210(c)(2)(i))

(4) *Need for Project (up to 30 points).*

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the

Secretary considers one or more of the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project (up to 15 points). (34 CFR 75.210(a)(2)(i))

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (up to 15 points). (34 CFR 75.210(a)(2)(ii))

(b) *Selection Criteria for Grants for the Replication and Expansion of High-Quality Charter Schools (Assistance Listing Number 84.282E).*

(1) *Quality of the Eligible Applicant (up to 20 points).*

In determining the quality of the eligible applicant, the Secretary considers the following factors:

(i) The extent to which the academic achievement results (including annual student performance on statewide assessments and annual student attendance and retention rates and where applicable and available, student academic growth, high school graduation rates, postsecondary enrollment and persistence rates, including in college or career training programs, employment rates, earnings and other academic outcomes) for educationally disadvantaged students served by the charter schools operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State (up to 5 points). (2019 NFP)

(ii) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (up to 5 points). (2019 NFP)

(iii) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter (up to 5 points). (2019 NFP)

(iv) The extent to which the schools operated or managed by the applicant demonstrate strong results on measurable outcomes in non-academic areas such as, but not limited to, parent satisfaction, school climate, student mental health, civic engagement, and crime prevention and reduction (up to 5 points). (2019 NFP)

(2) *Quality of the Charter School's Management Plan (up to 35 points).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 5 points). (34 CFR 75.210(g)(2)(i))

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 5 points). (34 CFR 75.210(f)(2)(iv))

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points). (34 CFR 75.210(g)(2)(iv))

(iv) The qualifications, including relevant training and experience, of key project personnel (up to 5 points). (34 CFR 75.210(e)(3)(ii))

(v) The adequacy of the applicant's plan to maintain control over all CSP grant funds (up to 5 points). (2022 NFP)

(vi) The adequacy of the applicant's plan to make all programmatic decisions (up to 5 points). (2022 NFP)

(vii) The adequacy of the applicant's plan to administer or supervise the administration of the grant, including maintaining management and oversight responsibilities over the grant (up to 5 points). (2022 NFP)

(3) *Quality of the Continuation Plan (up to 10 points).*

In determining the quality of the continuation plan, the Secretary considers the extent to which the eligible applicant is prepared to continue to operate the charter school that would receive grant funds in a manner consistent with the eligible applicant's application once the grant funds under this program are no longer available. (2019 NFP)

(4) *Quality of the Project Design (up to 10 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale (as defined in 34 CFR 77.1(c)) (up to 5 points). (34 CFR 75.210(c)(2)(xxix))

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 5 points). (34 CFR 75.210(c)(2)(i))

(5) *Need for Project (up to 25 points).*

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project (up to 15 points). (34 CFR 75.210(a)(2)(i))

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (up to 10 points). (34 CFR 75.210(a)(2)(ii))

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make

an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115—232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* (a) For the purposes of Department reporting under 34 CFR 75.110, the Secretary has established two performance indicators: (1) the number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: The Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among

other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors either virtually or at a location to be determined in the continental United States during each year of the project. Applicants may include, if applicable, the cost of attending this meeting in their proposed budgets as allowable administrative costs.

8. *Technical Assistance:* Applicants approved for funding under this competition must participate in all technical assistance offerings required by the CSP Office, including project directors' meetings and other on-site and virtual gatherings sponsored by the Department and its contracted technical assistance providers and partners throughout the performance period.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2024–08729 Filed 4–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Accrediting Agencies Currently Undergoing Review for the Purpose of Recognition by the U.S. Secretary of Education

AGENCY: U.S. Department of Education, Accreditation Group, Office of Postsecondary Education.

ACTION: Call for written third-party comments.

SUMMARY: This notice provides information to members of the public on submitting written comments for accrediting agencies currently undergoing review for the purpose of recognition by the U.S. Secretary of Education.

FOR FURTHER INFORMATION CONTACT: Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, fifth floor, Washington, DC 20202, telephone: (202) 453–7615, or email: *herman.bounds@ed.gov.*

SUPPLEMENTARY INFORMATION: This request for written third-party comments concerning the performance of accrediting agencies under review by the Secretary of Education is required by section 496(n)(1)(A) of the Higher Education Act (HEA) of 1965, as amended, and pertains to the summer 2025 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). The meeting date and location have not been determined but will be announced in a later **Federal Register** notice. In addition, a later **Federal Register** notice will describe how to register to provide oral comments at the meeting. Note: Written comments about the specific agencies identified below will not be accepted or provided to NACIQI members if those comments are submitted after the deadline provided in this **Federal Register** notice, which is May 20, 2024. Written comments must be submitted to the mailbox identified below. Do not submit written comments directly to Department officials or to NACIQI members.

Agencies Under Review and Evaluation: The Department requests written comments from the public on the following accrediting agencies, which are currently undergoing review and evaluation by the Accreditation Group, and which will be reviewed at the summer 2025 NACIQI meeting. The agencies are listed by the type of application or report each agency has submitted. Please note, each agency's current scope of recognition is indicated below. If any agency requested to expand its scope of recognition, identified are both the current scope of recognition and the requested scope of recognition.

Compliance Reports

1. Accreditation Commission for Midwifery Education. Scope of Recognition: The accreditation and pre-accreditation of basic certificate, basic graduate nurse-midwifery, direct entry midwifery, and pre-certification nurse-midwifery education programs, including those programs that offer distance education. Geographic area of accrediting activities: The United States. The compliance report includes findings of noncompliance with certain criteria in 34 Code of Federal Regulations (CFR) Part 602 identified in the May 31, 2023, letter from the Senior Department Official (SDO) following the February 28, 2023, NACIQI meeting. The SDO letter is available under NACIQI meeting date 2/28/2023, at *https://surveys.ope.ed.gov/erecognition/#/public-documents.*

2. American Physical Therapy Association, Commission on Accreditation in Physical Therapy. Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') in the United States of physical therapist education programs leading to the first professional degree at the master's or doctoral level and physical therapist assistant education programs at the associate degree level and for its accreditation of such programs offered via distance education. Geographic area of accrediting activities: The United States. The compliance report includes findings of noncompliance with certain criteria in 34 CFR part 602 identified in the May 31, 2023, letter from the SDO following the February 28, 2023, NACIQI meeting. The SDO letter is available under NACIQI meeting date 2/28/2023, at

https://surveys.ope.ed.gov/erecognition/#/public-documents.

3. Middle States Commission on Higher Education. Scope of Recognition: The accreditation and preaccreditation (''Candidacy status'') of institutions of higher education including distance, correspondence education programs and direct assessment programs offered at those institutions. Recognition extends to the Executive Committee to act on behalf of the Commission as necessary on cases of initial, reaffirmed, and continued candidacy or initial, reaffirmed and continued accreditation. Geographic Area of Accrediting Activities: The United States. The compliance report includes findings of noncompliance with certain criteria in 34 CFR part 602 identified in the May 31, 2023, letter from the SDO following the February 28, 2023 NACIQI meeting. The SDO letter is available under NACIQI meeting date 2/28/2023, at *https://surveys.ope.ed.gov/erecognition/#/public-documents.*

4. New England Commission of Higher Education. Scope of Recognition: The accreditation and pre-accreditation (''Candidacy status'') of institutions of higher education including the accreditation of programs offered via distance education and direct assessment within those institutions. Jointly with the Commission, this recognition extends to its Executive Committee and also to the Appeals Body for decisions related to the appeal of denial or withdrawal of candidacy; probation; and denial or withdrawal of accreditation. Geographic Area of Accrediting Activities: The United States. The compliance report includes findings of noncompliance with certain criteria in 34 CFR part 602 identified in the May 31, 2023, letter from the SDO following the February 28, 2023, NACIQI meeting. The SDO letter is available under NACIQI meeting date 2/28/2023, at *https://surveys.ope.ed.gov/erecognition/#/public-documents.*

5. Western Association of Schools and Colleges. Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of institutions of higher education that offer the baccalaureate degree or above, including distance education programs offered at those institutions. Geographic area of accrediting activities: The United States. The compliance report includes findings of noncompliance with certain criteria in 34 CFR part 602 identified in the May 31, 2023, letter from the SDO following the February 28, 2023, NACIQI meeting. The SDO letter is available under NACIQI meeting date 2/28/2023, at *https://surveys.ope.ed.gov/erecognition/#/public-documents.*

Submission of Written Comments Regarding a Specific Accrediting Agency Under Review

Written comments about the recognition of any of the accrediting agencies listed above must be received by May 20, 2024, in the *ThirdPartyComments@ed.gov* mailbox. Please include in the subject line ''Written Comments: (agency name).'' The electronic mail (email) must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a PDF, Microsoft Word document or in a medium compatible with Microsoft Word that is attached to an email or provided in the body of an email message. Comments about an agency that has submitted a compliance report scheduled for review by the Department must relate to the criteria for recognition cited in the SDO letter that requested the compliance report following the February 28, 2023, NACIQI meeting, or in the Secretary's appeal decision, if any. The SDO letters for the specific agencies referenced in this **Federal Register** notice are available under NACIQI meeting date 2/28/2023, at *https://surveys.ope.ed.gov/erecognition/#/public-documents.*

Only written materials submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and NACIQI in their deliberations. Written comments about the specific agencies identified in this **Federal Register** notice that are submitted after the deadline will not be considered by the Department or provided to NACIQI for purposes of the current review. However, comments may be provided orally at the summer 2025 NACIQI meeting, which has not yet been scheduled, but which will be announced in a future **Federal Register** notice.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1099b; 20 U.S.C. 1011c.

Nasser Paydar,

Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2024–08770 Filed 4–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (State Entity)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2024 for CSP Grants to State Entities, Assistance Listing Number (ALN) number 84.282A. This notice relates to the approved information collection under OMB control number 1810–0767.

DATES:

Applications Available: April 24, 2024.

Deadline for Transmittal of Applications: June 13, 2024.

Deadline for Intergovernmental Review: August 12, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 453–5638. Email: *SE_Competition@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CSP State Entity program, ALN 84.282A, is authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 7221–7221j). Through the CSP State Entity competition, the Department awards grants to *State entities* that, in turn, award subgrants to *eligible applicants* for the purpose of opening new *charter schools* and replicating and expanding *high-quality charter schools. State entities* also may use grant funds to provide technical assistance to *eligible applicants* and *authorized public chartering agencies* in opening new *charter schools* and replicating and expanding *high-quality charter schools,* and to work with *authorized public chartering agencies* in the *State* to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of *charter schools.* State Entity grant funds may also be used for grant administration, which may include technical assistance and monitoring of subgrants for performance and fiscal and regulatory compliance, as required under 2 CFR 200.332(d).

The CSP State Entity program provides financial assistance to *State entities* to support *charter schools* that serve elementary and secondary school students in *States* with a specific *State* statute authorizing the granting of charters to schools. *Charter schools* receiving funds under the CSP State Entity program may also serve students in *early childhood education programs* or postsecondary students.

Background: The major purposes of the CSP are to expand opportunities for all students, particularly traditionally underserved students, to attend high-quality public *charter schools* and meet challenging *State* academic standards; provide financial assistance for the planning, program design, and initial implementation of *charter schools;* increase the number of *high-quality charter schools* available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between *charter schools* and other public schools; encourage *States* to provide facilities support to *charter schools;* and support efforts to strengthen the *charter school* authorizing process.

''Raise the Bar: Lead the World'' (RTB) is the Department's call to action to all stakeholders to transform pre-kindergarten through postsecondary education and unite around evidence-based strategies that advance educational equity and excellence for all students.[1] When we raise the bar in education, all our Nation's students will be able to build the skills to thrive inside and outside of school. As part of the RTB initiative, the Department is focusing on six strategies aimed at promoting academic excellence and wellness for every learner and better preparing our Nation for global competitiveness.[2] This competition advances several RTB strategies, most notably those intended to deliver a comprehensive and rigorous education for every student.

Further, on July 6, 2022 (87 FR 40406), the Department published in the **Federal Register** a notice of final priorities, requirements, definitions, and selection criteria (2022 NFP). The 2022 NFP supplements the program statute and is intended to help support the creation, replication, and expansion of *high-quality charter schools* that promote positive student outcomes, *educator* and community empowerment, promising practices, and school diversity. The 2022 NFP promotes greater fiscal and operational transparency and accountability for CSP-funded *charter schools.* The application requirements and assurances associated with subgrant monitoring and the review of subgrant applications help facilitate the proper peer review and evaluation of CSP grant applications. The priorities, application requirements, assurances, selection criteria, and definitions in this notice are designed to support access to high-quality, diverse, and equitable learning opportunities, which should be a goal of all public schools.

Priorities: This notice includes one absolute priority, five competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and competitive preference priorities are from section 4303(g)(2) of the ESEA (20 U.S.C. 7221b(g)(2)).

Absolute Priority: For FY 2024, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the absolute priority.

This priority is:

Best Practices for Charter School Authorizers.

To meet this priority, the *State entity* must demonstrate that it has taken steps to ensure that all authorized[3] public chartering agencies implement best practices for *charter school* authorizing.

Competitive Preference Priorities: For FY 2024, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award 1 additional point to an application that meets Competitive Preference Priority 1; up to 2 additional points to an application depending on how well it meets Competitive Preference Priority 2; up to 2 additional points to an application depending on how well it meets Competitive Preference Priority 3; up to 2 additional points to an application depending on how well it meets Competitive Preference Priority 4; and up to 3 additional points to an application depending on how well it meets Competitive Preference Priority 5.

An applicant must identify in the abstract form and in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. The Department will not review or award points for any competitive preference priority that an applicant fails to clearly identify as a competitive preference priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. An application may receive a total of up to 10 additional points under the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—At Least One Authorized Public Chartering Agency Other than a Local Educational Agency, or an Appeals Process (0 or 1 point).

To meet this priority, the *State entity* must demonstrate that it is located in a *State* that—

(a) Allows at least one entity that is not a local educational agency (LEA) to be an *authorized public chartering agency* for *developers* seeking to open a *charter school* in the *State;* or

(b) In the case of a *State* in which LEAs are the only *authorized public*

[1] *www.ed.gov/raisethebar/.*

[2] The six strategies of Raise the Bar include: accelerating learning, developing a well-rounded education, eliminating the *educator* shortage, investing in mental health, ensuring every student has a postsecondary pathway, and a pathway to multilingualism.

[3] Although the statute utilizes the term ''authorizing,'' the term was modified to ''authorized'' in this notice.

chartering agencies, the *State* has an appeals process for the denial of an application for a *charter school.*

Competitive Preference Priority 2—Equitable Financing (up to 2 points).

To be eligible to receive points under this priority, the *State entity* must demonstrate that it is located in a *State* that ensures equitable financing, as compared to traditional public schools, for *charter schools* and students in a prompt manner.

Competitive Preference Priority 3—Best Practices to Improve Struggling Schools and LEAs (up to 2 points).

To be eligible to receive points under this priority, the *State entity* must demonstrate that it is located in a *State* that uses best practices from *charter schools* to help improve struggling schools and LEAs.

Competitive Preference Priority 4—Charter School Facilities (up to 2 points).

To be eligible to receive points under this priority, the *State entity* must demonstrate that it is located in a *State* that provides *charter schools* one or more of the following:

(a) Funding for facilities.

(b) Assistance with facilities acquisition.

(c) Access to public facilities.

(d) The ability to share in bonds or mill levies.

(e) The right of first refusal to purchase public school buildings.

(f) Low- or no-cost leasing privileges.

Competitive Preference Priority 5—Serving At-Risk Students (up to 3 points).

To be eligible to receive points under this priority, the *State entity* must demonstrate that it supports *charter schools* that serve at-risk students through activities such as dropout prevention, dropout recovery, or comprehensive career counseling services.

Invitational Priority: For FY 2024, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Collaborations between Charter Schools and Traditional Public Schools or Districts that Benefit Students and Families across Schools.

(a) The Secretary is interested in funding applications that propose to encourage, but not require, *eligible applicants* for subgrants to propose projects that include a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, is designed to lead to increased and improved educational opportunities for students served by at least one member of the collaboration, and includes implementation of one or more of the following:

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other *educators,* which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with *educator* preparation programs to support teaching residencies.

(3) Evidence-based (as defined in section 8101(21) of the ESEA) practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided that could impact a family's ability to enroll or remain enrolled (*e.g.,* transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for members of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating *charter schools* and traditional public schools in improving academic or developmental outcomes and services for students with disabilities (as defined in section 8101 of the ESEA).

(8) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating *charter schools* or traditional public schools in improving academic outcomes for English learners (as defined in section 8101 of the ESEA).

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools and designed to improve academic outcomes for all students served by members of the collaboration.

(b) The *State entity* certifies that it will ask each *eligible applicant* that proposes a project that includes such a collaboration to—

(1) Provide in its subgrant application a description of the collaboration that—

(i) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(ii) States the purpose and duration of the collaboration;

(iii) Describes the anticipated roles and responsibilities of each member of the collaboration;

(iv) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased or improved educational opportunities for students, and meet specific and measurable, if applicable, goals;

(vi) Describes the resources members of the collaboration will contribute; and

(vii) Contains any other relevant information; and

(2) Within 120 days of receiving a subgrant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, provide evidence of participation in the collaboration (which may include, but is not required to include, a memorandum of understanding).

Application Requirements:

The following application requirements are from section 4303(f) of the ESEA (20 U.S.C. 7221b(f)) and from the 2022 NFP. The Department will not fund an application that does not meet each application requirement.

In addressing the following application requirements, applicants must clearly identify which application requirement they are addressing. An applicant must address application requirements (a)(1)(i), (a)(1)(vii), (a)(1)(ix), (a)(2)(ii), and (a)(2)(iii) in its response to paragraph (a)(1) of the Quality of the Project Design selection criterion; application requirement (a)(8) in its response to paragraph (a)(4) of the Quality of the Project Design selection criterion; application requirements

(a)(1)(ii), (a)(1)(xiii), (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(5), and (a)(7) in its response to the Quality of Eligible Subgrant Applicants selection criterion; application requirements (a)(1)(vi), (a)(1)(x), and (a)(9) in its response to paragraph (c)(1) of the State Plan selection criterion; application requirements (a)(1)(iii), (a)(1)(iv), (a)(1)(viii), and (a)(1)(xi) in its response to paragraph (c)(3) of the State Plan selection criterion; and application requirement (a)(4) in its response to paragraph (d)(1) of the Quality of the Management Plan selection criterion. An applicant must respond to all other application requirements in paragraph (a) that are not listed above in the Project Narrative.

Applications for funding under the CSP State Entity program must contain the following:

(a) Description of Program—A description of the *State entity's* objectives in running a quality *charter school* program and how the objectives of the program will be carried out, including—

(1) A description of how the *State entity* will—

(i) Support the opening of *charter schools* through the startup of new *charter schools* and, if applicable, the replication of *high-quality charter schools,* and the expansion of *high-quality charter schools* (including the proposed number of new charter schools to be opened, *high-quality charter schools* to be opened as a result of the replication of a *high-quality charter school,* or *high-quality charter schools* to be expanded under the *State entity's* program) (4303(f));

(ii) Inform eligible *charter schools, developers,* and *authorized public chartering agencies* of the availability of funds under the program (4303(f));

(iii) Work with *eligible applicants* to ensure that the *eligible applicants* access all Federal funds that such applicants are eligible to receive, and help the *charter schools* supported by the applicants and the students attending those *charter schools*—

(A) Participate in the Federal programs in which the schools and students are eligible to participate;

(B) Receive the commensurate share of Federal funds the schools and students are eligible to receive under such programs; and

(C) Meet the needs of students served under such programs, including students with disabilities and English learners (4303(f));

(iv) Ensure that *authorized public chartering agencies,* in collaboration with surrounding LEAs where applicable, establish clear plans and procedures to assist students enrolled in a *charter school* that closes or loses its charter to attend other high-quality schools (4303(f));

(v) In the case of a *State entity* that is not a *State educational agency* (SEA)—

(A) Work with the SEA and *charter schools* in the *State* to maximize *charter school* participation in Federal and *State* programs for which *charter schools* are eligible; and

(B) Work with the SEA to operate the *State entity's* program under section 4303 of the ESEA, if applicable (4303(f));

(vi) Ensure that each *eligible applicant* that receives a subgrant under the *State entity's* program—

(A) Is using funds provided under this program for one of the activities described in section 4303(b)(1) of the ESEA; and

(B) Is prepared to continue to operate *charter schools* funded under section 4303 of the ESEA in a manner consistent with the *eligible applicant's* application for such subgrant once the subgrant funds under this program are no longer available (4303(f));

(vii) Support—

(A) *Charter schools* in LEAs with a significant number of schools identified by the *State* for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; and

(B) The use of *charter schools* to improve struggling schools, or to turn around struggling schools (4303(f));

(viii) Work with *charter schools* on—

(A) Recruitment and enrollment practices to promote inclusion of all students, including by eliminating any barriers to enrollment for *educationally disadvantaged students* (who include foster youth and unaccompanied homeless youth); and

(B) Supporting all students once they are enrolled to promote retention, including by reducing the overuse of discipline practices that remove students from the classroom (4303(f));

(ix) Share best and promising practices between *charter schools* and other public schools (4303(f));

(x) Ensure that *charter schools* receiving funds under the *State entity's* program meet the educational needs of their students, including children with disabilities and English learners (4303(f));

(xi) Support efforts to increase *charter school* quality initiatives, including meeting the quality authorizing elements described in section 4303(f)(2)(E) of the ESEA (4303(f));

(xii)(A) In the case of a *State entity* that is not a *charter school support organization,* a description of how the *State entity* will provide oversight of authorizing activity, including how the *State* will help ensure better authorizing, such as by establishing authorizing standards that may include approving, monitoring, and re-approving or revoking the authority of an *authorized public chartering agency* based on the performance of the *charter schools* authorized by such agency in the areas of student achievement, student safety, financial and operational management, and compliance with all applicable statutes and regulations; and

(B) In the case of a *State entity* that is a *charter school support organization,* a description of how the *State entity* will work with the *State* to support the *State's* system of technical assistance and oversight of the authorizing activity of *authorized public chartering agencies,* as described in application requirement (a)(1)(xii)(A) (4303(f)); and

(xiii) Work with *eligible applicants* receiving a subgrant under the *State entity's* program to support the opening of new *charter schools* or *charter school* models described in application requirement (a)(1)(i) that are high schools (4303(f));

(2) A description of the extent to which the *State entity*—

(i) Is able to meet and carry out Competitive Preference Priorities 1 through 5; [4]

(ii) Is working to develop or strengthen a cohesive statewide system to support the opening of new *charter schools* and, if applicable, the replication of *high-quality charter schools,* and the expansion of *high-quality charter schools;* and

(iii) Is working to develop or strengthen a cohesive strategy to encourage collaboration between *charter schools* and LEAs on the sharing of best practices (4303(f));

(3) A description of how the *State entity* will award subgrants, on a competitive basis, including—

(i) A detailed description of how the *State entity* will review applications from *eligible applicants,* including—

(*A*) How eligibility will be determined;

(*B*) How peer reviewers will be recruited and selected, including efforts the applicant will make to recruit peer reviewers from diverse backgrounds and underrepresented groups;

[4] In accordance with 34 CFR 75.105(c)(2)(i), applications are not required to address competitive preference priorities but may receive additional points if they do so. However, to meet this application requirement, the *State entity* must describe the extent to which it is able to meet and carry out competitive preference priorities 1 through 5. If the *State entity* is unable to meet and carry out one or more of these competitive preference priorities, the description for that priority should state that the *State entity* is unable to meet or carry out the priority.

(*C*) How subgrant applications will be reviewed and evaluated;

(*D*) How cost analyses and budget reviews will be conducted to ensure that costs are necessary, reasonable, and allocable to the subgrant;

(*E*) How applicants will be assessed for risk (*i.e.,* fiscal, programmatic, compliance); and

(*F*) How funding decisions will be made (2022 NFP);

(ii) A description of the application each *eligible applicant* desiring to receive a subgrant will be required to submit, which application must include the following:

(A) A description of the roles and responsibilities of *eligible applicants,* partner organizations, and *charter management organizations* (CMO), including the administrative and contractual roles and responsibilities of such partners (4303(f));

(*1*) For any existing or proposed contract between a *charter school* and a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercises full or substantial administrative control over the *charter school* or the CSP project, the applicant must provide the following information or equivalent information that the applicant has submitted to the *authorized public chartering agency*—

(*i*) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs or fees), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's overall funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(*ii*) A description of any business or financial relationship between the *charter school developer* and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the *charter school;*

(*iii*) The name and contact information for each member of the governing board of the *charter school* and a list of the management organization's officers, chief administrator, or other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(*iv*) A description of how the applicant will ensure that members of the governing board of the *charter school* are not selected, removed, controlled, or employed by the management organization and that the *charter school's* legal, accounting, and auditing services will be procured independently from the management organization;

(*v*) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed *charter school* to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the *charter school;* and

(*vi*) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the *charter school* to another public school, including due to closure of the *charter school,* in accordance with section 4308 of the ESEA (2022 NFP).

(B) A description of the quality controls agreed to between the *eligible applicant* and the *authorized public chartering agency* involved, such as a contract or performance agreement; how a school's performance in the *State's* accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school's charter; and how the *State entity* and the *authorized public chartering agency* involved will reserve the right to revoke or not renew a school's charter based on financial, structural, or operational factors involving the management of the school (4303(f));

(C) A description of how the autonomy and flexibility granted to a *charter school* is consistent with the definition of *charter school* in section 4310 of the ESEA (4303(f));

(D) A description of how the *eligible applicant* will solicit and consider input from parents and other members of the community on the implementation and operation of each *charter school* that will receive funds under the *State entity's* program (4303(f));

(E) A description of the *eligible applicant's* planned activities and expenditures of subgrant funds to support opening and preparing for the operation of new *charter schools,* opening and preparing for the operation of replicated *high-quality charter schools,* or *expanding high-quality charter schools, and how the eligible* applicant will maintain financial sustainability after the end of the subgrant period (4303(f));

(F) A description of how the *eligible applicant* will support the use of effective parent, family, and community engagement strategies to operate each *charter school* that will receive funds under the *State entity's* program (4303(f)); and

(G) A needs analysis and description of the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the *charter school* intends to serve. The needs analysis, which may consist of information and documents previously submitted to an *authorized public chartering agency* to address need, must include, but is not necessarily limited to, the following:

(*1*) Descriptions of the local community support, including information that demonstrates interest in, and need for, the *charter school;* benefits to the community; and other evidence of demand for the *charter school* that demonstrates a strong likelihood the *charter school* will achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed *charter school* or existing *charter school*s or traditional public schools, data on access to seats in high-quality public schools in the districts from which the *charter school* expects to draw students, and family interest in specialized instructional approaches proposed to be implemented at the charter school.

(*2*) Information on the proposed *charter school's* projected student enrollment and evidence to support the projected enrollment based on the needs analysis and other relevant data and

factors, such as the methodology and calculations used.

(*3*) An analysis of the proposed *charter school's* projected student demographics and a description of the demographics of students attending public schools in the local community in which the *charter school* would be located and the school districts from which the students are, or would be, drawn to attend the *charter school;* a description of how the applicant plans to establish and maintain a racially and socio-economically diverse student body, including proposed strategies (that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to establish and maintain a racially and socio-economically diverse student body at the proposed *charter school* because the *charter school* would be located in a racially or socio-economically segregated or isolated community, or due to the *charter school's* specific educational mission, must describe-

(*i*) Why it is unlikely to be able to establish and maintain a racially and socio-economically diverse student body at the proposed *charter school;*

(*ii*) How the anticipated racial and socio-economic makeup of the student body would promote the purposes of the CSP to provide high-quality educational opportunities to all students, which may include a specialized educational program or mission; and

(*iii*) The anticipated impact of the proposed *charter school* on the racial and socio-economic diversity of the public schools and school districts from which students would be drawn to attend the *charter school.*

(*4*) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following:

(*i*) How families and the community were, are, or will be engaged in determining the vision and design for the *charter school,* including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the *charter school.*

(*ii*) How the *charter school* will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(*iii*) How the *charter school* will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(*iv*) How the *charter school's* recruitment, admissions, enrollment, and retention processes will engage and accommodate families from various backgrounds, including English learners, students with disabilities, and students of color, including by holding enrollment and recruitment events on weekends or during non-standard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages; as appropriate, large print or braille for visually impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).

(*v*) How the *charter school* has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(*5*) How the plans for the operation of the *charter school* will support and reflect the needs of students and families in the community, including consideration of district or *community assets* and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(*6*) A description of the steps the applicant has taken or will take to ensure that the proposed *charter school* (A) would not hamper, delay, or negatively affect any desegregation efforts in the community in which the *charter school* would be located and the public school districts from which students are, or would be, drawn to attend the *charter school,* including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools; and (B) to ensure that the proposed *charter school* would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the *charter school.* (2022 NFP).

(iii)(A) A description of how the *State entity,* in awarding subgrants to *eligible applicants,* will—

(*1*) Give priority to *eligible applicants* that propose projects that include the creation, replication, or expansion of a *high-quality charter school* that is developed and implemented—

(*i*) With meaningful and ongoing engagement with current or former teachers and other *educators;* and

(*ii*) Using a community-centered approach that includes an assessment of *community assets,* informs the development of the *charter school,* and includes the implementation of protocols and practices designed to ensure that the *charter school* will use and interact with *community assets* on an ongoing basis to create and maintain strong community ties.

(B) In its application, an eligible applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (G)(6)(iii)(A)(1) of these application requirements, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the *charter school.*

(iv) In the case of a *State entity* that partners with an outside organization to carry out the *State entity's* quality *charter school* program, in whole or in part, a description of the roles and responsibilities of the partner (4303(f));

(v) A description of how the *State entity* will ensure that each *charter school* receiving funds under the *State entity's* program has considered and planned for the transportation needs of the school's students (4303(f));

(vi) A description of how the *State* in which the *State entity* is located addresses *charter schools* in the *State's* open meetings and open records laws (4303(f));

(vii) A description of how the *State entity* will support diverse *charter school* models, including models that serve rural communities (4303(f));

(viii) Evidence to support the requested funds and projected enrollment, such as explanations regarding the methodology and calculations (2022 NFP); and

(iX) A description, including a timeline, of how the *State entity* will monitor and report on subgrant performance in accordance with 2 CFR 200.329, and address and mitigate subgrantee risk, including—

(A) How subgrantees will be selected for in-depth monitoring, including factors that indicate higher risk (*e.g., charter schools* that have management contracts with for-profit education management organizations, virtual *charter schools,* and *charter schools* with a history of poor performance);

(B) How identified subgrantee risk will be addressed;

(C) How subgrantee expenditures will be monitored;

(D) How monitors will be trained;

(E) How monitoring findings will be shared with subgrantees;

(F) How corrective action plans will be used to resolve monitoring findings;

(G) How the *State entity* will ensure transparency so that monitoring findings and corrective action plans are available to families and the public; and

(H) How the *State entity* will work with *authorized public chartering agencies* to share information regarding the monitoring of subgrantees, including in areas related to fiscal protocols and organizational governance, for the purpose of reducing the reporting burden on *charter schools* (2022 NFP).

(b) Assurances—Assurances by the *State entity* that—

(1) Each *charter school* receiving funds through the *State entity's* program will have a high degree of autonomy over budget and operations, including autonomy over personnel decisions (4303(f));

(2) The *State entity* will support *charter schools* in meeting the educational needs of their students, including children with disabilities and English learners (4303(f));

(3) The *State entity* will ensure that the *authorized public chartering agency* of any *charter school* that receives funds under the *State entity's* program adequately monitors each *charter school* under the authority of such agency in recruiting, enrolling, retaining, and meeting the needs of all students, including children with disabilities and English learners (4303(f));

(4) The *State entity* will provide adequate technical assistance to *eligible applicants* to meet the objectives described in application requirement (a)(1)(8) (4303(f));

(5) The *State entity* will promote quality authorizing, consistent with *State* law, such as through providing technical assistance to support each *authorized public chartering agency* in the *State* to improve such agency's ability to monitor the *charter schools* authorized by the agency, including by—

(i) Assessing annual performance data of the schools, including, as appropriate, graduation rates, student academic growth, and rates of student attrition;

(ii) Reviewing the schools' independent, annual audits of financial statements prepared in accordance with generally accepted accounting principles and ensuring that any such audits are publicly reported; and

(iii) Holding *charter schools* accountable to the academic, financial, and operational quality controls agreed to between the *charter school* and the *authorized public chartering agency* involved, such as renewal, non-renewal, or revocation of the school's charter (4303(f));

(6) The *State entity* will work to ensure that *charter schools* are included with the traditional public schools in decision-making about the public school system in the *State* (4303(f));

(7) The *State entity* will ensure that each *charter school* receiving funds under the *State entity's* program makes publicly available, consistent with the dissemination requirements of the annual *State* report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(i) Information on the educational program;

(ii) Student support services;

(iii) Parent contract requirements (as applicable), including any financial obligations or fees;

(iv) Enrollment criteria (as applicable); and

(v) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (4303(f)).

(8) The State Entity will ensure that each *charter school* receiving CSP funding has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization, or its related entities, exercises full or substantial administrative control over the *charter school* and, thereby, the CSP project (2022 NFP).

(9) Each *charter school* receiving CSP funding will provide an assurance that any management contract between the *charter school* and a for-profit management organization, including a nonprofit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(i) The *charter school* maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the subgrant;

(ii) The management organization does not exercise full or substantial administrative control over the *charter school* (and, thereby, the CSP project), except that this does not limit the ability of a *charter school* to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the *charter school* project funded under the CSP (*e.g.,* food services or payroll services) and that otherwise comply with statutory and regulatory requirements;

(iii) The *charter school's* governing board has access to financial and other data pertaining to the *charter school,* the management organization, and any related entities; and

(iv) The *charter school* is in compliance with applicable Federal and *State* laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the *charter school* and the management organization (2022 NFP).

(10) Each *charter school* receiving CSP funding will post on its website, on an annual basis, a copy of any management contract between the *charter school* and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the *State entity,* including—

(i) A copy of the existing contract with the for-profit organization or a detailed description of the terms of the contract, including the name and contact information of the management organization, the cost (*i.e.,* fixed costs and estimates of any ongoing cost), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the *charter school's* total funding, the duration, roles and responsibilities of the management organization, and the steps the *charter school* is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant or subgrant in accordance with 34 CFR 76.701;

(ii) A description of any business or financial relationship between the *charter school developer* or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the *charter school;*

(iii) The names and contact information for each member of the governing boards of the *charter school* and a list of management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest,

including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(iv) A description of how the *charter school* ensured that such contract is severable and that a change in management companies will not cause the proposed *charter school* to close (2022 NFP).

(11) Each *charter school* receiving CSP funding will disclose, as part of the enrollment process, any policies and requirements (*e.g.,* purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program) (2022 NFP).

(12) Each *charter school* receiving CSP funding will hold or participate in a public hearing in the local community in which the proposed *charter school* would be located to obtain information and feedback regarding the potential benefit of the *charter school,* which shall at least include information about how the proposed *charter school* will increase the availability of high-quality public school options for underserved students, promote racial and socio-economic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socio-economic segregation or isolation in the school districts from which students would be drawn to attend the *charter school* (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.,* provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.,* hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided that it meets the requirements above. (2022 NFP).

(13) No *eligible applicant* receiving funds under the *State entity's* program will use implementation funds for a *charter school* until after the *charter school* has received a charter from an *authorized public chartering agency* and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an *eligible applicant* may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated *high-quality charter school* that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the *charter school* opening when such costs cannot be met from other sources. (2022 NFP).

Note: The Department recognizes that the charter approval process may exceed the 18-month planning period for CSP grants and subgrants, as prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, applicants may request approval from the *State entity* to amend their application to request an extension of the 18-month planning period. Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of ''*charter school*'' in section 4310(2), provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. It is also worth noting that a subgrantee may request approval from the *State entity* to amend its approved application and budget to cover additional planning costs that it may incur due to an unexpected delay in the charter approval process.

(14) Within 120 days of the date of any subgrant award notifications, the grantee will post on its website:

(i) A list of the *charter schools* slated to receive CSP funds, including the following for each school:

(A) The name, address, and grades served.

(B) A description of the education model.

(C) If the *charter school* has contracted with a for-profit management organization, the name of the management organization, the amount of CSP funding the management organization will receive from the school, and a description of the services to be provided.

(D) The award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.

(E) The grant or subgrant application (redacted as necessary).

(F) The peer review materials, including reviewer comments and scores (redacted as necessary) from the subgrant competition (2022 NFP).

(c) Waivers—Requests for information about waivers, including—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the *State entity* believes are necessary for the successful operation of the *charter schools* that will receive funds under the *State entity's* program under section 4303 of the ESEA or, in the case of a *State entity* that is a charter school support organization, a description of how the *State entity* will work with the *State* to request such necessary waivers, where applicable; and

(2) A description of any *State* or local rules, generally applicable to public schools, that will be waived or otherwise not apply to such schools.

Definitions:

The following definitions are from sections 4303(a), 4310, and 8101 of the ESEA (20 U.S.C. 7221b(a), 7221i, and 7801); 34 CFR 77.1; and the 2022 NFP.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target,* whether a *performance target* is *ambitious* depends upon the context of the relevant performance measure and the baseline for that measure (34 CFR 77.1).

Authorized public chartering agency means an SEA, LEA, or other public entity that has the authority pursuant to *State* law and approved by the Secretary to authorize or approve a *charter school* (section 4310(1) of the ESEA). *Baseline* means the starting point from which performance is measured and targets are set (34 CFR 77.1).

Charter management organization means a nonprofit organization that operates or manages a network of *charter schools* linked by centralized support, operations, and oversight (section 4310(3) of the ESEA).

Charter school means a public school that—

(1) In accordance with a specific *State* statute authorizing the granting of charters to schools, is exempt from significant *State* or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a *developer* as a public school, or is adapted by a *developer* from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's *developer* and agreed to by the *authorized public chartering agency;*

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution; [5]

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated *charter school* (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated *charter school* and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated *charter school* and the enrolling school, admits students on the basis of a lottery as described in paragraph (i);

(9) Agrees to comply with the same Federal and *State* audit requirements as do other elementary schools and secondary schools in the *State,* unless such *State* audit requirements are waived by the *State;*

(10) Meets all applicable Federal, *State,* and local health and safety requirements;

(11) Operates in accordance with *State* law;

(12) Has a written performance contract with the *authorized public chartering agency* in the *State* that includes a description of how student performance will be measured in *charter schools* pursuant to *State* assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the *authorized public chartering agency* and the *charter school;* and

(13) May serve students in *early childhood education programs* or postsecondary students (section 4310(2) of the ESEA).

Note: Pursuant to the definition of *authorized public chartering agency* in section 4310(1) of the ESEA, for a school to qualify as a *charter school* under section 4310(2) and receive Federal CSP funds, the entity that issues the charter or performance contract must be an SEA, LEA, or other *public* entity with authority pursuant to *State* law to approve a *charter school.*

Charter school support organization means a nonprofit, nongovernmental entity that is not an *authorized public chartering agency* and provides, on a statewide basis—

(1) Assistance to *developers* during the planning, program design, and initial implementation of a *charter school;* and

(2) Technical assistance to operating *charter schools* (section 4310(4) of the ESEA).

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as ''emotional disturbance''), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the *State* and the LEA, include a child (i) experiencing developmental delays, as defined by the *State* and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, needs special education and related services (section 8101(4) of the ESEA).

Community assets means resources that can be identified and mobilized to improve conditions in the *charter school* and community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities (2022 NFP).

Demonstrates a rationale means a key *project component* included in the project's *logic model* is informed by research or evaluation findings that suggest the *project component* is likely to improve *relevant outcomes* (34 CFR 77.1).

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a *charter school* project will be carried out (section 4310(5) of the ESEA).

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution (2022 NFP).

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives *State* funding;

(2) A *State* licensed or regulated child care program; or

(3) A program that (i) serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and (ii) is (A) a *State* prekindergarten program, (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA, or (C) a program operated by an LEA (section 8101(16) of the ESEA).

Educator means an individual who is an early learning *educator,* teacher, principal or other school or district leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty (2022 NFP).

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include

[5] The Department will apply this element of the definition of ''charter school'' consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S.Ct. 2012 (2017), *Espinoza* v. *Montana Department of Revenue,* 140 S.Ct. 2246 (2020), and *Carson* v. *Makin,* 142 S.Ct. 1987 (2022).

children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care (2022 NFP).

Eligible applicant means a *developer* that has—

(1) Applied to an authorized public chartering authority to operate a *charter school;* and

(2) Provided adequate and timely notice to that authority (section 4310(6) of the ESEA).

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging *State* academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society (section 8101(20) of the ESEA).

Expand, when used with respect to a *high-quality charter school,* means to significantly increase enrollment or add one or more grades to the *high-quality charter school* (section 4310(7) of the ESEA).

High-quality charter school means a *charter school* that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a *State;*

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the *charter school;* and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (section 4310(8) of the ESEA).

Logic model (also referred to as theory of action) means a framework that identifies key *project components* of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the *relevant outcomes*) and describes the theoretical and operational relationships among the key *project components* and *relevant outcomes* (34 CFR 77.1).

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare) (section 8101(38) of the ESEA).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance (34 CFR 77.1).

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project (34 CFR 77.1).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual *project component* or to a combination of *project components* (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers) (34 CFR 77.1).

Public as applied to an agency, organization, or institution means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal government. (34 CFR 77.1).

Relevant outcome means the student outcome(s) or other outcome(s) the key *project component* is designed to improve, consistent with the specific goals of the program (34 CFR 77.1).

Replicate, when used with respect to a *high-quality charter school,* means to open a new *charter school,* or a new campus of a *high-quality charter school,* based on the educational model of an existing *high-quality charter school,* under an existing charter or an additional charter, if permitted or required by *State* law (section 4310(9) of the ESEA).

State means each of the 50 *States,* the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas (section 8101(48) of the ESEA).

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools (section 8101(49) of the ESEA).

State entity means—

(1) A *State* educational agency;

(2) A *State charter school* board;

(3) A Governor of a *State*; or

(4) A *charter school support organization* (section 4303(a) of the ESEA).

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner (as defined in section 8101 of the ESEA).

(5) A child or student with a disability (as defined in section 8101 of the ESEA).

(6) A *disconnected youth.*

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level (2022 NFP).

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as

adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2022 NFP.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $46,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $2,000,000 to $20,000,000 per year.

Estimated Average Size of Awards: $8,000,000 per year.

Maximum Award: See section III.4(a) of this notice, *Reasonable and Necessary Costs,* for information regarding the maximum amount of funds that State Entities may award for each *charter school* receiving subgrant funds.

Estimated Number of Awards: 4–6.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use FY 2024 funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Entities: State entities* in *States* with a specific *State* statute authorizing the granting of charters to schools.

Under section 4303(e)(1) of the ESEA, no *State entity* may receive a grant under this competition for use in a *State* in which a *State entity* is currently using a CSP State Entity grant. Thus, if multiple *State entities* in a *State* submit applications that receive high enough scores to be recommended for funding under this competition, only the highest scoring application among such *State entities* will be funded. Likewise, *State entities* located in *States* in which a *State entity* has a current CSP State Entity grant that is not in its final budget period (or is in its final budget period, but the grantee plans to request a one-time no-cost extension in accordance with 34 CFR 75.261 and 2 CFR 200.308(e)(2)[6]) (*i.e.,* Alabama, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Washington, West Virginia, and Wisconsin) are ineligible to apply for a CSP State Entity grant under this competition.

State entities located in States in which a *State* entity has a current CSP State Entity grant that is operating under a no-cost extension (*i.e.,* Arizona, Arkansas, California, Colorado, Delaware, Michigan, New York, North Carolina, and Rhode Island), or that is not operating under a no-cost extension but is in its final budget period and has notified the Department that it does not intend to request a no-cost extension (*i.e.,* none), however, are eligible to apply for a CSP State Entity grant under this competition. The Department will accept applications from current *State entity* grantees located in these *States* as well as from *State entities* located in these *States* that do not have current grants.

Consistent with section 4303(e)(1), if a *State entity* is approved for a new CSP State Entity grant under this competition for use in a *State* in which a *State entity* has a current CSP State Entity grant that is operating under a no-cost extension (or that is in its final budget period and does not request a no-cost extension at least 10 calendar days before the end of the performance period specified in the Federal award in accordance with 2 CFR 200.308(e)(2)), the current *State entity* grantee must (a) obligate all grant funds; (b) complete all grant and subgrant activities; and (c) begin the grant closeout process (*i.e.,* liquidating the grant and not incurring new costs) prior to the expiration date of the no-cost extension (or the end of the performance period for a grantee that is in its final budget period and did not request a no-cost extension). In its application, the *State entity* that is applying for the new award may request a waiver under section 4303(d)(5) of the ESEA to enable it to award a second subgrant within a five-year period to *eligible applicants* that previously received a subgrant from the current *State entity* grantee but will be unable to complete their subgrant activities before the current State Entity grant expires, without requiring the eligible applicant to demonstrate three years of improved educational results as required under section 4303(e)(2) of the ESEA.

State entities in *States* in which an SEA has a current CSP Grant for SEAs (*i.e.,* Ohio) that was awarded under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (*i.e.,* prior to FY 2017), are eligible to apply for a CSP State Entity grant under this competition, as long as no other *State entity* in the *State* has a current CSP State Entity grant that is not in its final budget period nor operating under a no-cost extension.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* A State Entity receiving a grant under this section shall not reserve more than 3 percent of funds for administrative costs, which may include technical assistance.

3. *Subgrantees:* (a) Under section 4303(b) and (c)(2) of the ESEA, a *State entity* may award subgrants to *eligible applicants* and technical assistance providers.

(b) Under section 4303(d)(2) of the ESEA, when awarding subgrants to *eligible applicants,* a State Entity must use a peer review process to review applications.

Note: An *eligible applicant* (*i.e., charter school developer* or *charter school*) in a *State* in which no *State entity* has an approved grant application under section 4303 of the ESEA may apply for funding directly from the Department under the CSP Grants to *Charter School Developers* for the Opening of New *Charter Schools* and for the Replication and Expansion of *High-Quality Charter Schools* (*Developer*) (ALN numbers 84.282B and 84.282E) program. Additional information about the CSP *Developer* program is available at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/charter-schools-program-non-state-educational-agencies-non-sea-planning-program-design-and-initial-implementation-grant/.*

4. *Other:* (a) Reasonable and Necessary Costs: The Secretary may elect to impose maximum limits on the amount of subgrant funds that a State Entity may award to an *eligible applicant* per new *charter school* created or replicated, per *charter school* expanded, or per new school seat created.

For this competition, the maximum amount of subgrant funds a State Entity may award to a subgrantee per new *charter school,* replicated *high-quality*

[6] Under 34 CFR 75.261, a grantee may extend the project period of an award one time for up to 12 months without the prior approval of the Department if the grantee meets the requirements for extension in 2 CFR 200.308(d)(2), and Department statutes, regulations, and the terms of the award do not prohibit the extension. *See also* 2 CFR 200.308(e)(2).

charter school, or expanded *high-quality charter school* over a 5-year subgrant period is $2,000,000.

Note: Applicants must ensure that all costs included in the proposed budget are necessary and reasonable to meet the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

(b) *Audits:* (i) A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR part 200. (2 CFR 200.501(a))

(ii) A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office. (2 CFR 200.501(d)).

IV. Application and Submission Information

1. *Application Submission Instructions:* For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/*common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the CSP State Entity grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information, please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* In accordance with section 4303(c) of the ESEA, a *State entity* receiving a grant under this program shall (a) use not less than 90 percent of the grant funds to award subgrants to *eligible applicants,* in accordance with the quality *charter school* program described in the *State entity's* application pursuant to section 4303(f), for activities related to opening and preparing for the operation of new *charter schools* and replicated *high-quality charter schools,* or expanding *high-quality charter schools;* (b) reserve not less than 7 percent of the grant funds to provide technical assistance to *eligible applicants* and *authorized public chartering agencies* in carrying out such activities, and to work with *authorized public chartering agencies* in the *State* to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of *charter schools;* and (c) reserve not more than 3 percent of the grant funds for administrative costs, which may include technical assistance. The *State entity's* application should include a description of the *State entity's* objectives in providing technical assistance to *eligible applicants* and *authorized public chartering agencies* under section 4303(b)(2) of the ESEA, and the activities identified to provide such technical assistance, including any activities related to serving students with disabilities and English learners. A *State entity* may use a grant received under this program to provide technical assistance and to work with *authorized public chartering agencies* to improve authorizing quality under section 4303(b)(2) of the ESEA directly or through grants, contracts, or cooperative agreements.

Limitation on Grants and Subgrants: Under section 4303(d) of the ESEA, a grant awarded by the Secretary to a *State entity* under this competition shall be for a period of not more than 5 years.

A subgrant awarded by a *State entity* under this program shall be for a period of not more than 5 years, of which an *eligible applicant* may use not more than 18 months for planning and program design. An *eligible applicant* may not receive more than one subgrant under this program for each individual charter school for a 5-year period, unless the *eligible applicant* demonstrates to the *State entity* that such individual *charter school* has at least 3 years of improved educational results for students enrolled in such *charter school,* with respect to the elements described in section 4310(8)(A) and (D) of the ESEA.[7]

Other CSP Grants: A *charter school* that previously received funds for opening or preparing to operate a new *charter school,* or replicating or expanding a *high-quality charter school,* under the CSP State Entity program (ALN number 84.282A), the CSP Grants to Charter Management Organizations for the Replication and Expansion of *High-Quality Charter Schools* (CMO) program (ALN number 84.282M), or the CSP *Developer* program (ALN numbers 84.282B and 84.282E) may not use funds under this program to carry out the same or substantially similar activities. However, such *charter school* may be eligible to receive funds under this competition to expand the *charter school* beyond the existing grade levels or student count.

Likewise, a *charter school* that previously was awarded a subgrant by a *State entity* under this program (or the former CSP Grants for State Educational Agencies program) is ineligible to receive funds to carry out the same activities under the CMO program (ALN number 84.282M) or *Developer* program (ALN numbers 84.282B and 84.282E), including for opening or preparing to operate a new *charter school,* or for replication or expansion.

Uses of Subgrant Funds: Under section 4303(b) of the ESEA, *State entities* awarded grants under this competition shall award subgrants to *eligible applicants* to enable such *eligible applicants* to—

(a) Open and prepare for the operation of new *charter schools;*

(b) Open and prepare for the operation of replicated *high-quality charter schools;* or

(c) Expand *high-quality charter schools.*

Under section 4303(h) of the ESEA, an *eligible applicant* receiving a subgrant

[7] Section 4303(e)(2) of the ESEA prescribes the circumstances under which an *eligible applicant* may be eligible to apply to a *State entity* for a second subgrant for an individual *charter school* for a 5-year period. The *eligible applicant* still would have to meet all program requirements, including the requirements for *replicating* or *expanding* a *high-quality charter school.*

under this program shall use such funds to support activities related to opening and preparing for the operation of new *charter schools* or replicating or expanding *high-quality charter schools,* which shall include one or more of the following:

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(i) Providing professional development; and

(ii) Hiring and compensating, during the *eligible applicant's* planning period specified in the application for subgrant funds, one or more of the following:

(A) Teachers.

(B) School leaders.

(C) Specialized instructional support personnel.

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials).

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).

(d) Providing one-time, startup costs associated with providing transportation to students to and from the *charter school.*

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

(f) Providing for other appropriate, non-sustained costs related to opening, replicating, or expanding *high-quality charter schools* when such costs cannot be met from other sources.

Diversity of Projects: Per section 4303(d)(4) of the ESEA, each *State entity* awarding subgrants under this competition shall award subgrants in a manner that, to the extent practicable and applicable, ensures that such subgrants—

(a) Are distributed throughout different areas, including urban, suburban, and rural areas; and

(b) Will assist *charter schools* representing a variety of educational approaches.

Award Basis: In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the applicant's performance and use of funds under a previous or existing award under any Department program (34 CFR 75.217(d)(3)(ii) and 233(b)). In assessing the applicant's performance and use of funds under a previous or existing award, the Secretary will consider, among other things, the outcomes the applicant has achieved and the results of any Departmental grant monitoring, including the applicant's progress in remedying any deficiencies identified in such monitoring.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit and English Language Requirement:* The application narrative (Part III of the application) is where you, the applicant, address the priorities, selection criteria, and application requirements that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 60 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Pre-Application Webinar Information:* The Department will hold a pre-application meeting via webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/state-entities/application-info-and-eligibility/*. There is no registration fee for attending this meeting.

For further information about the pre-application meeting, contact Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 453–4538. Email: *SE_Competition@ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from section 4303(g)(1) of the ESEA (20 U.S.C. 7221b(g)(1)), the 2022 NFP, and 34 CFR 75.210. The maximum possible total score an application can receive for addressing the criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

(a) *Quality of the Project Design (up to 35 points).* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

(1) The extent to which the proposed project *demonstrates a rationale* (34 CFR 75.210(c)(2)(xxix)) (up to 5 points);

(2) The extent to which the methods of evaluation include the use of objective *performance measures* that are clearly related to the intended outcomes of the project and will produce both quantitative and qualitative data to the extent possible (34 CFR 75.210(h)(2)(iv)) (up to 5 points);

(3) The *ambitious*ness of the *State entity's* objectives for the quality *charter school* program carried out under the CSP State Entity program (section 4303(g)(1)(B) of the ESEA (20 U.S.C. 7221b(g)(1)(B)) (up to 5 points);

(4) The extent to which the projected number of subgrant awards for each grant project year is supported by evidence of demand and need, and the extent to which the proposed average subgrant award amount is supported by evidence of the need of applicants (2022 NFP) (up to 20 points).

(b) *Quality of Eligible Applicants Receiving Subgrants (up to 15 points):* The likelihood that the *eligible applicants* receiving subgrants under the program will meet the *State entity's* objectives for the quality *charter school* program and improve educational results for students (section 4303(g)(1)(C) (20 U.S.C. 7221b(g)(1)(C))).

(c) *State Plan (up to 35 points):* The *State entity's* plan to—

(1) Adequately monitor the *eligible applicants* receiving subgrants under the *State entity's* program (section 4303(g)(1)(D)(i) (20 U.S.C. 7221b(g)(1)(D)(i))) (up to 10 points);

(2) Work with the *authorized public chartering agencies* involved to avoid duplication of work for the *charter schools* and *authorized public chartering agencies* (section 4303(g)(1)(D)(ii) (20 U.S.C. 7221b(g)(1)(D)(ii))) (up to 5 points);

(3) Provide technical assistance and support for—

(i) The *eligible applicants* receiving subgrants under the *State entity's* program; and

(ii) Quality authorizing efforts in the State (section 4303(g)(1)(D)(iii) of ESEA (20 U.S.C. 7221b(g)(1)(D)(iii))) (up to 10 points);

(4) The *State entity's* plan to solicit and consider input from parents and other members of the community on the implementation and operation of *charter schools* in the *State* (section 4303(g)(1)(E) of ESEA (20 U.S.C. 7221b(g)(1)(E))) (up to 5 points); and

(5) The degree of flexibility afforded by the State's *charter school* law and how the *State entity* will work to maximize the flexibility provided to *charter schools* under such law (section 4303(g)(1)(A) of ESEA (20 U.S.C. 7221b(g)(1)(A))) (up to 5 points).

(d) *Quality of the Management Plan (up to 15 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (34 CFR 75.210(g)(2)(i)) (up to 10 points);

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project (34 CFR 75.210(g)(2)(ii)) (up to 3 points); and

(3) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (34 CFR 75.210(g)(2)(iv)) (up to 2 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing

requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118, including a description of the *State entity's* objectives in providing technical assistance to *eligible applicants* and *authorized public chartering agencies* under section 4303(b)(2) of the ESEA, and the activities identified to provide such technical assistance, including any activities related to serving students with disabilities and English learners; and the impact of the *State entity's* actions or, if no known impact, an explanation of why. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) In accordance with section 4303(i) of the ESEA, each *State entity* receiving a grant under this section must submit to the Secretary, at the end of the third year of the 5-year grant period (or at the end of the second year if the grant period is less than 5 years), and at the end of such grant period, a report that includes the following:

(1) The number of students served by each subgrant awarded under this section and, if applicable, the number of new students served during each year of the period of the subgrant.

(2) A description of how the *State entity* met the objectives of the quality *charter school* program described in the *State entity's* application, including—

(A) How the *State entity* met the objective of sharing best and promising practices as outlined in section 4303(f)(1)(A)(ix) of the ESEA in areas such as instruction, professional development, curricula development, and operations between *charter schools* and other public schools; and

(B) If known, the extent to which such practices were adopted and implemented by such other public schools.

(3) The number and amount of subgrants awarded under this program to carry out activities described in section 4303(b)(1)(A) through (C) of the ESEA.

(4) A description of—

(A) How the *State entity* complied with, and ensured that *eligible applicants* complied with, the assurances included in the *State entity's* application; and

(B) How the *State entity* worked with *authorized public chartering agencies,* and how the agencies worked with the management company or leadership of the schools that received subgrant funds under this program, if applicable.

(d) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection, analysis, and reporting. In this case, the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of reporting under 34 CFR 75.110: (a) The Secretary has established two performance indicators to measure annual progress toward achieving the purposes of the program, which are discussed elsewhere in this notice. The performance indicators are (1) the number of *charter schools* in operation around the Nation; and (2) the percentage of fourth- and eighth-grade *charter school* students who are achieving at or above the proficient level on *State* assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: the Federal cost per student in implementing a successful school (defined as a school in operation for 3 or more consecutive years).

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific *performance measures* and *performance targets* consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c).

(1) *Performance measures.* How each proposed *performance measure* would accurately measure the performance of the project and how the proposed *performance measure* would be consistent with the *performance measures* established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed *baseline* is valid; or (ii) if the applicant has determined that there are no established *baseline* data for a particular *performance measure,* an explanation of why there is no established *baseline* and of how and when, during the project period, the applicant would establish a valid *baseline* for the *performance measure.*

(3) *Performance targets.* Why each proposed *performance target* is *ambitious* yet achievable compared to the *baseline* for the *performance measure* and when, during the project period, the applicant would meet the *performance target(s).*

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these *performance measures.*

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established *performance measurement* requirements, whether the grantee has made substantial progress in achieving the *performance targets* in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors at a location to be determined in the continental United States during each year of the project. Applicants may include, if applicable, the cost of attending this meeting in their proposed budgets as allowable administrative costs.

8. Technical Assistance: Applicants approved for funding under this competition will be required to participate in all general and certain specified technical assistance offerings, to include but not limited to, project directors' meetings and other on-site gatherings sponsored by the Department and its contracted technical assistance

providers and partners throughout the life of the grant.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2024–08730 Filed 4–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: Docket Search Results ED–2024–SCC–0061]

Agency Information Collection Activities; Comment Request; Federal Perkins/NDSL Loan Assignment Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 24, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number Docket Search Results ED–2024–SCC–0061. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *https://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave, SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins/NDSL Loan Assignment Form.

OMB Control Number: 1845–0048.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 144,114.

Total Estimated Number of Annual Burden Hours: 72,058.

Abstract: The U.S. Department of Education (the Department) is authorized to accept Federal Perkins Loan (Perkins Loan) Program assignments under section 463(a)(5) of the Higher Education Act of 1965, as amended. Institutions participating in the Perkins Loan program, including loans made under the National Direct/Defense Student Loan Program (NDSL), use the form (OMB Control Number 1845–0048) to assign loans to the Department for collection without recompense. This request is for approval of the assignment form which allows for assignment of Perkins Loans either individually or in a batch format, utilizing either the paper based or electronic filing format.

An institution may use the form to assign one or more loans to the Department at any time throughout the year. Some conditions under which an institution could utilize the assignment form include defaulted loans, total permanent disability discharges, voluntary withdrawal from the program, termination from the program, closure of the institution and liquidation of its Perkins Loan portfolio.

The Department is requesting an extension of the currently approved collection. There has been no change to the form. There has been a change in the number of respondents, responses, and burden hours.

Dated: April 18, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–08703 Filed 4–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Withdrawal of Notice Inviting Applications and Cancellation of the Competition for the National Center on Rigorous Comprehensive Education for Students with Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; withdrawal.

SUMMARY: The U.S. Department of Education (Department) withdraws the notice inviting applications (NIA) and cancels the competition for fiscal year (FY) 2024 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—National Center on Rigorous Comprehensive Education for Students with Disabilities competition, Assistance Listing Number 84.326C.

DATES: The NIA published in the **Federal Register** on February 22, 2024 (89 FR 13315), is withdrawn and the competition cancelled as of April 24, 2024.

FOR FURTHER INFORMATION CONTACT: David Emenheiser, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0124. Email: *David.Emenheiser@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: On February 22, 2024, the Department published in the **Federal Register** (89 FR 13315) an NIA for the FY 2024 National Center on Rigorous Comprehensive Education for Students with Disabilities competition, ALN 84.326C. Following the publication of the NIA, the President signed the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47), which decreased funding for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. Due to the decrease in funding for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program, the Department is withdrawing the NIA and cancelling the National Center on Rigorous Comprehensive Education for Students with Disabilities competition. Information about Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities is available on the Department's website at *https://www2.ed.gov/programs/oseptad/index.html*.

DEPARTMENT OF EDUCATION

Applications for New Awards; Graduate Assistance in Areas of National Need (GAANN)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for the Graduate Assistance in Areas of National Need (GAANN) Program, Assistance Listing Number 84.200A. This notice relates to the approved information collection under OMB control number 1840–0604.

DATES:

Applications Available: April 24, 2024.

Deadline for Transmittal of Applications: June 24, 2024.

Deadline for Intergovernmental Review: August 22, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/d/2022-26554.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Rebecca Ell, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202–4260. Telephone: (202) 453–6348. Email: *OPE_GAANN_Program@ed.gov;* or ReShone Moore, Ph.D., U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202–4260. Telephone (202) 453–7624. Email: *reshone.moore@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GAANN Program provides grants to academic departments and programs of institutions of higher education (IHEs) to support graduate fellowships for students with excellent academic records in their previous programs of study who demonstrate financial need and plan to pursue the highest degree available in their course of study at the institution.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority is from the regulations for this program (34 CFR 648.33(a) and Appendix to part 648—Academic Areas). Please note that the codes next to selected academic areas under the absolute priority are from the Appendix to part 648—Academic Areas of the program regulations and can be found in the application booklet as well as at *www.ecfr.gov/cgi-bin/text-idx?SID=f8ad0cf4f75cd9841b2bc1adb98c5739&mc=true&node=pt34.3.648&rgn=div5.* The first competitive preference priority is from the notice of final administrative priorities for discretionary grant programs published in the **Federal Register** on March 9, 2020 (85 FR

Program Authority: 20 U.S.C. 1463 and 1481.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–08759 Filed 4–19–24; 4:15 pm]

BILLING CODE 4000–01–P

13640) (Administrative Priorities). The second competitive preference priority is from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which, if any, competitive preference priorities or invitational priority is addressed.

Absolute Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

The absolute priority is:

Graduate Assistance in Areas of National Need.

A project must provide fellowships in one or more of the following areas of national need.

For the following academic areas, the project must provide fellowships for programs that lead either to a master's degree or a doctoral degree, whichever is the highest degree awarded in the area of need at the institution.

- #11—Computer and Information Sciences (11)
  - 11.01 Computer and Information Sciences, General
  - 11.02 Computer Programming
  - 11.04 Information Sciences and Systems
  - 11.05 Computer Systems Analysis
  - 11.07 Computer Science
- #13—Education
  - 13.02 Bilingual/Bicultural Education
  - 13.10 Special Education
  - 13.11 Student Counseling and Personnel Services
  - 13.14 Teaching English as a Second Language/Foreign Language
- #14—Engineering
  - 14.01 Engineering, General
  - 14.02 Aerospace, Aeronautical, and Astronautical Engineering
  - 14.03 Agricultural Engineering
  - 14.04 Architectural Engineering
  - 14.05 Bioengineering and Biomedical Engineering
  - 14.06 Ceramic Sciences and Engineering
  - 14.07 Chemical Engineering
  - 14.08 Civil Engineering
  - 14.09 Computer Engineering
  - 14.10 Electrical, Electronic, and Communications Engineering
  - 14.11 Engineering Mechanics
  - 14.12 Engineering Physics
  - 14.13 Engineering Science
  - 14.14 Environmental/Environmental Health Engineering
  - 14.15 Geological Engineering
  - 14.16 Geophysical Engineering
  - 14.17 Industrial/Manufacturing Engineering
  - 14.18 Materials Engineering
  - 14.19 Mechanical Engineering
  - 14.20 Metallurgical Engineering
  - 14.21 Mining and Mineral Engineering
  - 14.22 Naval Architecture and Marine Engineering
  - 14.23 Nuclear Engineering
  - 14.24 Ocean Engineering
  - 14.25 Petroleum Engineering
  - 14.27 Systems Engineering
  - 14.28 Textile Sciences and Engineering
  - 14.29 Engineering Design
  - 14.30 Engineering/Industrial Management
  - 14.31 Materials Science
  - 14.32 Polymer/Plastics Engineering
- #26—Biological Sciences/Life Sciences
  - 26.01 Biology, General
  - 26.02 Biochemistry and Biophysics
  - 26.03 Botany
  - 26.04 Cell and Molecular Biology
  - 26.05 Microbiology/Bacteriology
  - 26.06 Miscellaneous Biological Specializations
  - 26.07 Zoology
- #27—Mathematics
  - 27.01 Mathematics
  - 27.03 Applied Mathematics
  - 27.05 Mathematic Statistics
- #40—Physical Sciences
  - 40.01 Physical Sciences, General
  - 40.02 Astronomy
  - 40.03 Astrophysics
  - 40.04 Atmospheric Sciences and Meteorology
  - 40.05 Chemistry
  - 40.06 Geological and Related Sciences
  - 40.07 Miscellaneous Physical Sciences
  - 40.08 Physics
- #42—Psychology
  - 42.01 Psychology
  - 42.02 Clinical Psychology
  - 42.03 Cognitive Psychology and Psycholinguistics
  - 42.04 Community Psychology
  - 42.06 Counseling Psychology
  - 42.07 Developmental and Child Psychology
  - 42.08 Experimental Psychology
  - 42.09 Industrial and Organizational Psychology
  - 42.11 Physiological Psychology/Psychobiology
  - 42.16 Social Psychology
  - 42.17 School Psychology

Competitive Preference Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional two points to an application that meets these priorities.

These priorities are:

Competitive Preference Priority 1: Applications from New Potential Grantees (1 point).

Under this priority, an applicant must demonstrate that the applicant does not, as of the deadline date for submission of applications, have an active grant, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, under the GAANN program.

Note: For the purpose of this priority, the ''applicant'' is the institution. Institutions with active grants that are applying on behalf of a new academic department cannot receive points for this competitive priority. A grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Competitive Preference Priority 2: Promoting Equity in Student Access to Educational Resources and Opportunities (1 point).

Under this priority, an applicant must demonstrate that the project will be implemented by one or more of the following entities:

(1) Historically Black colleges and universities (as defined in this notice).

(2) Tribal Colleges and Universities (as defined in this notice).

(3) Minority-serving institutions (as defined in this notice).

Invitational Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects designed to increase the number of low-income students in graduate fellowships.

Projects should include plans to identify, recruit, and retain students who are low-income.

For purpose of this priority, the term ''low-income student'' means a student who would otherwise be eligible to receive a Maximum Pell Grant for the award year in which the determination is made, except that the student is enrolled in graduate study. See criteria for Maximum Pell Grant eligibility in the Student Aid Index (SAI) and Pell

Grant Eligibility section of the 2024–2025 Federal Student Aid Handbook.[1]

Definitions: The following definition of ''financial need'' is from 34 CFR 648.9. The definitions of ''Historically Black Colleges and Universities,'' ''Minority-Serving Institution,'' and ''Tribal College and University'' are from the Supplemental Priorities.

Financial need means the fellow's financial need as determined under title IV, part F, of the HEA for the period of the fellow's enrollment in the approved academic field of study for which the fellowship was awarded.

Historically Black colleges and universities means colleges and universities that meet the criteria set out in 34 CFR 608.2.

Minority-serving institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Tribal College or University has the meaning ascribed it in section 316(b)(3) of the HEA.

Program Authority: 20 U.S.C. 1135–1135e.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 648. (e) The Administrative Priorities. (f) The Supplemental Priorities.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to this program.

II. Award Information

Type of Award: Discretionary grants, including funds redistributed as graduate fellowships to individual fellows.

Estimated Available Funds: $20,479,535.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $112,102–$448,408 based on an average of 2 to 8 federally funded fellowships.

Minimum and Maximum Award: The amount of a grant to an academic department may not be less than $100,000 and may not be more than $750,000 in a fiscal year (648.5(a)).

Estimated Average Size of Awards: $336,306 based on an average of 6 Federal GAANN fellowships requested per grant application.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Stipend Level: For the 2024–25 academic year, the institution must pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation Graduate Research Fellowship Program (*https://www.nsfgrfp.org/*), except this amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need as stated under part F of title IV of the Higher Education Act of 1965, as amended.

Institutional Payment: For the 2024–25 academic year, the estimated institutional payment is $19,051 per fellow. This amount was determined by adjusting the previous academic year's institutional payment of $18,266 per fellow by the U.S. Department of Labor's Consumer Price Index (CPI) for the 2023 calendar year.

Note: The institutional payment must be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program. (34 CFR 648.52(b)).

III. Eligibility Information

1. Eligible Applicants:

(a) Any academic department of an IHE that provides a course of study that—(i) Leads to a graduate degree in an area of national need; and (ii) Has been in existence for at least four years at the time of an application for a grant under this competition.

(b) Eligible applicants may apply alone or in partnership with one or more eligible nondegree granting institutions that have formal arrangements for the support of doctoral dissertation research.

Note: A formal arrangement under paragraph (b) is a written agreement between a degree-granting institution and an eligible nondegree granting institution whereby the degree-granting institution accepts students from the eligible nondegree granting institution as doctoral degree candidates with the intention of awarding these students doctorates in an area of national need.

Note: A school or department of divinity is not eligible for a grant.

Note: Students are not eligible to apply for grants under this program.

2a. *Cost Sharing or Matching:* An institution must provide, from non-Federal funds, an institutional matching contribution equal to at least 25 percent of the grant amount received. (See 34 CFR 648.7.)

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. (See 34 CFR 648.20(b)(5).)

c. *Administrative Cost Limitation:* Under 34 CFR 648.64, neither grant funds nor institutional matching funds may be used to pay for general operational overhead costs of the academic department.

3. Subgrantees: A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. Other: For requirements relating to selecting fellows, see 34 CFR 648.40.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/d/2022–26554,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. Funding Restrictions: We specify unallowable costs in 34 CFR 648.64. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. Recommended Page Limit: Applications that do not follow the page

[1] *https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2024-2025/application-and-verification-guide/ch3-student-aid-index-sai-and-pell-grant-eligibility#:~:text=Minimum%20Pell%20Grant%20Eligibility%20Criteria.*

limit and formatting recommendations will not be penalized. The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend the following limits and standards:

- A project narrative in a single discipline or for an interdisciplinary course of study should be limited to no more than 40 pages.
- A project narrative for a multidisciplinary project should be limited to no more than 40 pages for each academic department.
- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.
- Limit appendices to the following: two-page version of a curriculum vitae, per faculty member; a course listing; letters of commitment showing institutional support; a bibliography; and one additional optional appendix relevant to the support of the proposal, recommended not to exceed five pages.

The recommended page limit does not apply to the cover sheet (Application for Federal Assistance (SF 424) and the Department of Education Supplemental Information for the SF 424 form, the one-page abstract; the GAANN Statutory Assurances Form; the GAANN Budget Spreadsheet(s) Form; the Appendices; the Assurances and Certifications; or an optional two-page table of content. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. Selection Criteria: The selection criteria for this program are from 34 CFR 648.31. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application. An applicant that also chooses to address the competitive preference priorities can earn up to 102 total points.

(a) *Meeting the purposes of the program* (up to 7 points). The Secretary reviews each application to determine how well the project will meet the purposes of the program, including the extent to which—

(1) The applicant's general and specific objectives for the project are realistic and measurable;

(2) The applicant's objectives for the project seek to sustain and enhance the capacity for teaching and research at the institution and at State, regional, or national levels;

(3) The applicant's objectives seek to institute policies and procedures to ensure the enrollment of talented graduate students from traditionally underrepresented backgrounds; and

(4) The applicant's objectives seek to institute policies and procedures to ensure that it will award fellowships to individuals who satisfy the requirements of 34 CFR 648.40.

(b) *Extent of need for the project* (up to 5 points). The Secretary considers the extent to which a grant under the program is needed by the academic department by considering—

(1) How the applicant identified the problems that form the specific needs of the project;

(2) The specific problems to be resolved by successful realization of the goals and objectives of the project; and

(3) How increasing the number of fellowships will meet the specific and general objectives of the project.

(c) *Quality of the graduate academic program* (up to 20 points). The Secretary reviews each application to determine the quality of the current graduate academic program for which project funding is sought, including—

(1) The course offerings and academic requirements for the graduate program;

(2) The qualifications of the faculty, including education, research interest, publications, teaching ability, and accessibility to graduate students;

(3) The focus and capacity for research; and

(4) Any other evidence the applicant deems appropriate to demonstrate the quality of its academic program.

(d) *Quality of the supervised teaching experience* (up to 10 points). The Secretary reviews each application to determine the quality of the teaching experience the applicant plans to provide fellows under this program, including the extent to which the project—

(1) Provides each fellow with the required supervised training in instruction;

(2) Provides adequate instruction on effective teaching techniques;

(3) Provides extensive supervision of each fellow's teaching performance; and

(4) Provides adequate and appropriate evaluation of the fellow's teaching performance.

(e) *Recruitment plan* (up to 5 points). The Secretary reviews each application to determine the quality of the applicant's recruitment plan, including—

(1) How the applicant plans to identify, recruit, and retain students from traditionally underrepresented backgrounds in the academic program for which fellowships are sought;

(2) How the applicant plans to identify eligible students for fellowships;

(3) The past success of the academic department in enrolling talented graduate students from traditionally underrepresented backgrounds; and

(4) The past success of the academic department in enrolling talented graduate students for its academic program.

(f) *Project administration* (up to 8 points). The Secretary reviews the quality of the proposed project administration, including—

(1) How the applicant will select fellows, including how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition;

(2) How the applicant proposes to monitor whether a fellow is making satisfactory progress toward the degree for which the fellowship has been awarded;

(3) How the applicant proposes to identify and meet the academic needs of fellows;

(4) How the applicant proposes to maintain enrollment of graduate students from traditionally underrepresented backgrounds; and

(5) The extent to which the policies and procedures the applicant proposes to institute for administering the project are likely to ensure efficient and effective project implementation, including assistance to and oversight of the project director.

(g) *Institutional commitment* (up to 15 points). The Secretary reviews each application for evidence that—

(1) The applicant will provide, from any funds available to it, sufficient funds to support the financial needs of the fellows if the funds made available under the program are insufficient;

(2) The institution's social and academic environment is supportive of the academic success of students from traditionally underrepresented backgrounds on the applicant's campus;

(3) Students receiving fellowships under this program will receive stipend support for the time necessary to complete their courses of study, but in no case longer than five years; and

(4) The applicant demonstrates a financial commitment, including the nature and amount of the institutional matching contribution, and other institutional commitments that are likely to ensure the continuation of project activities for a significant period of time following the period in which the project receives Federal financial assistance.

(h) *Quality of key personnel* (up to 5 points). The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of other key personnel to be used in the project;

(3) The time commitment of key personnel, including the project director, to the project; and

(4) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan.

(i) *Budget* (up to 5 points). The Secretary reviews each application to determine the extent to which—

(1) The applicant shows a clear understanding of the acceptable uses of program funds; and

(2) The costs of the project are reasonable in relation to the objectives of the project.

(j) *Evaluation plan* (up to 15 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Relate to the specific goals and measurable objectives of the project;

(2) Assess the effect of the project on the students receiving fellowships under this program, including the effect on persons of different racial and ethnic backgrounds, genders, and ages, and on persons with disabilities who are served by the project;

(3) List both process and product evaluation questions for each project activity and outcome, including those of the management plan;

(4) Describe both the process and product evaluation measures for each project activity and outcome;

(5) Describe the data collection procedures, instruments, and schedules for effective data collection;

(6) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis; and

(7) Include a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks.

(k) *Adequacy of resources* (up to 5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant makes available to graduate students receiving fellowships under this program, including facilities, equipment, and supplies.

2. Review and Selection Process: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 648.31. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additional factors we consider in selecting an application for an award are in 34 CFR 648.32.

Tiebreaker: If there is more than one application with the same score and insufficient funds to fund all the applications with the same ranking, the Department will apply the following procedure to determine which application or applications will receive an award:

First Tiebreaker: The first tiebreaker will be an institution that has not received an award in this competition. If a tie remains, the second tiebreaker will be utilized. If this first tie-breaker provision exhausts available funds, then no further action is taken.

Second Tiebreaker: The second tiebreaker will be the highest average score for the selection criterion 34 CFR 648.31(e), ''Recruitment Plan.

3. Risk Assessment and Specific Conditions: Consistent with 2 CFR 200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. Integrity and Performance System: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. In General: In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials

produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* The open licensing requirement in 2 CFR 3474.20 does not apply to this program.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Grantees will be required to submit a supplement to the Final Performance Report two years after the expiration of their GAANN grant. The purpose of this supplement is to identify and report the educational and employment outcome of each GAANN fellow.

5. *Performance Measures:* The following performance measures will be used by the Department in assessing the performance of the GAANN Program and for Department reporting under 34 CFR 75.110:

(1) The percentage of GAANN fellows completing the terminal degree in the designated areas of national need.

(2) The median time to completion of master's and doctoral degrees for GAANN fellows.

(3) The percentage of GAANN fellows who have placements in faculty or professional positions in the area of their studies within one year of completing the degree.

(4) The cost per successful outcome, where success is defined as terminal program graduate completion.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590) on those measures and steps taken toward improving performance toward those outcomes. Consequently, applicants are advised to include these outcome measures in conceptualizing the design, implementation, and evaluation of their proposed projects. These outcome measures should be included in the project evaluation plan, in addition to measures of your progress toward the goals and objectives specific to your project.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–08771 Filed 4–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC24–58–000]

MidAmerican Central California, Transco, LLC; Notice of Filing

Take notice that on April 17, 2024, MidAmerican Central California Transco, LLC submitted a request for a limited waiver of the Federal Energy Regulatory Commission's (Commission) requirement of the preparation and independent audit of the 2023 FERC Form No. 1 on the basis of the calendar year ending December 31.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on May 2, 2024.

Dated: April 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08784 Filed 4–23–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15329–000]

Ocean Renewable Power Company, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

a. On October 20, 2023, Ocean Renewable Power Company, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Buffalo-Niagara Hydrokinetic Project No. 15329 (project), to be located on the Niagara River in the City of Buffalo, Erie County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

b. *Project Description:* The proposed project would consist of the following: (1) up to 265 turbine-generators, including RivGen and Modular RivGen hydrokinetic turbine-generators with a combined installed capacity of 5 megawatts; (2) a mooring system to anchor each turbine-generator to the riverbed; (3) an approximately 3,365-foot-long bundled data line and 750-volt generator lead line that connect the turbine-generators to a 20-foot-long, 8-foot-wide onshore station; (4) a 12.5- to 25-kilovolt transmission line and transformer that connect the onshore station to an adjacent electric distribution line owned by National Grid; and (5) appurtenant facilities. The estimated annual generation of the project would be up to 42,050 megawatt-hours.

c. *Applicant Contact:* Mr. Nathan Johnson, Ocean Renewable Power Company, Inc., 254 Commercial Street, Suite 119B, Portland, Maine 04101; telephone at (207) 772–7707; email at *njohnson@orpc.co*.

d. *FERC Contact:* Joshua Dub, Project Coordinator, Great Lakes Branch, Division of Hydropower Licensing; telephone at (202) 502–8138; email at *Joshua.Dub@ferc.gov*.

e. The preliminary permit application has been accepted for filing.

f. Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice, June 17, 2024.

Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/.aspx*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15329–000.

g. 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 filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov*.

h. More information about this project, including a copy of the application, can be viewed on the Commission's website (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number (P–15329) in the docket number field to access the document. For assistance, please contact FERC Online Support.

Dated: April 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08776 Filed 4–23–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2628–066]

Alabama Power Company; Notice of Revised Procedural Schedule for Environmental Impact Statement for the Proposed Project Relicense

On November 23, 2021, the Alabama Power Company filed an application for a new major license for the 135-megawatt R.L. Harris Hydroelectric Project No. 2628 (Harris Project or project). On March 31, 2023, Commission staff issued a notice of intent to prepare an Environmental Impact Statement (EIS) to evaluate the effects of relicensing the Harris Project. The notice of intent included a schedule for preparing a draft and final EIS.

By this notice, Commission staff is updating the procedural schedule for completing the EIS. The revised schedule is shown below. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue draft EIS	July 2024.[1]
Public Meeting on draft EIS	August 2024.
Comments on draft EIS due	September 2024.
Commission issues final EIS ...	March 2025.

Any questions regarding this notice may be directed to Sarah Salazar at (202) 502–6863 or *sarah.salazar@ferc.gov.*

Dated: April 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08777 Filed 4–23–24; 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 rate filings:

Docket Numbers: ER24–952–001.

*Applicants:*Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Horus Georgia 2 (Coweta Solar) LGIA Deficiency Response to be effective 1/10/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5084.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1071–002.

Applicants: Consumers Energy Company.

Description: Tariff Amendment: Further Amended Contract-RS with Alpena Pwr. Co (ER24–1071–) to be effective 4/1/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5074.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1306–001.

Applicants: Windy Flats Partners, LLC.

Description: Tariff Amendment: Windy Flats Filing to be effective 4/22/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5065.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1717–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of Amended ISA, SA No. 4401; Queue No. AA1–095 to be effective 1/25/2016.

Filed Date: 4/18/24.

Accession Number: 20240418–5146.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1782–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Hall Creek Solar LGIA Filing to be effective 4/5/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5085.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1783–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–04–18_SA 4276 NIPSCO-Monroe Power GIA (J1355) to be effective 6/18/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5086.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1784–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 369 to be effective 5/2/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5107.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1785–000.

Applicants: MPower Energy NJ LLC.

Description: Baseline eTariff Filing: MPE_NJ_FERC_Application to be effective 5/18/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5116.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1786–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 216 to be effective 6/17/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5120.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1787–000.

Applicants: H.A. Wagner LLC.

Description: § 205(d) Rate Filing: RMR Arrangement—Continuing Operations Rate Schedule to be effective 6/18/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5128.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1788–000.

Applicants: Dogwood Energy LLC.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule to be effective 4/19/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5140.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1789–000.

Applicants: Avista Corporation.

Description: § 205(d) Rate Filing: Avista RS T1224 Haymaker Cert of Concurrence to be effective 4/12/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5175.

Comment Date: 5 p.m. ET 5/9/24.

Docket Numbers: ER24–1790–000.

Applicants: Brandon Shores LLC.

Description: § 205(d) Rate Filing: RMR Arrangement—Continuing Operations Rate Schedule to be effective 6/18/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5176.

Comment Date: 5 p.m. ET 5/9/24.

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.

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.*

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(2) (2023) require that EISs be completed within 2 years of the federal action agency's decision to prepare an EIS. *See also* National Environmental Policy Act, 42 U.S.C. 4321 *et seq., amended by* section 107(g)(1)(A)(iii) of the Fiscal Responsibility Act of 2023, Public Law 118–5, 4336a, 137 Stat. 42.

Dated: April 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08781 Filed 4–23–24; 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: EC24–70–000.

Applicants: Terra-Gen Power Holdings II, LLC on behalf of itself and its Public Utility Subsidiaries.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Terra-Gen Power Holdings II, LLC.

Filed Date: 4/16/24.

Accession Number: 20240416–5278.

Comment Date: 5 p.m. ET 5/7/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–103–000.

Applicants: PSEG Renewable Transmission LLC.

Description: Petition for Declaratory Order of PSEG Renewable Transmission LLC.

Filed Date: 4/15/24.

Accession Number: 20240415–5328.

Comment Date: 5 p.m. ET 5/15/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1889–003; ER23–1015–000; ER18–1984–003; ER18–1984–004; ER23–1016–000; ER13–2386–008; ER24–1161–000; ER23–2750–002; ER10–2847–006; ER10–2847–007; ER10–2818–006; ER10–2818–007; ER10–2818–008; ER23–1017–000; ER24–1159–000; ER10–2806–006; ER10–2806–007; ER10–2806–008; ER23–1018–000; ER24–1160–000; ER14–963–006; ER15–2539–001; ER23–2751–002; ER23–2752–002.

Applicants: WHITE ROCK WIND WEST, LLC,WHITE ROCK WIND EAST, LLC, TransAlta Wyoming Wind LLC, TransAlta Wyoming Wind LLC, TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing Corp., TransAlta Energy Marketing Corp., TransAlta Energy Marketing Corporation, TransAlta Centralia Generation LLC, HORIZON HILL WIND, LLC, Lakeswind Power Partners, LLC, Lakeswind Power Partners, LLC, Big Level Wind LLC, Big Level Wind LLC, Antrim Wind Energy LLC, Antrim Wind Energy LLC.

Description: Amendment to December 30, 2022, Triennial Market Power Analysis for Northeast Region of TransAlta Energy Marketing (U.S.) Inc., et al.

Filed Date: 4/10/24.

Accession Number: 20240410–5190.

Comment Date: 5 p.m. ET 5/1/24.

Docket Numbers: ER24–1220–000.

Applicants: 68SF 8me LLC.

Description: Report Filing: 68SF 8me LLC MBR Tariff Effective Date to be effective N/A.

Filed Date: 4/16/24.

Accession Number: 20240416–5247.

Comment Date: 5 p.m. ET 4/30/24.

Docket Numbers: ER24–1341–001.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Limited Amendment to Rate Schedule No. 366 and Motion for Leave to Answer to be effective 4/28/2024.

Filed Date: 4/16/24.

Accession Number: 20240416–5238.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1769–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–04–16_SA 4275 NSP–NSP GIA (R1036) to be effective 4/8/2024.

Filed Date: 4/16/24.

Accession Number: 20240416–5216.

Comment Date: 5 p.m. ET 5/7/24.

Docket Numbers: ER24–1770–000.

Applicants: AMA QSE, LLC.

Description: Baseline eTariff Filing: Petition for Blanket MBR Authorization with Waivers & Expedited Treatment to be effective 5/1/2024.

Filed Date: 4/16/24.

Accession Number: 20240416–5218.

Comment Date: 5 p.m. ET 5/7/24.

Docket Numbers: ER24–1771–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Second Amended ISA, Service Agreement No. 5757; AC1–161 to be effective 6/17/2024.

Filed Date: 4/16/24.

Accession Number: 20240416–5234.

Comment Date: 5 p.m. ET 5/7/24.

Docket Numbers: ER24–1772–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Regulation Market Redesign to be effective 6/16/2024.

Filed Date: 4/16/24.

Accession Number: 20240416–5240.

Comment Date: 5 p.m. ET 5/7/24.

Docket Numbers: ER24–1773–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: § 205(d) Rate Filing: Southeastern Power Admin Revised NITSA to be effective 5/1/2024.

Filed Date: 4/17/24.

Accession Number: 20240417–5029.

Comment Date: 5 p.m. ET 5/8/24.

Docket Numbers: ER24–1775–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Implement Congestion Hedging Improvements to be effective 12/31/9998.

Filed Date: 4/17/24.

Accession Number: 20240417–5086.

Comment Date: 5 p.m. ET 5/8/24.

Docket Numbers: ER24–1776–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: TFA Naval Air Station Lemoore.

Filed Date: 4/17/24.

Accession Number: 20240417–5094.

Comment Date: 5 p.m. ET 5/8/24.

Docket Numbers: ER24–1777–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6738; Queue No. AC2–090 (amend) to be effective 6/17/2024.

Filed Date: 4/17/24.

Accession Number: 20240417–5115.

Comment Date: 5 p.m. ET 5/8/24.

Docket Numbers: ER24–1778–000.

Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Duke Energy Progress, LLC submits tariff filing per 35.13(a)(2)(iii: DEC–DEP Update to Attachment N–1 of Joint OATT to be effective 6/17/2024.

Filed Date: 4/17/24.

Accession Number: 20240417–5134.

Comment Date: 5 p.m. ET 5/8/24.

Docket Numbers: ER24–1779–000.

Applicants: DesertLink, LLC.

Description: Informational Update of 2024 Transmission Revenue Requirement of DesertLink, LLC.

Filed Date: 4/15/24.

Accession Number: 20240415–5339.

Comment Date: 5 p.m. ET 5/6/24.

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.

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: April 17, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08716 Filed 4–23–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–672–000.

Applicants: Entergy New Orleans, LLC, Delta States Utilities NO, LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, *et al.* of Entergy New Orleans, LLC, *et al.*

Filed Date: 4/17/24.

Accession Number: 20240417–5200.

Comment Date: 5 p.m. ET 4/29/24.

Docket Numbers: RP24–673–000.

Applicants: Entergy Louisiana, LLC, Delta States Utilities LA, LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Entergy Louisiana, LLC *et al.*

Filed Date: 4/17/24.

Accession Number: 20240417–5201.

Comment Date: 5 p.m. ET 4/29/24.

Docket Numbers: RP24–674–000.

Applicants: Centra Pipelines Minnesota Inc.

Description: § 4(d) Rate Filing: Updated Index of Shippers June 2024 to be effective 6/1/2024.

Filed Date: 4/18/24.

Accession Number: 20240418–5073.

Comment Date: 5 p.m. ET 4/30/24.

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.

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Dated: April 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08780 Filed 4–23–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–14–000]

Commission Information Collection Activities (FERC–921); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–921, OMB Control No. 1902–0257, Ongoing Electronic Delivery of Data from Regional Transmission Organization and Independent System Operators.

DATES: Comments on the collection of information are due June 24, 2024.

ADDRESSES: You may submit comments (identified by Docket No. IC24–14–000) by either of the following methods:

Electronic filing through *http://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov/ferc-online/overview.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC–921, Ongoing Electronic Delivery of Data from Regional Transmission Organization and Independent System Operators.

OMB Control No.: 1902–0257.

Type of Request: Three-year extension of the FERC–921 information collection requirements with no changes to the current reporting requirements.

Abstract: The collection of data in FERC–921 is an effort by the Commission, implemented under Order

No. 760,[1] to detect potential anti-competitive or manipulative behavior or ineffective market rules by requiring Regional Transmission Organizations (RTO) and Independent System Operators (ISO) to electronically submit, on a continuous basis, data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights, internal bilateral contracts, uplift, and interchange pricing. Although provision was made by the Commission that market monitoring units (MMUs) may provide datasets, all data for this collection has (and is expected to continue to) come from each RTO or ISO and not the MMUs. Therefore, any associated burden is counted as a burden on RTOs and ISOs.

While the ongoing delivery of data under FERC–921 is continuous and routine, each RTO or ISO makes sporadic changes to its individual market with Commission approval. When those changes occur, the RTO or ISO may need to change the data being routinely sent to the Commission to ensure compliance with Order No. 760. Such changes typically require respondents to alter the ongoing delivery of data under FERC–921.

Type of Respondent: Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs).

Estimate of Annual Burden:[2] The Commission estimates the total annual burden and cost for this information collection by calculating the total hourly cost (including both mean wages and benefits) of three occupations and then by multiplying that total hourly cost by the number of hours needed for each response.

The total hourly cost applied in this calculation is $88.03, calculated as the sum of weighted mean hourly wages and benefits of the following occupations:[3]

- Computer Systems Analysts (Occupational Code: 15–1211): $56.57 (base hourly wage) ÷ 70.7% (benefits) = $80.01 × 75 percent of the time needed for each response = $60.0075;
- Legal (Occupational Code: 23–0000): $104.10 (base hourly wage) ÷ 70.7% (benefits) = $147.24 × 12.5 percent of the time needed for each response = $18.405; and
- Database Administrators (Occupational Code: 15–1242): $54.40 (base hourly wage) ÷ 70.7% (benefits) = $76.94 × 12.5 percent of the time needed for each response = $9.6175.

Category	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & cost	Annual cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Ongoing Electronic Delivery of Data	6	1	[4] 6	52 hrs.; $4,577.56.	312 hrs.; $27,465.36.	$4,577.56
Data Delivery Changes Over the Year[5]	6	1	6	480 hrs.; $42,254.40.	2,880 hrs.; $253,526,40.	42,254.40
Total	6	2	12		3,192 hrs.; $280,991.76.	46,831.96

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate 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.

Dated: April 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08778 Filed 4–23–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2023–0584, FRL–11866–01–OMS]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Air Emission Standards for Tanks, Surface Impoundments and Containers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Air Emission Standards for Tanks, Surface Impoundments and Containers (EPA ICR Number 1593.12, OMB Control Number 2060–0318) 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 April 30, 2024. Public comments were previously requested via the **Federal Register** on December 11, 2023 during a 60-day comment period. This notice allows for 30 days for public comments.

DATES: Comments may be submitted on or before May 24, 2024.

[1] *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators,* Order No. 760, 139 FERC ¶ 61,053 (2012)

[2] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to title 5 Code of Federal Regulations 1320.3.

[3] Costs (for wages and benefits) are based on the mean wage estimate by the Bureau of Labor Statistics' (BLS) Occupational Employment and Wage Statistics (OEWS) program from May 2023 (*https://www.bls.gov/oes/current/naics2_22.htm.*) and benefits information for private industry workers (*https://www.bls.gov/news.release/ecec.nr0.htm.*)

[4] Each RTO/ISO electronically submits data daily. To match with past filings, we are considering the collection of daily responses to be a single response.

[5] The hour burden associated with a ''Data Delivery Change Over the Year'' varies considerably based on the significance of the specific change; therefore, the estimate is intended to reflect the incremental burden for an average change. Based on historical patterns, staff estimates there to be about one and a half changes of this nature per RTO or ISO per year. Based on our estimate that the total time required for a single change is 320 hours, and there are, on average, 1.5 changes annually, the total time for this category of response is 480 hours (1.5 × 320 hours).

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2023–0584, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, U.S. Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue 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: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through April 30, 2024. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on December 11, 2023 during a 60-day comment period (88 FR 85883). 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 *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 264, subpart A and 40 CFR 265, Subpart A), as well as for the specific requirements at 40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining 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 reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/Affected Entities: Business or other for-profit.

Respondent's Obligation To Respond: Mandatory (40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC).

Estimated Number of Respondents: 6,760.

Frequency of Response: On occasion.

Total Estimated Burden: 775,000 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $111,000,000 (per year), which includes $13,500,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–08693 Filed 4–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2023–0573; FRL–11875–01–OLEM]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; RCRA Section 3007 Survey for Drum Reconditioning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), RCRA Section 3007 Survey for Drum Reconditioning Facilities (EPA ICR Number 2800.01, OMB Control Number 2050–NEW), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before June 24, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OLEM–2023–0573, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

FOR FURTHER INFORMATION CONTACT: Patrick Wise, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division (MC 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0520; email address: *wise.patrick@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.

This notice allows 60 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 *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through

the use of appropriate forms of information technology. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This information collection will provide the EPA with necessary information about the operations of drum reconditioners and similar facilities that clean out and recondition used industrial containers. The Agency needs this information to determine whether future regulatory or non-regulatory action is needed to address environmental issues identified in the EPA's Drum Reconditioner Damage Case Report, published in September 2022. The data collected through this ICR will advance the Agency's mission of protecting human health and the environment by determining the current engineering controls and standard practices employed at these facilities, and by collecting additional information about the environmental impacts these facilities may have on surrounding communities and the wider environment. All information submitted to the agency in response to the ICR that is claimed as confidential will be managed in accordance with applicable laws and EPA's regulations governing treatment of confidential business information at 40 CFR part 2, subpart B. Any information determined to constitute a trade secret will be protected under 18 U.S.C. 1905.

Form Numbers: None.

Respondents/Affected Entities: This ICR applies to all facilities engaged in drum and/or industrial container reconditioning and/or recycling.

Respondent's Obligation To Respond: Mandatory under section 3007 of RCRA (42 U.S.C. 6927).

Estimated Number of Respondents: 216 (total).

Frequency of Response: One-time response.

Total Estimated Burden: 1,187 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $121,000 (per year), which includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: Not applicable; this is a new ICR, so there is no previous burden.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2024–07972 Filed 4–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2023–0435; FRL–11881–01–ORD]

Workshop To Inform Review of the Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of workshop.

SUMMARY: The Center for Public Health and Environmental Assessment (CPHEA) within U.S. EPA's Office of Research and Development is announcing a workshop entitled ''Workshop to Discuss Policy-Relevant Science to Inform EPA's Integrated Plan for the Review of the Ozone National Ambient Air Quality Standards''. This workshop is being organized by CPHEA and the Office of Air Quality Planning and Standards within U.S. EPA's Office of Air and Radiation. This will be a four-day virtual workshop and will be open to the public through a public event registration website.

DATES: The workshop will be held on May 13 through May 16, 2024. Start and end times will vary each day and range from 9:50 a.m. to 4:30 p.m. EST. Registrants will have access to the workshop agenda once they register.

ADDRESSES: This is a virtual workshop. An EPA contractor, ICF International, is providing logistical support for the workshop. To register, please visit the website: *https://EPA-ozone-NAAQS-workshop.eventbrite.com.* Interested parties can listen and ask questions via a virtual webinar. The pre-registration deadline is Friday, May 10, 2024. Please direct questions regarding workshop registration or logistics to Joshua Cleland at (401) 854–8675, or *joshua.cleland@icf.com.* For specific questions regarding technical aspects of the workshop see **FOR FURTHER INFORMATION CONTACT** section in this document.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Qingyu Meng (919–541–2563 or *meng.qinyu@epa.gov*) or Jeff Herrick (919–541–7745 or *herrick.jeff@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Information About the Project

Section 108(a) of the Clean Air Act (CAA) directs the Administrator to identify and to list certain air pollutants and then to issue ''air quality criteria'' for those pollutants. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air. . . .'' Under section 109 of the CAA, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d)(1) of the CAA additionally requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

Photochemical oxidants, including ozone, are one of six ''criteria'' pollutants for which EPA has established NAAQS, and ozone is the current indicator for that NAAQS. In its periodic review of the air quality criteria for these pollutants, EPA reviews the currently available science and prepares an Integrated Science Assessment (ISA). The evidence assessed and conclusions presented in the ISA directly inform the technical and policy assessments. Collectively, the ISA and any technical and policy assessments developed from the scientific and technical bases for the Administrator's decisions on the adequacy of existing NAAQS and the appropriateness of possible alternative standards.

On August 25, 2023, EPA released the Call for Information on the Integrated Science Assessment for Ozone and Related Photochemical Oxidants to announce the development of the Ozone ISA (88 FR 58264). The Notice of Workshop also seeks information from the public regarding the design and scope of the review of the air quality criteria to ensure that this review addresses key policy-relevant issues and considers the new science relevant to informing our understanding of these issues. The Clean Air Scientific Advisory Committee (CASAC), part of EPA's Science Advisory Board (SAB) whose review and advisory functions are mandated by section 109(d)(2) of the Clean Air Act, is charged with independent scientific review of the air quality criteria among other responsibilities. In conjunction with the

CASAC review, the public will have an opportunity to review and comment on the draft ozone ISA. As the process proceeds, in conjunction with CASAC review, the public will have opportunities to review and comment on drafts of other technical and policy assessments that are developed. These opportunities will also be announced in the **Federal Register**.

As part of this review of the ozone NAAQS, EPA intends to sponsor a four-day workshop from May 13 through May 16, 2024, to provide the opportunity for internal and external experts to highlight significant new and emerging research on ozone and related photochemical oxidants. Experts will be asked to discuss how new evidence can best be used to build upon the analyses and scientific evidence that supported decisions made in the last review of the ozone NAAQS and to make recommendations to the Agency regarding the design and scope of the review for the primary (health-based) and secondary (welfare-based) ozone standards to ensure that it addresses key policy-relevant issues and considers the new and emerging science that is relevant to informing EPA's understanding of these issues. EPA intends that workshop discussions will build upon four prior publications by the Agency:

1. *Review of the Ozone National Ambient Air Quality Standards: Final Decision* (85 FR 87256, December 31, 2020). The preamble to the final rule included detailed discussions of policy-relevant issues central to the last review.

2. *Integrated Science Assessment for Ozone and Related Photochemical Oxidants—Final Report.* (EPA/600/R–20/012, April 2020). The 2020 Ozone ISA, completed by CPHEA, included consideration of studies published through January 1, 2018.

3. The final *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards* (EPA–452/R–20–001, May 2020). This document presents an evaluation, for consideration by the EPA Administrator, of the policy implications of the currently available scientific information, assessed in the ISA, any quantitative air quality, exposure, or risk analyses based on the ISA findings, and related limitations and uncertainties.

4. The draft document titled, *Policy Assessment for the Reconsideration of the Ozone National Ambient Air Quality Standards, External Review Draft Version 2* (EPA–452/P–23–002, March 2023). This draft document was prepared as a part of the reconsideration of the 2020 final decision on the ozone NAAQS, which has been incorporated into this review.

Workshop participants are encouraged to review these documents thoroughly before the meeting, as they provide important background information on the scientific findings and analytical approaches considered in the previous review, as well as insights into the key policy-relevant questions from that review. Participants may also want to review related documents including:

1. Technical memos considered by the CASAC Ozone Panel as part of the reconsideration of the 2020 decision (available on the CASAC website under ''meeting materials'' at *https://casac.epa.gov/ords/sab/r/sab_apex/casac/meeting?p19_id=976&clear=19&session=15138357514835*).

2. Letter from Elizabeth A. Sheppard, Chair, Clean Air Scientific Advisory Committee, to Administrator Michael S. Regan. Re: CASAC Review of the EPA's Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants (Final Report—April 2020). November 22, 2022. EPA–CASAC–23–001. Available at: *https://casac.epa.gov/ords/sab/f?p=105:18:8476900499267:::RP,18:P18_ID:2614.*

3. Letter from Elizabeth A. Sheppard, Chair, Clean Air Scientific Advisory Committee, to Administrator Michael S. Regan. Re: CASAC Review of the EPA's Policy Assessment (PA) for the Reconsideration of the Ozone National Ambient Air Quality Standards (External Review Draft Version 2) (June 9, 2023) (EPA–CASAC–23–002). Available at *https://casac.epa.gov/ords/sab/f?p=113:18:7093179574667:::RP,18:P18_ID:2636#meeting.*

Following the workshop, EPA will develop a workshop proceedings document and a three-volume Integrated Review Plan (IRP) for the review of the ozone NAAQS. Volume 1 will provide background on the ozone NAAQS. Volume 2 is the planning document for the review and the ISA, and will outline the schedule, process, and approaches for evaluating the relevant scientific information and addressing the key policy-relevant issues to be considered in this review. Lastly, Volume 3 is the planning document for technical air quality, exposure, and risk analyses. CASAC will be asked to consult with the Agency on Volumes 2 and 3, and the public will also have the opportunity to comment. The IRP, with input received from the CASAC and the public, will provide the framework to guide the review and development of the draft ISA and policy assessments.

Wayne Cascio,

Director, Center for Public Health and Environmental Assessment.

[FR Doc. 2024–08753 Filed 4–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2024–0134; FRL–11831–01–OAR]

Opportunity for Stakeholder Engagement in the ENERGY STAR Products Program Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing an opportunity for public input on ENERGY STAR product specification development activities. Since its creation in 1992, the ENERGY STAR program has grown to designate highly efficient products in more than 75 categories, all of which are independently certified. EPA relies on broad stakeholder engagement to develop and maintain its ENERGY STAR product specifications and grow and evolve the products portfolio. Through its products work, the Agency also looks for innovative ways to accelerate market movement to greater efficiency. The ENERGY STAR products specification 2024 annual workplan is posted on the ENERGY STAR website at *https://www.energystar.gov/partner_resources/products_partner_resources/brand-owner/spec-dev-efforts* to allow interested parties to determine how they wish to engage with the EPA to track progress and share feedback. If you are not an ENERGY STAR partner and wish to stay informed about these specification development activities, please email *join@energystar.gov* to be added to the mailing list. The general public may also track specific opportunities for public input on our products public notices web page—*https://www.energystar.gov/partner_resources/products_partner_resources/public-notices*.

FOR FURTHER INFORMATION CONTACT: Kathleen Vokes, Acting Supervisor ENERGY STAR Product Specifications Branch, Office of Atmospheric Programs (6202A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone

number: 202–343–9019; email address: *vokes.kathleen@epa.gov*.

Jean Lupinacci,

Director, Climate Protection Partnerships Division.

[FR Doc. 2024–08564 Filed 4–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0118; FRL- 11865–01–OMS]

Agency Information Collection Activities; Submission to Office of Management and Budget for Review and Approval; Comment Request; NSPS for Onshore Natural Gas Processing Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Onshore Natural Gas Processing Plants (EPA ICR Number 1086.13, OMB Control Number 2060–0120), 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 April 30, 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 May 24, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2023–0118, to EPA online using *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. 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 specific information collection by selecting ''Currently under 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 proposed extension of the ICR, which is currently approved through April 30, 2024. An Agency may neither conduct nor 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 May 18, 2023, during a 60-day comment period (88 FR 31748). 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 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 New Source Performance Standards (NSPS) for Onshore Natural Gas Processing Plants (40 CFR part 60, subpart KKK) were proposed on January 20, 1984, promulgated on June 24, 1985, and most recently amended on August 16, 2012. These regulations apply to Volatile Organic Compound (VOC) emissions at existing facilities located at onshore natural gas processing plants: compressors in equipment leaks of VOC service or in wet gas service, and the groups of all equipment (except compressors) within a process unit. This information is being collected to assure compliance with 40 CFR part 60, subpart KKK.

The New Source Performance Standards for Onshore Natural Gas Processing Plants (40 CFR part 60, subpart LLL) were proposed on January 20, 1984, promulgated on October 1, 1985, and most recently amended on August 16, 2012. These regulations apply to sulfur dioxide (SO_2) emissions at the following types of existing facilities located at onshore natural gas processing plants: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit. The provisions of Subpart LLL do not apply to sweetening facilities that produce acid gas that is completely re-injected into oil or gas bearing geologic strata or that is otherwise not released to the atmosphere, or to affected facilities with design capacities of less than two long tons per day (LT/D) of hydrogen sulfide in the acid gas, expressed as sulfur. This information is being collected to assure compliance with 40 CFR part 60, subpart LLL.

Form Numbers: None.

Respondents/affected entities: Owners and operators of onshore natural gas processing plants that commenced construction, reconstruction, or modification after January 20, 1984, and on or before August 23, 2011.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts KKK and LLL).

Estimated number of respondents: 305 (total).

Frequency of response: Semiannually.

Total estimated burden: 56,900 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $ 7,260,000 (per year), which includes $ 97,001 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease is not due to any program changes. The change in the burden and cost estimates occurred because the number of respondents subject to these requirements has decreased as those respondents modify their sources and become subject to another NSPS standard. This estimate assumes the same growth rate as stated in the previous ICR. As sources subject to NSPS Subparts KKK and LLL modify, they become subject to NSPS Subpart OOOOa and cease being subject to NSPS Subparts KKK and LLL. Although there is a decrease in the overall burden, there is an increase in the operation & maintenance costs due to an adjustment to increase from 2008 to 2022 $ using the CEPCI Equipment Cost Index.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–08684 Filed 4–23–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

[ICR Ref. No. 202312–3121–001; OMB Control No. 3121–0002]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Permitting Improvement Steering Council.

ACTION: 30-Day notice; request for comment.

SUMMARY: The Federal Permitting Improvement Steering Council (Permitting Council) Executive Director invites the public and Federal agencies to comment on an existing information collection request (ICR) 3121–0002. The information collection was previously published in the **Federal Register** on January 19, 2024 for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Please send your comments on this ICR on or before May 24, 2024.

ADDRESSES: Please send your comments to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please reference OMB Control Number 3121–0002, ''ERIF Tribal Assistance Program Application'' in the subject line of your comments. Please also provide a copy of your comments to *ERIF@fpisc.gov* with the subject line: ''ERIF TAP Information Collection Comment.'' You may obtain copies of the proposed collection of information by emailing *ERIF@fpisc.gov.* Please identify all requests by including ''ERIF TAP'' in the subject line.

FOR FURTHER INFORMATION CONTACT: John Flores, at *john.flores@fpisc.gov,* or (385) 602–2138.

SUPPLEMENTARY INFORMATION: The Permitting Council publishes this notice in the **Federal Register** and invites comments in accordance with the Paperwork Reduction Act of 1995. The Permitting Council Executive Director is soliciting comment on any aspect of this information collection, including: (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; (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.

Title of the Program Seeking Information Collection: Environmental Review Improvement Fund Tribal Assistance Program (ERIF TAP).

Type of Review: New Information Collection Request (ICR).

Background: Established in 2015 by title 41 of the Fixing America's Surface Transportation Act (FAST–41), 42 U.S.C. 4370m *et seq.,* the Permitting Council is a unique Federal agency charged with improving the transparency and predictability of the Federal environmental review and authorization process for certain infrastructure projects. The Permitting Council is comprised of the Permitting Council Executive Director, who serves as the Council Chair; 13 Federal agency Council members (including deputy secretary-level designees of the Secretaries of Agriculture, Army, Commerce, Interior, Energy, Transportation, Defense, Homeland Security, and Housing and Urban Development, the Administrator of the Environmental Protection Agency, and the Chairs of the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, and the Advisory Council on Historic Preservation); and the Chair of the Council on Environmental Quality and the Director of the OMB. 42 U.S.C. 4370m–1(a) & (b).

The Permitting Council coordinates Federal environmental reviews [1] and authorizations [2] for projects that seek and qualify for FAST–41 coverage. FAST–41 covered projects are entitled to comprehensive permitting timetables and transparent, collaborative management of those timetables on the Federal Permitting Dashboard in compliance with FAST–41 procedural requirements. 42 U.S.C. 4370m–2(c) & (d). Sponsors of FAST–41 covered projects also benefit from the direct engagement of the Permitting Council Executive Director and the Permitting Council members in timely identification and resolution of permitting issues that affect covered projects' permitting timetables.

The Permitting Council Executive Director, with the approval of the OMB Director, also may transfer funds from the Environmental Review and Improvement Fund (ERIF) to Federal agencies and state, local, and tribal governments to make the environmental review and authorization process for FAST–41 covered projects more timely and efficient. 42 U.S.C. 4370m–8(d)(3). Executive Director has established the ERIF Tribal Assistance Program (TAP) to facilitate the distribution of ERIF funds to Tribal governments pursuant to this authority.

This collection is necessary for administration of the ERIF TAP in accordance with 42 U.S.C. 4370m–8(d)(3). The Executive Director seeks public comment on the application form that the Executive Director would use to collect information from Tribal governments that seek ERIF TAP funding. The form will be used by the Executive Director to evaluate the eligibility of each Tribal government applicant, and determine whether, the circumstances under which, and the amount of any ERIF funds that may be transferred to a Tribal government applicant pursuant to 42 U.S.C. 4370m–2(d)(3). Seeking ERIF funds under the ERIF TAP is voluntary with each Tribal government. The application form is planned as a one-time information collection per applicant. The Permitting Council estimates that it will take approximately 40 hours to complete the application form for ERIF TAP funds.

Respondents: Federally-recognized Indian Tribe consulting on or engaged in the Federal environmental review and authorization process (*e.g.,* through the National Environmental Policy Act or Section 106 of the National Historic Preservation Act) for one or more FAST–41 covered projects that are posted on the Permitting Dashboard at the time of submission.

Frequency: One time per grant application.

Application: To be considered to receive ERIF TAP funds, an eligible Tribal government must submit a completed application form to the Permitting Council Executive Director that contains the information required in the Application Instructions. At a minimum, the applicant must include contact information, the amount of funding requested, what will be accomplished with the funding (*i.e.,* activities and funding level per activity),

[1] 42 U.S.C. 4370m(11) (defining ''environmental review'' as ''the agency procedures and processes for applying a categorical exclusion or for preparing an environmental assessment, an environmental impact statement, or other document required under [the National Environmental Policy Act]'').

[2] 42 U.S.C. 4370m(3) (defining ''authorization'' as ''any license, permit, approval, finding, determination, or other administrative decision issued by an agency and any interagency consultation that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with [42 U.S.C.] 4370m–2(c)(3)(A) . . . , a State agency'').

which FAST–41 covered projects the applicant is consulting on or engaged in, and how the funded activities will result in more timely and efficient environmental review and authorization of those FAST–41 covered projects. The application should include the information necessary for the Permitting Council Executive Director to determine that the project and proposal satisfies eligibility requirements.

Completed application forms must be submitted to the Executive Director through *ERIF@fpisc.gov.* Instructions for submitting applications can be found at *https://www.permits.performance.gov/fpisc-content/erif-tribal-assistance-program.*

Estimated Burden: The estimated burden for completing an application form is as follows:

Expected Number of Respondents: Approximately 30 per year.

Frequency: Once per application.

Estimated Average Burden per Response: 40 hours for each new application form.

Authority: 44 U.S.C. 3501 *et seq.;* 42 U.S.C. 4370m–8(d)(3).

Dated: April 8, 2024

Eric Beightel,

Executive Director, Federal Permitting Improvement Steering Council.

[FR Doc. 2024–08514 Filed 4–23–24; 8:45 am]

BILLING CODE 6820–PL–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 215693]

Open Commission Meeting Thursday, April 25, 2024

April 18, 2024.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 25 2024, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	WIRELINE COMPETITION	*Title:* Implementation of the National Suicide Hotline Act of 2018 (WC Docket No. 18–336). *Summary:* The Commission will consider a Second Further Notice of Proposed Rulemaking, which would propose to require the implementation of one or more georouting solutions for wireless calls to the 988 Suicide & Crisis Lifeline to ensure that calls are routed based on the geographic location for the origin of the call, rather than the area code and exchange associated with a wireless phone. manufacturers to meet higher cybersecurity standards.
2	WIRELINE COMPETITION	*Title:* Safeguarding and Securing the Open Internet (WC Docket No. 23–320); Restoring Internet Freedom (WC Docket No. 17–108). *Summary:* The Commission will consider a Declaratory Ruling, Order, Report and Order, and Order on Reconsideration that would reestablish the Commission's authority to protect consumers and safeguard the fair and open Internet by.
3	ENFORCEMENT	*Title:* Enforcement Bureau Action Coverage. *Summary:* The Commission will consider an enforcement action.
4	ENFORCEMENT	*Title:* Enforcement Bureau Action Coverage. *Summary:* The Commission will consider an enforcement action.
5	ENFORCEMENT	*Title:* Enforcement Bureau Action Coverage. *Summary:* The Commission will consider an enforcement action.
6	ENFORCEMENT	*Title:* Enforcement Bureau Action Coverage. *Summary:* The Commission will consider an enforcement action.
7	ENFORCEMENT	*Title:* Enforcement Bureau Action Coverage. *Summary:* The Commission will consider an enforcement action.
8	ENFORCEMENT	*Title:* Enforcement Bureau Action Coverage *Summary:* The Commission will consider an enforcement action.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2024–08745 Filed 4–23–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1257; FR ID 215166]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before May 24, 2024.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1257.

Title: New Procedure for Non-Federal Public Safety Entities to License Federal Government Interoperability Channels.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions and State, local, or Tribal government.

Number of Respondents and Responses: 40,599 respondents; 40,599 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Section 90.25 adopted in Order DA 18–282, requires any non-Federal public safety entity seeking to license mobile and portable units on the Federal Interoperability Channels to obtain written concurrence from its Statewide Interoperability Coordinator (SWIC) or a State appointed official and include such written concurrence with its application for license. A non-Federal public safety entity may communicate on designated Federal Interoperability Channels for joint Federal/non-Federal operations, provided it first obtains a license from the Commission authorizing use of the channels. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

Total Annual Burden: 10,150 hours.

Total Annual Cost: No cost.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring a non-Federal public safety entity to obtain written consent from its SWIC or State appointed official before communicating with Federal Government agencies on the Federal Interoperability Channels is to ensure that the non-Federal public safety entity operates in accordance with the rules and procedures governing use of the Federal interoperability channels and does not cause inadvertent interference during emergencies. Commission staff will use the written concurrence from the SWIC or Ftate appointed official to determine if an applicant's proposed operation on the Federal Interoperability Channels conforms to the terms of an agreement signed by the SWIC or State appointed official with a Federal user with a valid assignment from the National Telecommunications and Information Administration (NTIA) which has jurisdiction over the channels.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2024–08786 Filed 4–23–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0876; FR ID 215165]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before June 24, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–0876.

Title: Sections 54.703, USAC Board of Directors Nomination Process and Sections 54.719 through 54.725, Review of the Administrator's Decision.

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit institutions, and State, Local or Tribal Governments.

Number of Respondents and Responses: 1,413 respondents; 1,413 responses.

Estimated Time per Response: 20 hours.

Frequency of Response: Once every 3 year reporting requirement and on occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405.

Total Annual Burden: 28,126 hours.

Total Annual Cost: No cost.

Needs and Uses: The information in this collection is used by the Commission to select Universal Service Administrative Company (USAC) Board of Directors and to ensure that requests for review are filed properly with the Commission.

Section 54.703 states that industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors.

Sections 54.719 through 54.725 describes the procedures for Commission review of USAC decisions including the general filing requirements pursuant to which parties may file requests for review.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2024–08773 Filed 4–23–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201424.

Agreement Name: Siem Car Carriers AS/Seven Seals Co. Ltd. Space Charter Agreement.

Parties: Siem Car Carriers AS; Seven Seals Co., Ltd.

Filing Party: Ashley Craig, Venable LLP.

Synopsis: The Agreement authorizes the Parties to engage in a limited range of cooperative activities, including but not limited to, vessel space chartering in the trade between China and the U.S.

Proposed Effective Date: 04/18/2024.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/86559.

Dated: April 19, 2024.

Carl Savoy,

Federal Register Alternate Liaison Officer.

[FR Doc. 2024–08757 Filed 4–23–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 May 9, 2024.

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. *Castle Creek Capital Partners VI, LP; Castle Creek Capital VI LLC; Castle Creek Advisors IV LLC; JME Advisory Corp.; Scavuzzo Advisory Corp.; Volk Advisory Corp.; and Rana Advisory Corp., all of San Diego, California; together with John Eggemeyer, Rancho Santa Fe, California; Anthony Scavuzzo, Dallas, Texas; David Volk, San Diego, California; and Sundeep Rana, Dallas, Texas;* a group acting in concert, to acquire voting shares of Tri-County Financial Group, Inc., and thereby indirectly acquire voting shares of First State Bank, both of Mendota, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–08768 Filed 4–23–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Community Services Block Grant (CSBG) Model State Plan Applications (Office of Management and Budget No. 0970–0382)

AGENCY: Office of Community Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Community Services (OCS), Administration for Children and Families (ACF) requests a 3-year extension of the Community Services Block Grant (CSBG) State Plan, CSBG Eligible Entity Master List, and the American Customer Survey Index (ACSI) forms (OMB #0970–0382, expiration 8/31/2024). There are no changes requested to these information collections.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 676 of the CSBG Act requires states, including the District of Columbia and the Commonwealth of Puerto Rico, and U.S. territories applying for CSBG funds to submit an application and plan (CSBG State Plan). The CSBG State Plan must meet statutory requirements prior to OCS awarding CSBG grant recipients (states and territories) with CSBG funds. Grant recipients have the option to submit a detailed plan annually or biannually. Grant recipients that submit a biannual plan must provide an abbreviated plan the following year if substantial changes to the initial plan will occur. OCS is not requesting any changes to this form. As this will be the 11th year of submitting this form, OCS does not anticipate any additional burden.

OCS is also requesting to extend approval of the following information collections, with no changes proposed:

- *CSBG Eligible Entity List.* In alignment with Federal requirements, OCS requests that all grant recipients continue to keep their CSBG Eligible Entity List current, to include maintaining an accurate listing of the CSBG sub-grant recipients (CSBG eligible entities) and current Unique Entity Identifier (UEI) for each recipient listed. This is in alignment with current policies and processes, and therefore OCS does not anticipate any additional burden.
- *Optional survey for the sub-grant recipients (or CSBG-eligible entities).* The American Customer Survey Index (ACSI) is administered biennially. OCS uses the ACSI survey for eligible entities as part of the CSBG performance management framework. The survey focuses on the customer service that the CSBG sub-grant recipients receive from the CSBG grant recipients. The survey is optional, and this will be the seventh time that CSBG sub-grant recipients have the option to complete the survey. There were no revisions to the survey.

OCS anticipates submitting a subsequent revision to this information collection, pending OMB review and approval of a separate but related information collection request (CSBG Annual Report, OMB No. 0970–0492) that is scheduled to publish on April 22, 2024 (see *https://www.federalregister.gov/d/2024-08549*) and may result in minor updates to some of these materials.

Respondents: State governments, including the District of Columbia and the Commonwealth of Puerto Rico and U.S. territories, and local level sub-grant recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
CSBG State Plan	56	3	28	4,704	1,568
CSBG Eligible Entity List	56	3	1	168	56
Estimated Total Annual Burden Hours for CSBG Grant Recipients					1,624
CSBG ACSI Survey of CSBG Eligible Entities	1000	2	.15	300	150
Estimated Total Annual Burden Hours for CSBG sub-grant recipients					150
Estimated Total Annual Burden Hours for All Respondents					1774

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Sec. 676, Public Law 105–285, 112 Stat. 2735 (42 U.S.C. 9908)

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–08732 Filed 4–23–24; 8:45 am]

BILLING CODE 4184–27–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; Refugee Data Submission System for Formula Funds Allocations and Service Analysis (ORR–5) (OMB #0970–0043)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for children and Families (ACF), U.S. Department of Health and Human Services (HHS), seeks an update to the existing data collection for the form ORR–5: Refugee Data Submission System for Formula Funds Allocations and Service Analysis (OMB#: 0970–0043, expiration 4/30/2024) and requests an extension of approval for three years. Minor changes to the form ORR–5 are as proposed in the description section. Since the previous comment period, there are additional minor proposed edits: an additional data element to clarify whether the initial client assessment was completed and a change to spacing in headers to improve data processing. ACF estimates the proposed changes will not increase response burden.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ORR–5 is designed to satisfy the statutory requirements of the Immigration and Nationality Act (INA). Section 412(a)(3) of INA (8 U.S.C. 1522(a)(3)) requires that the Director of ORR make a periodic assessment of the needs of refugees for assistance and services and the resources available to meet those needs. ORR proposes an extension with minor changes to the current form to ensure continuous information collection, enabling the ORR Director to better understand client demographics, services utilized, and the outcomes achieved by clients enrolled in certain ORR-funded programs. Data elements continue to include ORR program entrance and exit dates, biographical information, referrals for services, progress made toward achieving self-sufficiency, and employment status. During the 60-day comment period (88 FR 84145) ORR received comments regarding the proposed addition of two data elements. ORR has decided to delay the addition of client email address and phone number due to recent and rapid changes to the national interagency refugee landscape and the current operational capacity of ORR-funded service providers. Since the 60-day comment period, a data element has been added to indicate whether the initial client assessment was completed and a change to spacing in headers was made to improve data processing. The data collected will inform evidence-based policy making and program design.

Respondents: States, Replacement Designees, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Refugee Data Submission for Formula Funds Allocations and Service Analysis (ORR–5)	50	1	140	7,000

Authority: 8 U.S.C. 412(a)(3).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–08761 Filed 4–23–24; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Public Comment Request; Pediatric Mental Health Care Access Program National Impact Study

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than May 24, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Pediatric Mental Health Care Access Program National Impact Study, OMB No. 0915–xxxx–[New]

Abstract: This notice describes an information collection request for one of HRSA's Maternal and Child Health Bureau programs, the Pediatric Mental Health Care Access (PMHCA) Program. The PMHCA Program aims to promote behavioral health integration into pediatric primary care by supporting the development of state, regional, and tribal pediatric mental health care teleconsultation access programs. The PMHCA Program supports pediatric health professionals (HPs) [1] in their delivery of high-quality and timely screening, assessment, treatment, and referrals for children and adolescents with behavioral health conditions through the provision of teleconsultation, care coordination support/navigation (*e.g.,* resource identification and referrals), and training and education. Additionally, the PMHCA Program focuses on achieving health equity related to racial, ethnic, and geographic disparities in access to care, especially in rural and other underserved areas.

The information will be collected from participants in HRSA's Maternal and Child Health Bureau PMHCA award recipient programs that were funded in 2021, 2022, or 2023. The 2021 and 2022 PMHCA programs were authorized by 42 U.S.C 254c–19 (Title III, section 330M of the Public Health Service Act), using funding appropriated by Section 2712 of the American Rescue Plan Act of 2021 (Pub. L. 117–2), and the 2023 PMHCA programs were authorized by 42 U.S.C 254c–19 (section 330M of the Public Health Service Act), as amended by section 11005 of the Bipartisan Safer Communities Act (Pub. L. 117–159). To examine the impact of the PMHCA program on children and adolescents, this data collection will use two instruments: the HP Impact Survey and the Family/Caregiver Focus Group Discussion (FGD). Additionally, family members/caregivers identified by PMHCA programs to participate in the Family/Caregiver FGD will be asked demographic questions (Family/Caregiver Demographic Questionnaire) about themselves and their child/adolescent for the purpose of FGD sampling and to inform qualitative data analyses.

A 60-day notice published in the **Federal Register** on February 6, 2024, vol. 89, No. 25; pp. 8210–11. HRSA received two requests for additional information from the public, but no comments.

Need and Proposed Use of the Information: This information is needed by HRSA to examine PMHCA program impacts on children/adolescents and their families/caregivers to guide future program decisions. Specifically, data collected for the PMHCA Impact Study will be used to examine changes in children's and adolescents' and their families'/caregivers' access to behavioral health care (BHC); their subsequent receipt and utilization of BHC, including culturally and linguistically appropriate care; related behavioral health impacts; and monetary and societal cost-benefits. The study will examine changes over time regarding enrolled/participating HPs' practices with screening, diagnosing, treating, and referring children and adolescents with behavioral health conditions and assess their perceptions of the behavioral health impact of the PMHCA Program. Additionally, the study will deepen the understanding of families'/caregivers' experiences with BHC access, receipt, and utilization; satisfaction with BHC services; and the impact of behavioral health services on their children/adolescents.

Likely Respondents:

- *HP Impact Survey:* Pediatricians, family physicians, physician assistants, advanced practice nurses/nurse practitioners, licensed practical nurses, registered nurses, counselors, social workers, medical assistants.
- *Family/Caregiver FGD:* Family members and caregivers who have sought and/or received BHC for their child(ren)/adolescent(s).
- *Family/Caregiver Demographic Questionnaire:* Family members and caregivers who have sought and/or received BHC for their child(ren)/adolescent(s).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

[1] HPs may include but are not limited to pediatricians, family physicians, physician assistants, advanced practice nurses/nurse practitioners, licensed practical nurses, registered nurses, counselors, social workers, medical assistants, patient care navigators.

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
HP Impact Survey	21,070	2	42,140	0.17	7,163.80
Family/Caregiver FGD	42	1	42	1.00	42.00
Family/Caregiver Demographic Questionnaire	270	1	270	.08	21.60
Total	21,382		42,452		7,227.40

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–08692 Filed 4–23–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors *Eunice Kennedy Shriver* National Institute of Child Health and Human Development.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the *Eunice Kennedy Shriver* National Institute of Child Health & Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Development of Novel Nonsteroidal Contraceptive Methods (R61/R33—Clinical Trial Not Allowed).

Date: June 21, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute, of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Helen Huang, Ph.D., Scientific Review Branch, *Eunice Kennedy Shriver* National Institute of Child Health & Human Development, National Institute of Health, 6710B Rockledge Drive, Room 2137D, Bethesda, MD 20892, (301) 496–8558, *helen.huang@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 19, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–08747 Filed 4–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 5–7, 2024.

Time: June 5, 2024, 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, Room GE620/630, 35 Convent Drive, Bethesda, MD 20892 (Hybrid Meeting).

Time: June 6, 2024, 9:00 a.m. to 5:50 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, Room GE620/630, 35 Convent Drive, Bethesda, MD 20892 (Hybrid Meeting).

Time: June 7, 2024, 9:00 a.m. to 4:15 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, Room GE620/630, 35 Convent Drive, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Jennifer E Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, National Institutes of Health, 35A Convent Drive, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: April 19, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–08748 Filed 4–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel; Time-Sensitive Obesity PAR Review.

Date: May 31, 2024.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Blvd., Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 18, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–08677 Filed 4–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors *Eunice Kennedy Shriver* National Institute of Child Health and Human Development.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the *Eunice Kennedy Shriver* National Institute of Child Health & Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Study Section Health, Behavior, and Context Study Section

Date: June 10, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriot Residence Inn- Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814 (In-person).

Contact Person: Kimberly L. Houston, M.D., Scientific Review Branch, *Eunice Kennedy Shriver* National Institute of Child Health & Human Development, National Institute of Health, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892, (301) 827–4902, *kimberly.houston@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 19, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–08749 Filed 4–23–24; 8:45 a.m.]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0011]

Agency Information Collection Activities: CISA Gateway User Registration

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; renewal, 1670–0009.

SUMMARY: DHS CISA Infrastructure Security Division (ISD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are due by June 24, 2024. Submissions received after the deadline for receiving comments may not be considered.

ADDRESSES: You may submit comments, identified by docket number CISA–2024–0011 at:

Federal eRulemaking Portal: *http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received, please go to *www.regulations.gov* and enter docket number CISA–2024–0011.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Iesha Alexander, 202–440–0834, *Iesha.Alexander@CISA.DHS.GOV.*

SUPPLEMENTARY INFORMATION: The Homeland Security Presidential Directive-7, Presidential Policy Directive-21, and the National Infrastructure Protection Plan highlight the need for a centrally managed repository of infrastructure attributes capable of assessing risks and facilitating data sharing. The Critical Infrastructure Information Act of 2002 and Title 6 Code of Federal Regulation part 29 direct an information protection program and a system to record the receipt, acknowledgement, and validation of submitted critical infrastructure information (CII), as well as storage, dissemination, and destruction of original Protected Critical Infrastructure Information (PCII). To support these missions, the DHS CISA ISD developed the CISA Gateway and the Protected Critical Infrastructure Information Management System (PCIIMS). The CISA Gateway and PCIIMS contain several capabilities which support the homeland security mission in the area of critical infrastructure (CI) and information protection.

The purpose of this collection is to gather the details pertaining to the users of the CISA Gateway and PCIIMS for the purpose of creating accounts to access the CISA Gateway and PCIIMS. This information is also used to verify a need to know to access the CISA Gateway and PCIIMS. After being vetted and granted access, users are prompted and required to take an online training course upon first logging into the system. After completing the training, users are permitted full access to the systems. In addition, this collection will gather feedback from the users of the CISA Gateway to determine any future system improvements.

The information gathered will be used by the CISA Gateway Program Management Team and the PCII Program Office for PCIIMS to vet users for a need to know and grant access to the system. For the CISA Gateway, as part of the registration process, users are required to take a one-time online training course. When logging into the system for the first time, the system prompts users to take the training courses. Users cannot opt out of the training and are required to take the course in order to gain and maintain access to the system. When users complete the training, the system automatically logs that the training is complete and allows full access to the system. For PCIIMS, after registration and vetting, users are directed to take PCII Authorized User training, which must be retaken annually to maintain their active status.

The collection of information uses automated electronic forms. During the online registration process, there is an electronic form used to create a user account and an online training course required to grant access.

The collection was initially approved on October 9, 2007, and the most recent approval was on December 19, 2023, with an expiration date of June 30, 2024. The changes to the collection since the previous OMB approval include; updating the title of the collection, decrease in burden estimates and decrease in costs The total annual burden cost for this collection has changed by $3,096.40, from $4,128 to $7,224.40 due to the removal of the utilization survey, and the addition of PCIIMS respondents. For the CISA Gateway, the total number of responses has increased from 350 to 700 due to the updated metrics resulting from the awareness campaign and due to the registration process changing which does not include the training registration. The annual government cost for this collection has changed by $8,340.92 from $5,723 to $14,063.92 due to the removal of the utilization survey, and the addition of PCIIMS respondents. The This is a renewal with changes of an information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title of Collection: CISA Gateway User Registration.

OMB Control Number: 1670–0009.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments and Private Sector Individuals.

Number of Annualized Respondents: 700.

Estimated Time Per Respondent: 0.167 hours for Registration, 0.167 hours for Training.

Total Annualized Burden Hours: 116.679 hours.

Total Annualized Respondent Opportunity Cost: $7,224.40.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $14,063.92.

Robert J. Costello,

Chief Information Officer, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2024–08744 Filed 4–23–24; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0009]

National Security Telecommunications Advisory Committee

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of partially closed Federal Advisory Committee meeting.

SUMMARY: CISA is publishing this notice to announce the President's National Security Telecommunications Advisory Committee (NSTAC) meeting on May 23, 2024, in Washington DC. This meeting will be partially closed to the public. The public can access the open portion of the meeting via teleconference.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Daylight Savings Time (EDT) on May 20, 2024. For more information on how to participate, please contact *NSTAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. EDT on May 16, 2024.

Written Comments: Written comments must be received no later than 5:00 p.m. EDT on May 20, 2024.

Meeting Date: The NSTAC will meet on May 23, 2024, from 1:00 to 4:30 p.m. EDT. The meeting may end early if the committee has completed its business.

ADDRESSES: The May 23, 2024 NSTAC Meeting's open session is set to be held from 3:15 to 4:30 p.m. EDT at 1650 Pennsylvania Avenue NW, Washington, DC 20504. Members of the public may participate via teleconference. For access to the conference call bridge, or to request special assistance, please email *NSTAC@cisa.dhs.gov* by 5:00 p.m. EDT on May 20, 2024. The NSTAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Comments: Members of the public are invited to provide comments on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/nstac* prior to the day of the meeting. Comments should be submitted by 5:00 p.m. EDT on May 20, 2024, and must be identified by Docket Number CISA–2024–0009. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@cisa.dhs.gov.* Include the Docket Number CISA–2024–0009 in the subject line of the email.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You

may wish to review the Privacy & Security Notice available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2024–0009.

A public comment period is scheduled to be held during the meeting from 4:00 to 4:10 p.m. EDT. Speakers who wish to participate in the public comment period must email *NSTAC@cisa.dhs.gov* to register. Speakers should limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Christina Berger, 202–701–6354, *NSTAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC is established under the authority of Executive Order (E.O.) 12382, dated September 13, 1982, as amended by E.O. 13286 and 14048, continued under the authority of E.O. 14109, dated September 30, 2023. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. 10 (Pub. L. 117–286). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will meet in an open session on Thursday, May 23, 2024, from 3:15 p.m. to 4:30 p.m. EDT to discuss current NSTAC activities and the government's ongoing cybersecurity and NS/EP communications initiatives. This open session will include: (1) an update on the administration's cybersecurity initiatives; (2) a keynote address;(3) an update on current NSTAC activities; and (4) a status update on the NSTAC Principles for Baseline Security Offerings from Cloud Service Providers Study.

The committee will also meet in a closed session from 1:00 to 3:00 p.m. EDT during which time: (1) senior government intelligence officials will provide a threat briefing concerning threats to NS/EP communications; and (2) engage NSTAC members in follow-on discussion on how future studies can help inform policy to mitigate threats.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(1), *The Government in the Sunshine Act,* it has been determined that a portion of the agenda requires closure.

These agenda items are the: (1) classified threat briefing and discussion, which will provide NSTAC members the opportunity to discuss information concerning threats to NS/EP communications with senior government intelligence officials; and (2) potential study topic discussion. The briefing is anticipated to be classified at the top secret/sensitive compartmented information level. Disclosure of these threats during the briefing, as well as vulnerabilities and mitigation techniques, is a risk to the Nation's cybersecurity posture because adversaries could use this information to compromise commercial and government networks. Subjects discussed during the potential study topics discussion are tentative and are under further consideration by the committee.

Therefore, this portion of the meeting is required to be closed pursuant to section 10(d) of FACA and 5 U.S.C. 552b(c)(1) because it will disclose matters that are classified.

Dated: April 18, 2024.

Christina Berger,

Designated Federal Officer, National Security Telecommunications Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2024–08741 Filed 4–23–24; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–OC–2024–N025; FXGO16600926000–245–FF09X60000]

Hunting and Wildlife Conservation Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of virtual meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a virtual meeting of the Hunting and Wildlife Conservation Council (Council), in accordance with the Federal Advisory Committee Act.

DATES:

Meeting: The Council will meet on Friday, May 17, 2024, from 11 a.m. to 3:30 p.m. (eastern time).

Registration: Registration to attend or participate in the meeting is required. The registration deadline is Monday, May 13, 2024. To register, please contact the Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**).

Public Comment: If you wish to provide oral public comment or provide a written comment for the Council to consider, contact the DFO (see **FOR FURTHER INFORMATION CONTACT**) no later than Monday, May 13, 2024.

Accessibility: The deadline for accessibility accommodation requests is Monday, May 13, 2024. For more information, please see *Accessibility Information* below.

ADDRESSES: The meeting will be held via a virtual meeting platform. To register and receive the web address and telephone number for virtual participation, contact the DFO (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, DFO, by email at *doug_hobbs@fws.gov,* or by telephone at 703–358–2336. 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

Under the authority of the Federal Advisory Committee Act (5 U.S.C. ch. 10), the Hunting and Wildlife Conservation Council (Council) was established to further the provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701–1785), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–ee), other statutes applicable to specific Department of the Interior bureaus, and Executive Order 13443 of August 16, 2007, ''Facilitation of Hunting Heritage and Wildlife Conservation'' (72 FR 46537, August 20, 2007). The Council's purpose is to provide recommendations to the Federal Government, through the Secretary of the Interior and the Secretary of Agriculture, regarding policies and endeavors that (a) benefit wildlife resources; (b) encourage partnership among the public, sporting conservation organizations, and Federal, State, Tribal, and territorial governments; and (c) benefit fair-chase recreational hunting and safe recreational shooting sports.

Meeting Agenda

Among other business to be addressed by the Council, the meeting will include:

- reports by Council subcommittees;
- discussion of and further consideration of the Council recommendations related to the management and future use of lead and

non-lead ammunition on the U.S. Fish and Wildlife Service's lands and waters, including discussion of a National Wildlife Refuge System concept for non-lead ammunition pilot programs;

- discussion and further consideration of a Council recommendation pertaining to land appraisal and land exchange processes at both the Department of the Interior and the Department of Agriculture;
- briefings from Federal agency staff on the fiscal year 2025 budget request for the U.S. Fish and Wildlife Service, mature and old-growth forest regulations by the U.S. Forest Service, and the Bureau of Land Management solar energy draft programmatic environmental impact statement; and
- a briefing on the name change of the U.S. Fish and Wildlife Service's Wildlife and Sport Fish Restoration program to the Office of Conservation Investment.

The Council will also hear public comment if members of the public make such requests. The final agenda and other related meeting information will be available on the Council website, *https://www.fws.gov/program/hwcc.*

Public Input

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Interested parties should contact the DFO in writing (see **FOR FURTHER INFORMATION CONTACT**) for placement on the public speaker list for this meeting. Requests to address the Council during the meeting will be accommodated in the order the requests are received. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the DFO up to 30 days following the meeting.

Accessibility Information

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Please contact the DFO (see **FOR FURTHER INFORMATION CONTACT**) no later than Monday, May 13, 2024, to give the U.S. Fish and Wildlife Service sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information on any comments you might have about this notice, 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.

Authority: 5 U.S.C. ch. 10.

Roya Mogadam,

Acting Assistant Director, Office of Communications.

[FR Doc. 2024–08723 Filed 4–23–24; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1364]

Certain Blood Flow Restriction Devices With Rotatable Windlasses and Components Thereof; Notice of a Commission Determination That the March 19, 2024, Initial Determination (Order No. 23) is an Order and Recommended Determination Rather Than an Initial Determination; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined that the March 19, 2024, initial determination (''ID'') (Order No. 23) issued by the presiding administrative law judge (''ALJ'') granting a motion to withdraw Complainants' request for a general exclusion order (''GEO'') in connection with the asserted trademarks and trade dress and to cancel the evidentiary hearing is properly issued in the form of an order rather than an initial determination. Order No. 23 also includes the ALJ's recommended determination (''RD'') on remedy and bonding, and thus, the Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 31, 2023, based on a complaint, as supplemented, filed by Composite Resources, Inc. of Rock Hill, South Carolina, and North American Rescue, LLC of Greer, South Carolina (collectively, ''Complainants''). 88 FR 34893–95 (May 31, 2023). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, sale for importation, or sale in the United States after importation of certain blood flow restriction devices with rotatable windlasses and components thereof that infringe one or more of: claims 1–17 of U.S. Patent No. 7,842,067 (''the '067 patent''), claims 1–30 of the U.S. Patent No. 8,888,807 (''the '807 patent''), and claims 1–13 of the U.S. Patent No. 10,016,203 (''the '203 patent''); United States Trademark Registration Nos. 3,863,064 and 5,064,378; and trade dress infringement in violation of Section 43(a) of the Lanham Act (15 U.S.C. 1125) the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* at 34893–94; *see* Complaint, ¶¶ 9–15. The complaint also requested the issuance of a GEO with respect to all of these allegations.

The Commission's notice of investigation named the following respondents: (1) Anping Longji Medical Equipment Factory of Hengshui City, China; Dongguanwin Si Hai Precision Mold Co., Ltd. of Dongguan, China; Eiffel Medical Supplies Co., Ltd. of Shenzhen, China; Empire State Distributors Inc. of Brooklyn, New York; EMRN Medical Equipment of LaSalle, Canada; GD Tianwu New Material Tech Co., Ltd. of Guangzhou, China; Hengshui Runde Medical Instruments Co., Ltd. of Hengshui City, China; Putian Dima Trading Co., Ltd. of Putian City, China; Rhino Inc. of Lewes, Delaware; Shanghai Sixu International Freight Agent Co., Ltd. Of Shanghai, China; Shenzhen Anben E-Commerce Co., Ltd. of Shenzhen, China; Shenzhen TMI Medical Supplies Co., Ltd. of Shenzhen, China; Shenzhen Yujie

Commercial and Trading Co., Ltd. of Shenzhen, China; Wuxi Emsrun Technology Co., Ltd. of Wuxi City, China; Wuxi Golden Hour Medical Technology Co., Ltd. of Wuxi City, China; and Wuxi Puneda Technology Co., Ltd. of Wuxi City, China (collectively, ''the Defaulting Respondents''); (2) Chaozhou Jiduo Trading Co., Ltd. of Chaozhou City, China; Dongguan Hongsui Electronic Commerce, Co., Ltd. of Dongguan City, China; Fuzhou Meirun Medical Equipment Technology Co., Ltd. of Fuzhou, China; Henan Eyocean E-Commerce Co., Ltd. of Zhengzhou, China; Huang Xia of Sangzi Town, China; Jingcai Jiang of Shenzhen, China; Shen Yi of Shenzhen, China; Shenzhen Janxle E E Commerce Co. of Shenzhen, China; Shenzhen Smart Medical Co. Ltd. of Shenzhen, China; Sun Minghui of Shenzhen, China; Xia Guo Long of Dongguan City, China; and Yinping Yin of Shenzhen, China (collectively, ''the Unserved Respondents''); and (3) Express Companies, Inc. of Oceanside, California, and SZY Holdings LLC of Brooklyn, New York (collectively, ''the Participating Respondents''). *Id.* The Office of Unfair Import Investigations (''OUII'') is also a party to this investigation.

The Commission terminated the Participating Respondents based on the entry of consent orders. *See* Order No. 7 (Aug. 9, 2023), *unreviewed by* Comm'n Notice (Sept. 5, 2023); Order No. 13 (Oct. 3, 2023), *unreviewed by* Comm'n Notice (Nov. 2, 2023). The Commission also terminated the Unserved Respondents based on the withdrawal of the complaint as to those respondents. *See* Order No. 10 (Aug. 22, 2023), *unreviewed by* Comm'n Notice (Sept. 20, 2023). The Commission also found the Defaulting Respondents in default. *See* Order No. 11 (Aug. 29, 2023), *unreviewed by* Comm'n Notice (Sept. 22, 2023).

On November 1, 2023, Complainants filed a motion to partially terminate the investigation with respect to the '807 and '203 patents. On November 2, 2023, the ALJ issued Order No. 14 granting the motion. Order No. 14 (Nov. 2, 2023), *unreviewed by* Comm'n Notice (Dec. 4, 2023).

On January 23, 2024, Complainants filed a motion to terminate claims 2, 3, 5–14, and 17 of the '067 patent. On January 25, 2024, the ALJ issued Order No. 19 granting the motion. Order No. 19 (Jan. 25, 2024), *unreviewed by* Comm'n Notice (Feb. 15, 2024). Therefore, only claims 1, 4, 15, and 16 remained asserted.

On December 22, 2023, Complainants filed a motion for summary determination on violation of section 337 with regard to the '067 patent, trademarks, and trade dress by those respondents who had been found in default in this investigation. Complainants later withdrew the portion of the motion concerning the trademark and trade dress violations. On February 7, 2024, the ALJ issued Order No. 20, granting the motion in part with respect to the claims 1, 4, 15, and 16 of the '067 patent. Order No. 20 (Feb. 7, 2024), *unreviewed by* Comm'n Notice (Mar. 6, 2024).

On March 1, 2024, Complainants filed a motion to terminate the investigation in part based on a withdrawal of its request for a GEO as to the trademark and trade dress claims and to cancel the hearing.

On March 19, 2024, the ALJ granted the motion and issued the subject order (Order No. 23) styled as an initial determination. Order No. 23 also includes the ALJ's RD on remedy and bonding. Specifically, the RD recommends that the Commission issue a GEO as to claims 1, 4, 15, and 16 of the '067 patent. Order No. 23 at 9–12. The RD further recommends that a limited exclusion order and a cease and desist order issue against each of the Defaulting Respondents in connection with the asserted claims of the '067 patent, as well as the asserted trademarks and the trade dress. *Id.* at 13–15. Finally, the RD recommends that the Commission set the bond at one hundred percent (100%). *Id.* at 15–16.

Upon review of Commission Rules 210.16, 210.21, and 210.42, 19 CFR 210.16, 210.21, 210.42, the Commission has determined that the ALJ's March 19, 2024, initial determination (Order No. 23) granting Complainants' motion to withdraw its request for a GEO as to the asserted trademark and trade dress claims and to cancel the hearing is an order rather than an initial determination. Commission Rule 210.42 does not include declaration or withdrawal of the requested remedies and/or cancellation of the hearing in the list of issues that must be decided in the form of an initial determination. Nor are such requests properly the subject of motions for termination of the investigation under Rule 210.21. Accordingly, the Commission treats Order No. 23 as an order and an RD on remedy and bonding, not subject to the procedures and deadlines in Rules 210.42–43, 19 CFR 210.42–43.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. In their initial submission, Complainants are also requested to identify the remedy sought and Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS

subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on May 2, 2024. Reply submissions must be filed no later than the close of business on May 9, 2024. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1364'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on April 18, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 18, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–08705 Filed 4–23–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1349]

Components for Certain Environmentally-Protected LCD Digital Displays and Products Containing the Same; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on April 16, 2024, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of section 337. The ALJ also issued a Recommended Determination on Remedy and Bond should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Joelle P. Justus, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 617–1998. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to components for certain environmentally-protected LCD digital displays and products containing the same that are imported, sold for importation, and/or sold after importation by Respondent Manufacturing Resources International, Inc. The Recommended Determination does not recommend issuance of the requested cease and desist order. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bond issued in this investigation on April 16, 2024. Comments should address whether issuance of the recommended remedial order 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 recommended remedial order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended order;

(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 recommended order within a commercially reasonable time; and

(v) explain how the recommended order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on May 20, 2024.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1349'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 18, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–08709 Filed 4–23–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; COPS Application Guide

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The office of Community Oriented Policing Services, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on February 7, 2024, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until May 24, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Dave Neely, Department of Justice, Office of Community Policing Services, 145 N St. NE, Washington, DC 20530, (202) 514–8553.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1103–0098. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Abstract: Under the Violent Crime and Control Act of 1994, the U.S. Department of Justice would request grant application information from state, local and tribal law enforcement agencies to properly award grant funds to advance public safety through community policing.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.
2. *Title of the Form/Collection:* COPS Application Package.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Application Attachment to SF–424, COPS. DOJ.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Law Enforcement Agencies.
5. *Obligation to Respond:* Voluntary.
6. *Total Estimated Number of Respondents:* 5,000.
7. *Estimated Time per Respondent:* 11 hours to review the instructions and complete the application.
8. *Frequency:* Annually.
9. *Total Estimated Annual Time Burden:* 55,000 total annual burden hours associated with this collection.
10. *Total Estimated Annual Other Costs Burden:* $0.
11. *If additional information is required, contact:* Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: April 19, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–08733 Filed 4–23–24; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given to announce a public meeting of the ACA. All meetings of the ACA are open to the public.

DATES: The meeting will be held on Tuesday June 4, 2024, The meeting will begin at approximately 1:30 p.m. Eastern Standard Time (EST) and end at approximately 4 p.m. EST. The meeting will reconvene on Wednesday, June 5, 2024, at 9:30 a.m. EST and adjourn at approximately 4:30 p.m. EST.

ADDRESSES: U.S. Department of Labor, Frances Perkins Building located at 200 Constitution Avenue NW, Washington, DC 20210.

Any updates to the agenda and meeting logistics will be posted on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room C–5321, Washington, DC 20210; Email: *AdvisoryCommitteeonApprenticeship@dol.gov;* Telephone: (202) 693–2796 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The ACA is a discretionary committee that was renewed by the Acting Secretary of Labor in accordance with the FACA (5 U.S.C. App. 2 § 10), as amended in 5 U.S.C. App. 2, and its implementing regulations (41 CFR 101–6 and 102–3). The ACA's Charter was renewed on May 11, 2023, and is active for two years. This will be the first meeting of the renewed ACA. All meeting materials, including all previous term materials, are posted here: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.* All meetings are open to the public. To promote greater access, webinar and audio conference technology will be used to support public participation in the meeting. In-person space for the meeting is limited. Please send an email to *AdvisoryCommitteeonApprenticeship@dol.gov* if you plan to attend the meeting in-person, no later than Tuesday, May 28, 2024. Members of the public that are unable to join the meeting in-person are encouraged to join the meeting virtually. Both the in-person and virtual login instructions will be posted prominently on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.* If individuals have special needs and/or disabilities that will require special accommodations, please contact Kenya Huckaby at (202) 693–3795 or via email at *huckaby.kenya@dol.gov* no later than Tuesday, May 28, 2024.

Instructions to Attend the Meeting In-Person: Send an email to *AdvisoryCommitteeonApprenticeship@dol.gov* no later than Tuesday, May 28, 2024, to request to attend the meeting in-person. As outlined above, DOL is located at 200 Constitution Avenue NW, Washington, DC 20210.

Instructions to Attend the Meeting Virtually: Virtual meeting participants have two options to access the meeting. Virtual meeting participants can access the meeting by computer or by phone. To access the meeting by computer, meeting participants will use the meeting link and event password below. To access the meeting by phone, meeting participants will use the dial-in number and access code below.

Tuesday, June 4, 2024

- Computer Access
  - *https://usdolevents.webex.com/usdolevents/j.php?MTID=m49a79d67c5d44367424bbea5a397292b*
  - Access code: 2824 377 2245
  - Webinar password: Welcome!24
- Telephone Access
  - Dial 877–465–7975
  - Access code: 2824 377 2245
  - Telephone password: 93526631

Wednesday, June 5, 2024

- Computer access
  - *https://usdolevents.webex.com/usdolevents/j.php?MTID=mac104df373fc771e1b7ef29142d1ef31*
  - Access code: 2831 404 4991
  - Webinar password: Welcome!24
- Telephone Access
  - Dial 877–465–7975
  - Access code: 2831 404 4991
  - Telephone password: 93526631

Virtual meeting instructions will also be posted on posted on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.* Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd via email at *AdvisoryCommitteeonApprenticeship@dol.gov* using the subject line ''June 2024 ACA Meeting.'' Such submissions will be included in the record for the meeting if received by Tuesday, May 28, 2024. See below regarding members of the public wishing to speak at the ACA meeting.

Purpose of the Meeting and Topics to Be Discussed: The primary purpose of the June 2024 ACA meeting is to onboard the new membership, provide updates regarding the National Apprenticeship system, and discuss planned activities for the future term. The agenda will focus on Federal initiatives, as well as highlighting current state and international apprenticeship partnerships. Anticipated agenda topics for this meeting include the following:

- Call to Order

- Welcome and Departmental Remarks
- Updates regarding the National Apprenticeship System
- ACA Road Map
- Federal, State, and International Initiatives and Partnerships
- Public Comment
- Adjourn

The agenda and meeting logistics may be updated should priority items come before the ACA between the time of this publication and the scheduled date of the ACA meeting. All meeting updates will be posted to the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.* Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Officer, Mr. John V. Ladd, via email at *AdvisoryCommitteeonApprenticeship@dol.gov,* by Tuesday, May 28, 2024. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–08687 Filed 4–23–24; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Report on Current Employment Statistics

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 May 24, 2024.

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 Current Employment Statistics (CES) program provides current monthly statistics on employment, hours, and earnings, by industry and geography. CES estimates are among the most visible and widely-used Principal Federal Economic Indicators (PFEIs). CES data are also among the timeliest of the PFEIs, with their release each month by the BLS in the Employment Situation, typically on the first Friday of each month. The statistics are fundamental inputs in economic decision processes at all levels of government, private enterprise, and organized labor. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 6, 2024 (89 FRN 8250).

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: Report on Current Employment Statistics.

OMB Control Number: 1220–0011.

Affected Public: Federal Government; State, Local and Tribal Governments; Businesses or other for-profits; Not-for-profit institutions.

Total Estimated Number of Respondents: 262,484.

Total Estimated Number of Responses: 1,658,664.

Total Estimated Annual Time Burden: 243,273 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. 2024–08689 Filed 4–23–24; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Thursday, May 9, 2024. This meeting will be held virtually from 10:00 a.m. to 4:00 p.m. EST. The Committee presents advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics, data science, and survey design.

The schedule and agenda for the meeting are as follows:

10:00 a.m. Commissioner's Welcome and Review of Agency Developments

10:30 a.m. New Producer Price Index for Postsecondary Education

1:00 p.m. How to Use Matched Data from the Occupational Safety and Health Administration's Injury Tracking Application (OSHA ITA) to Improve Survey of Occupational Injuries and Illnesses (SOII) Estimates

2:30 p.m. Current Population Survey Modernization

4:00 p.m. Approximate Conclusion

The meeting is open to the public. Any questions concerning the meeting should be directed to Sarah Dale, Bureau of Labor Statistics Technical Advisory Committee, at *BLSTAC@bls.gov.* Individuals planning to attend the meeting should register at *https://blstac.eventbrite.com.* Individuals who require special accommodations should contact Ms. Dale at least two days prior to the meeting date.

Signed at Washington, DC, this 19th day of April 2024.

Leslie Bennett,

Chief, Division of Management Systems.

[FR Doc. 2024–08728 Filed 4–23–24; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Thursday, May 16, 2024. This meeting will be held virtually.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities. The Committee advises on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The agenda for the meeting is as follows:

12:00 p.m. Commissioner's Welcome and Remarks

12:30 p.m. Quarterly Census of Employment and Wages (QCEW) Wage Dynamics

1:15 p.m. Labor Market Data on Managers and Supervisors

2:00 p.m. Break

2:15 p.m. Reaching new users: BLS Language Access Work

3:00 p.m. Touchpoints: *BLS.gov* Customer Satisfaction Survey

3:45 p.m. Discussion of Future Topics and Concluding Remarks

4:00 p.m. Conclusion

All times are eastern time. The meeting is open to the public. Anyone planning to attend the meeting should contact Ebony Davis, Data Users Advisory Committee, at *Davis.Ebony@bls.gov.* Any questions about the meeting should be addressed to Mrs. Davis. Individuals who require special accommodations should contact Mrs. Davis at least two days prior to the meeting date.

Signed at Washington, DC, this 19th day of April 2024.

Leslie Bennett,

Chief, Division of Management Systems.

[FR Doc. 2024–08727 Filed 4–23–24; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for Intertek Testing Services NA, Inc., (ITSNA) as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–1911 or email *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Intertek Testing Services NA, Inc. (ITSNA) as a NRTL. ITSNA's expansion covers the addition of four test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

ITSNA submitted an application dated February 15, 2021 (OSHA–2007–0039–0055), requesting the addition of four test standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing ITSNA's expansion application in the **Federal Register** on March 27, 2024 (89 FR 21284). The agency requested comments by April 11, 2024, but it received no comments in response to this notice.

To obtain or review copies of all public documents pertaining to the ITSNA application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2007–0039 contains all materials in the record concerning ITSNA's recognition. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined ITSNA's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that ITSNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant ITSNA's expanded scope of recognition. OSHA limits the expansion

of ITSNA's recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARDS FOR INCLUSION IN ITSNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 1973	Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER) Applications.
UL 2271	Batteries for Use in Light Electric Vehicle (LEV) Applications.
UL 2524	In-Building 2-Way Emergency Radio Communication Enhancement Systems.
UL 2743	Portable Power Packs.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, Chapter 2, Section VIII), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, ITSNA must abide by the following conditions of the recognition:

1. ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. ITSNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. ITSNA must continue to meet the requirements for recognition, including all previously published conditions on ITSNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of ITSNA as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on April 17, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–08686 Filed 4–23–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0056]

Voluntary Protection Programs; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Voluntary Protection Program.

DATES: Comments must be submitted (postmarked, sent, or received) by June 24, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov.* Documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2011–0056) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small

businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The Voluntary Protection Program (VPP) [1] established the efficacy of cooperative action among government, industry, and labor to address employee safety and health issues and to expand employee protection. To qualify, employers must meet OSHA's safety and health management criteria which focus on comprehensive management programs and active employee involvement to prevent or control worksite safety and health hazards. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance, and set their own more stringent standards, wherever necessary, to improve employee protection. Prospective VPP worksites must submit an application that includes:

- General applicant information (*e.g.,* site, corporate, and collective bargaining contact information).
- Injury and illness rate performance information (*i.e.,* number of employees and/or applicable contractors on-site, type of work performed and products produced, North American Industry Classification System (NAICS), and Recordable Injury and Illness Case Incidence Rate information.
- Safety and health management program information (*i.e.,* description of the applicant's safety and health management programs including how the programs successfully addresses management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training OSHA uses this information to determine whether an applicant is ready for a VPP on-site evaluation and as a verification tool during VPP on-site evaluations. Without this information, OSHA would be unable to determine which sites are ready for VPP status.

Each current VPP applicant is also required to submit an annual evaluation which addresses how that applicant is continuing the adherence to programmatic requirements. In 2008, OSHA modified procedures for VPP applicants, OSHA on-site evaluation, and Annual participant self-evaluation for applicants/participants subject to OSHA's Process Safety Management (PSM) Standard. Applicants that perform works that use or produce highly hazardous chemical exceeding specified limits covered under the PSM standard must submit responses to the PSM application supplement along with their VPP application.

Once in the VPP, the participant is required to submit an annual evaluation detailing the continued adherence to programmatic requirements. Applicants covered under the PSM standard are required to submit a PSM questionnaire a supplemental document as part of their annual submission. OSHA needs this information to ensure that the participant remains qualified to participate in the VPP between the on-site evaluations. Without this information, OSHA would be unable to determine whether applicants are maintaining excellent safety and health management programs during this interim period.

In 2009, with the publication of the **Federal Register** Notice (FRN), VPP revised the traditional focus on individual fixed worksites (site-based) by adding two new ways to participate: mobile workforce and corporate. A significant reorganization of the program helps clarify the multiple participation options now available.

Employees of VPP participants may apply to participate in the Special Government Employee (SGE) Program. The SGE Program offers private and public sector safety and health professionals and other qualified participants the opportunity to exchange ideas, gain new perspectives, and grow professionally while serving as full-fledged team members on OSHA's VPP on-site evaluations. In that capacity, SGEs may review company documents, assist with worksite walkthroughs, interview employees, and assist in preparing VPP on-site evaluation reports. Potential SGEs must submit an application that includes:

- SGE Eligibility Information Sheet (*i.e.,* applicant's name, professional credentials, site/corporate contact information, etc.);
- Current Resume;
- Optional Application for Federal Employment OF–612; and
- Confidential Financial Disclosure Report (OGE Form 450).

OSHA uses the SGE Eligibility Information Sheet to ensure that the potential SGE works at a VPP site and meets the minimum eligibility qualifications. The resume is required to provide a detailed description of their current duties and responsibilities as they relate to safety and health and the implementation of an effective safety and health management program. The OGE Form 450 is used to ensure that SGEs do not participate in on-site evaluations at VPP sites where they have a financial interest.

OSHA Challenge is designed to reach and guide employers and companies in all major industry groups who are strongly committed to improving their safety and health management programs and possibly pursuing recognition in the VPP. The Challenge Administrators application is used to: (1) conduct a preliminary analysis of the applicant's knowledge of safety and health management programs; and (2) make a determination regarding the applicant's qualifications to become a Challenge Administrator. Once a Challenge Administrator is approved, the Administrator will review each challenge candidate's application/annual submissions to ensure that all necessary information is provided, prior to forwarding to OSHA's National Office for acceptance and analysis.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in Voluntary Protection Programs. The agency is requesting an adjustment decrease from 90,500 hours to 69,657 hours, a difference of 20,843 hours. This decrease is due to the lack of Challenge Participation, lack of training of new SGE applicants and re-approval training of existing SGE's. The lingering effect of the COVID–19 Pandemic effected all OSHA Cooperative Programs.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

[1] Source: Adopted by OSHA on July 2,1982 (47 FR 29025).

Title: Voluntary Protection Programs (VPP).

OMB Control Number: 1218–0239.

Affected Public: Business or other for-profits.

Number of Respondents: 3,751.

Number of Responses: 3,295.

Frequency of Responses: Various.

Average Time per Response: Varies.

Estimated Total Burden Hours: 69,657.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR OSHA–2011–0056. You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on April 17, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–08690 Filed 4–23–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for TUV Rheinland of North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1911; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV Rheinland of North America, Inc. (TUVRNA), as a NRTL. TUVRNA's expansion covers the addition of two test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by NRTLs or applicant organizations for initial recognition, as well as for expansion or renewal of recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA submitted an application, dated June 7, 2023 (OSHA–2007–0042–0072), to expand recognition to include the addition of two test standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing TUVRNA's expansion application in the **Federal Register** on March 25, 2024 (89 FR 20705). The agency requested comments by April 9, 2024, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of TUVRNA's scope of recognition.

To review copies of all public documents pertaining to TUVRNA's application, go to *www.regulations.gov* or contact the OSHA Docket Office. Docket No. OSHA–2007–0042 contains all materials in the record concerning TUVRNA's recognition.

II. Final Decision and Order

OSHA staff examined TUVRNA's expansion application, their capability to meet the requirements of the test standard, and other pertinent information. Based on its review of this evidence, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVRNA's scope of recognition. OSHA limits the expansion of TUVRNA's recognition to testing and certification of products for demonstration of conformance to the test standards shown below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 61010–2–051	Electrical Equipment for Measurement, Control and Laboratory Use—Part 2—051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.
UL 61010–2–061	Electrical Equipment for Measurement, Control and Laboratory Use—Part 2—061: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including but not limited to, abiding by the following conditions of recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. TUVRNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA's scope of recognition, in all areas for which it has recognition.

OSHA hereby expands the scope of recognition of TUVRNA, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on April 17, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–08685 Filed 4–23–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following request for revision of the approved collection of research and development data in accordance with the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: 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 ADDITIONAL INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 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: National Science Foundation Research Traineeship (NRT) Monitoring System.

OMB Number: 3145–0263.

Type of Request: Intent to seek approval to renew an information collection.

Proposed Project: The National Science Foundation's (NSF's) Division of Graduate Education (DGE) in the Directorate for STEM Education (EDU) administers the NSF Research Traineeship (NRT) program. The NRT program is designed to encourage the development and implementation of bold, new, and potentially transformative models for STEM graduate education training. The NRT program seeks to ensure that graduate students in research-based master's and doctoral degree programs develop the skills, knowledge, and competencies needed to pursue a range of STEM careers. NRT is dedicated to effective training of STEM graduate students in high-priority interdisciplinary or convergent research areas through the use of a comprehensive traineeship model that is innovative, evidence-based, and aligned with changing workforce and research needs.

Previously, NRT awardees provided NSF with information on their activities through periodic research performance progress reports. The NRT monitoring system (also referred to as the NRT reporting system) has replaced these reports with a tailored program monitoring system that uses internet-based information and communication technologies to collect, review, and validate specific data on NRT awards. EDU is committed to ensuring the efficiency and effectiveness with which respondents provide and NSF staff can access and analyze data on funded projects within the NRT programs.

The NRT monitoring system includes subsets of questions aimed at the different project participants (*i.e.,* Principal Investigators (PIs), and trainees), and allows for data analysis and data report generation by authorized NSF staff. The collection generally includes three categories of descriptive data: (1) Staff and project participants (data that are necessary to determine individual-level treatment and control groups for future third-party study or for internal evaluation); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post-NSF-funding-level impacts). NRT awardees will be required to report data on an annual basis for the life of their award.

Use of the Information: NSF will primarily use the data from this collection for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers, who serve as advisors, including Committees of Visitors (COVs), the NSF's Office of the Inspector General, and as a basis for either internal or third-party evaluations of individual programs. This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2022–2026 Strategic Plan may be found at: *https://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf22068.*

Since this collection will primarily be used for accountability and evaluation purposes, including responding to queries from COVs and other scientific experts, a census, rather than sampling design, typically is necessary. At the individual project level, funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under this collection will serve as baseline data for separate research and evaluation studies.

NSF-funded contract or grantee researchers and internal or external evaluators in part may identify control, comparison, or treatment groups for NSF's education and training portfolio using some of the descriptive data gathered through this collection to conduct well-designed, rigorous research and portfolio evaluation studies.

Burden on the Public: Estimated at 2–16 hours per respondent for 4080 respondents for a total of 5,150 hours (per year).

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.

Dated: April 19, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–08766 Filed 4–23–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263; NRC–2023–0031]

Northern States Power Company; Monticello Nuclear Generating Plant Unit 1; Draft Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission

ACTION: Request for comment; public comment meetings.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 26, Second Renewal, Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, NUREG–1437, regarding the proposed subsequent renewal of Renewed Facility Operating License No. DPR–22, for an additional 20 years of operation for Monticello Nuclear Generating Plant, Unit 1 (Monticello). Monticello is located in central Minnesota on the banks of the Mississippi River in Sherburne and Wright Counties, approximately 38 miles northwest of Minneapolis, MN. Possible alternatives to the proposed action of subsequent license renewal (SLR) include no action and reasonable replacement power alternatives.

DATES: The staff will hold two public meetings, one in-person near Monticello and one through an online webinar and teleconference call, on the draft site-specific environmental impact statement (EIS), including a presentation on the preliminary findings and a transcribed public comment session. The virtual meeting will be held May 8, 2024, at 1 p.m. central time (CT). The in-person meeting will be held on May 15, 2024, at 6 p.m. CT, at the Monticello Community Center, South Mississippi Room, 505 Walnut St., Monticello, MN 55362. The in-person public meeting will be preceded by an open house from 5–6 p.m. CT, at the Monticello Community Center. The public meeting details can be found on the NRC's Public Meeting Schedule at *https://www.nrc.gov/pmns/mtg.* Members of the public are invited to submit comments by June 10, 2024. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before that date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0031. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email:* Comments may be submitted to the NRC electronically using the email address *MonticelloEnvironmental@nrc.gov.*
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jessica Umaña, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5207; email: *Jessica.Umana@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0031 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this action using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0031.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* Draft Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 26, Second Renewal, Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, NUREG–1437, is available in ADAMS under Accession No. ML24102A276.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. ET, Monday through Friday, except Federal holidays.
- *Public Library:* A copy of the draft Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 26, Second Renewal, Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, NUREG–1437, regarding the proposed subsequent renewal of Renewed Facility Operating License Nos. DPR–22, for an additional 20 years of operation for Monticello, will be available for public review at the Monticello Great River Regional Library, 200 W 6th St., Monticello, MN 55362.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0031 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC is issuing for public comment draft Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 26, Second Renewal Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, NUREG–1437, regarding the proposed subsequent renewal of Renewed Facility Operating License No. DPR–22, for an additional 20 years of operation for Monticello. Draft Site-Specific Supplement 26, Second Renewal, includes a preliminary analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. It considers the impacts of all SLR issues applicable to Monticello SLR on a site-specific basis.

Based on the NRC staff's (i) review of the SLR application, which includes the environmental report, supplemental documents, and the licensee's responses to the NRC staff's requests for additional information; (ii) consultation with Federal, State, Tribal, and local governmental agencies and consideration of input from other stakeholders; and (iii) independent environmental review as documented in the draft site-specific EIS, the NRC staff's preliminary recommendation is that the adverse environmental impacts of subsequent license renewal for Monticello are not so great that preserving the option of subsequent license renewal for energy-planning decisionmakers would be unreasonable.

Detailed information about the subsequent license renewal process can be found on the NRC's public website, under Reactor License Renewal, at *https://www.nrc.gov/reactors/operating/licensing/renewal.html.* Materials involving the request to renew the operating licenses for Monticello are available for public inspection at the NRC's PDR, and at *https://www.nrc.gov/reactors/operating/licensing/renewal/subsequent-license-renewal.html.*

Dated: April 19, 2024.

For the Nuclear Regulatory Commission.

Stephen S. Koenick,

Chief, Environmental Project Management Branch 1, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024–08746 Filed 4–23–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1048, 50–390, and 50–391; NRC–2024–0064]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Independent Spent Fuel Storage Installation; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued an exemption to Tennessee Valley Authority permitting Watts Bar Nuclear Plant to load five of the model 37 multi-purpose canisters (MPC) with continuous basket shims beginning July 2024 in the HI–STORM Flood/Wind MPC Storage System at its Watts Bar Nuclear Plant, Units 1 and 2 independent spent fuel storage installation in a storage condition where the terms, conditions, and specifications in the Certificate of Compliance No. 1032, Amendment No. 0, Revision No. 1 are not met.

DATES: The exemption was issued on April 17, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0064 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0064. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System*

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: April 19, 2024.

For the Nuclear Regulatory Commission.

Yoira Diaz-Sanabria,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety, and Safeguards.

Attachment—Exemption.

NUCLEAR REGULATORY COMMISSION

Docket Nos. 72–1048, 50–390, and 50–391

Tennessee Valley Authority; Watts Bar Nuclear Plant Units 1 and 2; Independent Spent Fuel Storage Installation

I. Background

Tennessee Valley Authority (TVA) is the holder of Facility Operating License Nos. NPF–90 and NPF–96, which authorize operation of the Watts Bar Nuclear Plant (WBN), Units 1 and 2 in Rhea County, Tennessee, pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities.'' The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect.

Consistent with 10 CFR part 72, subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites,'' a general license is issued for the storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. TVA is authorized to operate nuclear power reactors under 10 CFR part 50 and holds a 10 CFR part 72 general license for storage of spent fuel at the WBN ISFSI. Under the terms of the general license, TVA stores spent fuel at its WBN ISFSI using the HI–STORM Flood/Wind (FW) Multi-Purpose Canister (MPC) Storage System in accordance with Certificate of Compliance (CoC) No. 1032, Amendment No. 0, Revision No. 1.

II. Request/Action

By a letter dated February 28, 2024 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML24059A369), and supplemented on March 18, 2024 (ML24078A257), TVA requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 that require WBN to comply with the terms, conditions, and specifications of the CoC No. 1032, Amendment No. 0, Revision No. 1 (ML16112A309). If approved, TVA's exemption request would accordingly allow WBN to load MPCs with continuous basket shims (CBS) (*i.e.,* MPC–37–CBS), an unapproved, variant basket design, in the HI–STORM FW MPC Storage System, and thus, to load the systems in a storage condition where the terms, conditions, and specifications in the CoC No. 1032, Amendment No. 0, Revision No. 1 are not met.

TVA currently uses the HI–STORM FW MPC Storage System under CoC No. 1032, Amendment No. 0, Revision No. 1, for dry storage of spent nuclear fuel in MPC–37 at the WBN ISFSI. Holtec International (Holtec), the designer and manufacturer of the HI–STORM FW MPC Storage System, developed a variant of the design with CBS for the MPC–37, known as MPC–37–CBS. Holtec performed a non-mechanistic tip-over analysis with favorable results and implemented the CBS variant design under the provisions of 10 CFR 72.48, ''Changes, tests, and experiments,'' which allows licensees to make changes to cask designs without a CoC amendment under certain conditions (listed in 10 CFR 72.48(c)). After evaluating the specific changes to the cask designs, the NRC determined that Holtec erred when it implemented the CBS variant design under 10 CFR 72.48, as this is not the type of change allowed without a CoC amendment. For this reason, the NRC issued three Severity Level IV violations to Holtec (ML24016A190).

TVA's near-term loading campaign for the WBN ISFSI includes plans to load five MPC–37–CBS in the HI–STORM FW MPC Storage System beginning in July 2024. While Holtec was required to submit a CoC amendment to the NRC to seek approval of the CBS variant design, such a process will not be completed in time to inform decisions for this near-term loading campaign. Therefore, TVA submitted this exemption request in order to allow for future loading of five MPC–37–CBS beginning in July 2024 at the WBN ISFSI. This exemption is limited to the use of MPC–37–CBS in the HI–STORM FW MPC Storage System only for the specific near-term planned loading of five canisters using the MPC–37–CBS variant basket design.

III. Discussion

Pursuant to 10 CFR 72.7, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

This exemption would allow TVA to load five MPC–37–CBS in the HI–STORM FW MPC Storage System, beginning July 2024, at its WBN ISFSI in a storage condition where the terms, conditions, and specifications in the CoC No. 1032, Amendment No. 0, Revision No. 1, are not met. WBN is requesting an exemption from the provisions in 10 CFR part 72 that require the licensee to comply with the terms, conditions, and specifications of the CoC for the approved cask model it uses. Section 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR part 72. This authority to grant exemptions is consistent with the Atomic Energy Act of 1954, as amended, and is not otherwise inconsistent with NRC's regulations or other applicable laws. Additionally, no other law prohibits the activities that would be authorized by the exemption. Therefore, the NRC concludes that there is no statutory prohibition on the issuance of the requested exemption, and the NRC is authorized to grant the exemption by law.

B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security

This exemption would allow TVA to load five MPC–37–CBS in the HI–STORM FW MPC Storage System, beginning July 2024, at the WBN ISFSI in a storage condition where the terms, conditions, and specifications in the CoC No. 1032, Amendment No. 0, Revision No. 1, are not met. In support of its exemption request, TVA asserts that issuance of the exemption would not endanger life or property because a tip-over or handling event is administratively controlled, and that the containment boundary would be maintained in such an event. TVA relies, in part, on the approach in the NRC's Safety Determination Memorandum (ML24018A085). The NRC issued this Safety Determination Memorandum to address whether, with respect to the enforcement action against Holtec regarding this violation, there was any need to take an immediate action for the cask systems that were already loaded with non-compliant basket designs. The Safety Determination Memorandum documents a risk-informed approach concluding that, during the design basis event of a non-mechanistic tip-over, the fuel in the basket in the MPC–37–CBS remains in a subcritical condition.

TVA also provided site-specific technical information, as supplemented, including information explaining why the use of the approach in the NRC's Safety Determination Memorandum is appropriate for determining the safe use of the CBS variant baskets at the WBN ISFSI. Specifically, TVA described that the analysis of the tip-over design basis event that is relied upon in the NRC's Safety Determination Memorandum, which demonstrates that the MPC confinement barrier is maintained, is documented in the updated final safety analysis report (UFSAR) for the HI–STORM FW MPC Storage System CoC No. 1032, Amendment 0, Revision No. 1 that is used at the WBN site. TVA stated the transporter for handling of the HI–STORM FW MPC Storage System at the WBN ISFSI has redundant drop protection features and was designed, fabricated, and tested in accordance with the applicable codes described in the CoC No. 1032.

Additionally, TVA provided specific information from WBN's 72.212 Evaluation Report, Revision 5, indicating the calculated total values for annual dose to any real individual who is located beyond the controlled area are shown to be well below the limits required by 10 CFR 72.104(a), ''Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS.'' The analysis of a design basis accident scenario also demonstrates compliance with 72.106, ''Controlled area of an ISFSI or MRS.'' Specifically, TVA described that, in the highly unlikely event of a tip-over, any potential fuel damage from a non-mechanistic tip-over event would be localized, the confinement barrier would be maintained, and the shielding material would remain intact. Coupled with the distance of the WBN ISFSI to the site area boundary, TVA concluded that compliance with 72.104 and 72.106 is not impacted by approving this exemption request.

The NRC staff reviewed the information provided by TVA and concludes that issuance of the exemption would not endanger life or property because the administrative controls TVA has in place at the WBN ISFSI sufficiently minimize the possibility of a tip-over or handling event, and that the containment boundary would be maintained in such an event. The staff confirmed that these administrative controls comply with the technical specifications and UFSAR for the HI–STORM FW MPC Storage System CoC No. 1032, Amendment 0, Revision No. 1 that is used at the WBN site. In addition, the staff confirmed that the information provided by TVA regarding WBN's 72.212 Evaluation Report, Revision 5, demonstrates that the consequences of normal and accident conditions would be within the regulatory limits of the 10 CFR 72.104 and 10 CFR 72.106. The staff also determined that the requested exemption is not related to any aspect of the physical security or defense of the WBN ISFSI; therefore, granting the exemption would not result in any potential impacts to common defense and security.

For these reasons, the NRC staff has determined that under the requested exemption, the storage system will continue to meet the safety requirements of 10 CFR part 72 and the offsite dose limits of 10 CFR part 20 and, therefore, will not endanger life or property or the common defense and security.

C. The Exemption Is Otherwise in the Public Interest

The proposed exemption would allow WBN to load five MPC–37–CBS in the HI–STORM FW MPC Storage System beginning in July 2024, at the WBN ISFSI, even though the CBS variant basket design is not part of the approved CoC No. 1032, Amendment No. 0, Revision No. 1. According to TVA, the exemption is in the public interest because not being able to load fuel into dry storage in the future loading campaign would impact TVA's ability to offload fuel from the WBN reactor units, consequently impacting continued safe reactor operation.

TVA stated that to delay the future loading would impact the ability to effectively manage the margin to full core discharge reserve in the WBN Unit 1 and Unit 2 spent fuel pools. WBN's upcoming loading campaign was originally scheduled to begin on January 29, 2024, but was postponed until July 2024 . Any further delay would lead to insufficient space in the spent fuel pool for core offload and the shutdown of WBN Unit 2, which in turn would potentially impact the energy supply in the area. According to TVA, the planned July 2024 loading campaign is the latest, and only opportunity for cask loading to avoid loss of full core reserve in 2025.

For the reasons described by TVA in the exemption request, the NRC agrees that it is in the public interest to grant the exemption. If the exemption is not granted, in order to comply with the CoC, WBN would have to keep spent fuel in the spent fuel pool if it is not permitted to be loaded into casks for future loading. This would impact the ability to manage the margin for full core reserve in the WBN spent fuel pool. Increased inventory in the spent fuel pool would likely require additional fuel moves, which could in turn increase dose to workers and the risk of accidents during fuel handling operations. Moreover, once the spent fuel pool capacity is reached, the ability to refuel the operating reactor is limited, thus affecting continued reactor operations. As described by TVA, this scenario would possibly result in the shutdown of one unit, which could potentially impact the energy supply in the area.

Therefore, the staff concludes that approving the exemption is in the public interest.

Environmental Consideration

The NRC staff also considered whether there would be any significant environmental impacts associated with the exemption. For this proposed action, the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The environmental assessment concluded that the proposed action would not significantly impact the quality of the human environment. The NRC staff concluded that the proposed action would not result in any changes in the types or amounts of any radiological or non-radiological effluents that may be released offsite,

and there would be no significant increase in occupational or public radiation exposure because of the proposed action. The environmental assessment and the finding of no significant impact was published on April 17, 2024 (89 FR 27465).

IV. Conclusion

Based on these considerations, the NRC has determined that, pursuant to 10 CFR 72.7, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC grants TVA an exemption from the requirements of §§ 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 with respect to the future loading in the HI–STORM FW MPC Storage System of five MPC–37–CBS beginning in July 2024.

This exemption is effective upon issuance.

Dated: April 17, 2024.

For the Nuclear Regulatory Commission.

Bernard H. White,

Acting Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2024–08769 Filed 4–23–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2022–34; MC2024–231 and CP2024–237; MC2024–234 and CP2024–240]

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:* April 25, 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. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2022–34; *Filing Title:* Notice of United States Postal Service of Filing Modifications to Rates Under Inbound Competitive Multi-Service IRA–USPS II Agreement; *Filing Acceptance Date:* April 17, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Samuel Robinson; *Comments Due:* April 25, 2024.

2. *Docket No(s).:* MC2024–231 and CP2024–237; *Filing Title:* Request of the United States Postal Service to Add Global Expedited Package Services—Non-Published Rates 16 (GEPS—NPR 16) to the Competitive Products List and Notice of Filing GEPS—NPR 16 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* April 17, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Samuel Robinson; *Comments Due:* April 25, 2024.

3. MC2024–234 and CP2024–240; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 56 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 17, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alireza Motameni; *Comments Due:* April 25, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–08717 Filed 4–23–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99991; File No. SR–FINRA–2024–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Retire the FINRA Rule 10000 Series (Code of Arbitration Procedure)

April 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 April 17, 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. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule

[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).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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 retire the FINRA Rule 10000 Series (Code of Arbitration Procedure) that governs arbitration and mediation claims filed in the forum administered by FINRA Dispute Resolution Services (''DRS'') prior to April 16, 2007.

The text of the proposed rule change is available on FINRA's website at *http://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

The FINRA Rule 10000 Series (''old Code'') applies to arbitration and mediation claims filed in the DRS forum prior to April 16, 2007. As part of a comprehensive plan to reorganize and simplify the old Code, FINRA previously separated the old Code into three sections: the Code of Arbitration Procedure for Customer Disputes (''Customer Code''); the Code of Arbitration Procedure for Industry Disputes (''Industry Code''); and the Code of Mediation Procedure (''Mediation Code'') (together, ''Codes'').[4] The Codes apply to claims filed in the DRS forum on or after April 16, 2007.[5]

The proposed rule change would retire the old Code. All mediation and arbitration claims that were filed in the DRS forum prior to April 16, 2007, and governed by the old Code, have closed. Thus, the old Code is no longer applicable to any mediation or arbitration claims filed in the DRS forum.

FINRA has filed the proposed rule change for immediate effectiveness.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] 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.

The proposed rule change will protect investors and the public interest by eliminating potential confusion and providing greater regulatory clarity to forum users regarding the rules applicable to claims filed in the DRS forum as it will retire the old Code, which is no longer applicable to any arbitration or mediation claims filed in the DRS forum.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would retire the old Code that is no longer applicable to any arbitration or mediation claims filed in the DRS forum and, therefore, would not have additional economic impacts on FINRA members or their associated persons.

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[7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–FINRA–2024–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–FINRA–2024–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 52705 (October 31, 2005), 70 FR 67525 (November 7, 2005) (Order Approving File No. SR–NASD–2004–013); Securities Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (Order Approving File Nos. SR–NASD–2003–158 and SR–NASD–2004–011). *See also* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File Nos. SR–FINRA–2008–021; SR–FINRA–2008–022; SR–FINRA–2008–026; SR–FINRA–2008–028 and SR–FINRA–2008–029) (consolidating NASD rules, including the Codes, as FINRA rules in the consolidated FINRA rulebook).

[5] The FINRA Rule 12000 Series contains the Customer Code; the FINRA Rule 13000 Series contains the Industry Code; and the FINRA Rule 14000 Series contains the Mediation Code.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

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–2024–005 and should be submitted on or before May 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–08688 Filed 4–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99989; File No. SR–IEX–2024–06]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Transaction Fees for Tape B Securities

April 18, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 8, 2024, the Investors Exchange LLC (''IEX'' 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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[6] (the ''Fee Schedule'') pursuant to IEX Rule 15.110(a) and (c). Changes to the Fee Schedule pursuant to this proposal are effective upon filing,[7] and will be operative on May 1, 2024.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to modify the transaction fees applicable to most[8] displayed executions of Tape B securities.[9] As proposed, the Exchange will increase the rebate paid for executions of displayed liquidity adding orders in Tape B securities with an execution price of $1.00 per share or more from $0.0004 to $0.0014 per share, increase the fee for executions of most[10] displayed liquidity removing orders in Tape B securities from $0.0010 to $0.0020 per share (unless a lower fee applies), and introduce two new fee codes to reflect these fee changes. IEX is not proposing any changes to executions that add or remove non-displayed liquidity in Tape B securities, which will continue to be subject to the same fees charged for executions in Tape A and C securities.[11] The Exchange notes that other exchanges also offer different fees for Tape B executions that are designed to incentivize the posting of displayed liquidity in Tape B securities.[12] IEX's proposed fee structure for executions of Tape B securities is less than or in line with other exchanges, but with lower access fees and rebates and without the use of any volume-based pricing.[13]

IEX is making this proposal to incentivize the posting of displayed liquidity in Tape B securities by increasing the rebate applied to those orders, thereby promoting price discovery and market quality on the Exchange, which the Exchange believes benefits all Members and market participants. The Exchange periodically assesses its fee structure. Based upon a recent assessment, the Exchange believes that the proposed pricing change would further incentivize Members to submit displayed orders in Tape B securities priced at or above $1.00 per share.

[9] 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.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* IEX Rule 1.160(s).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] This fee proposal will not change the fees charged or fee codes applied for Retail and Retail Liquidity Providing executions of Tape B securities, which execute for free. Additionally, while the fee proposal includes a fee code change for all other executions of Tape B securities that are priced at less than $1.00 per share, the fees charged for such executions will not change. Finally, as described *infra,* certain pegged order types that by design are not likely to interact with displayed liquidity will not be subject to the increased fees charged for taking displayed liquidity in Tape B securities.

[9] ''Tape B securities'' are securities listed on any national securities exchange other than the New York Stock Exchange or The Nasdaq Stock Market.

[10] *See supra* note 5.

[11] As discussed below, IEX is proposing to introduce a new fee code that will apply to non-displayed adding or removing executions of Tape B securities, but the fees charged for these executions will be unchanged.

[12] *See, e.g.,* MEMX Equities Fee Schedule (effective April 1, 2024), available at *https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/* (paying an ''additive rebate'' of $0.0002 per share for Tape B securities if the member satisfies a volume threshold in its Tape B trades, but offering no similar rebate for Tape A or C securities); Nasdaq Equity 7, Section 118(a)(1), available at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section_118_nasdaq_market_center_order_execution_and_routing* (paying a supplemental rebate of $0.0001 per share for Tape B displayed liquidity providing orders, but offering no similar rebate for Tape A or C securities).

[13] *See, e.g.,* MEMX Equities Fee Schedule, supra, note 9 (offering rebates for adding displayed Tape B liquidity of $0.0015 to $0.0035, depending upon trading volume, and charging as much as $0.0030 to remove Tape B liquidity); Nasdaq Equity 7, Section 118(a)(1), supra, note 9 (offering rebates for adding displayed Tape B liquidity of $0.0028 to $0.0036, depending upon trading volume, and charging as much as $0.0030 to remove Tape B liquidity).

Fee Schedule Changes

IEX proposes to increase the rebate it pays for adding displayed liquidity in Tape B securities from $0.0004 per share to $0.0014 per share for executions priced at or above $1.00 per share. ''Sub-dollar'' [14] executions of Tape B securities that add displayed liquidity will continue to execute for free. Consistent with the higher rebate IEX will pay for adding displayed liquidity in Tape B securities, IEX proposes to increase the fee for removing displayed liquidity in Tape B securities from $0.0010 per share to $0.0020 per share. Sub-dollar executions of Tape B securities that remove displayed liquidity will continue to be charged 0.09% of the Total Dollar Value (''TDV'') of the execution.

IEX does not propose to change the fee ($0.0010 per share) currently applicable to Discretionary Peg (''D-Peg''),[15] Fixed Midpoint Peg (''FM-Peg''),[16] Midpoint Peg (''M-Peg),[17] or Primary Peg (''P-Peg'') [18] orders that remove displayed liquidity in Tape B securities. IEX notes that each of these four order types is designed to execute within the spread (*i.e.,* at a price between the NBBO [19]). IEX understands that Members and other market participants typically use these order types with the expectation that they will either add or remove non-displayed liquidity, and that they will not execute against displayed liquidity. However, these four order types may execute against displayed orders in certain ''edge case'' scenarios, such as when a resting D-Peg order is invited to Recheck the Order Book [20] and matches with a displayed odd lot order, or when an incoming M-Peg order matches with a displayed order standing its ground in a locked or crossed market. Currently, in these circumstances, the non-displayed pegged order is charged the same fee (*i.e.,* $0.0010 per share) as if it traded with a non-displayed order (Fee Code Combination TL). To provide greater fee determinism to its Members and consistent with current practice, IEX proposes to continue charging $0.0010 per share for D-Peg, FM-Peg, M-Peg, and P-Peg orders that remove displayed liquidity in a Tape B security in one of the above-listed circumstances.

Notwithstanding this exception, if an incoming Post Only [21] order for a Tape B security executes against a resting M-Peg or FM-Peg order with the Trade Now [22] instruction, IEX proposes to charge the M-Peg or FM-Peg order a fee of $0.0020 per share, not the $0.0010 per share fee that would otherwise apply had the M-Peg or FM-Peg order executed against a displayed order for a Tape B security. IEX is proposing to make this distinction because Members that include a Trade Now instruction on their M-Peg or FM-Peg orders have thereby specified their willingness to match with incoming Post Only orders, and thus indicated their willingness to pay the $0.0020 per share fee IEX will charge for taking displayed liquidity in Tape B securities.

IEX is not proposing to change the fees charged or fee codes applied to Retail [23] or Retail Liquidity Provider [24] orders that execute in Tape B securities. Thus, a Retail order that takes liquidity from a non-displayed order in a Tape B security will be assigned Fee Code Combination TIR (free execution), and the non-displayed order will be assigned Fee Code Combination MIB (fee of $0.0010 per share). Relatedly, a Retail order that takes liquidity from a displayed odd lot order in a Tape B security will be assigned Fee Code Combination TLR (free execution), and the displayed odd lot order will be assigned Fee Code Combination MLB (rebate of $0.0014 per share).

IEX also proposes to introduce two new Fee Code Modifiers: ''B'' and ''K'' to reflect the proposed fee changes. Fee Code Modifier B would be included on any execution report for an execution of a Tape B security, with the exception of executions of Retail and Retail Liquidity Provider orders, which will continue to execute for free, as described above. In addition, Fee Code Modifier K would be included on execution reports for D-Peg, FM-Peg, M-Peg, or P-Peg orders that remove displayed liquidity in a Tape B security in the circumstances discussed above.

IEX also proposes to add two new footnotes to the Fee Schedule: (i) proposed Footnote 2, which would apply to Fee Code Modifier B, and (ii) proposed Footnote 3, which would apply to Fee Code Combination TLBK. Proposed Footnote 2 reads in full:

Fee Code B: Fee Code B applies to all executions of Tape B securities, other than executions of Retail and Retail Liquidity Provider orders and executions with Base Fee Codes X, O, C, H, and P.[25]

And Proposed Footnote 3 reads in full:

TLBK will not apply to Midpoint Peg and Fixed Midpoint Peg orders with Trade Now functionality enabled that take liquidity from an incoming Post Only order for a Tape B security; such executions will be assigned Fee Code Combination TLWB.

IEX proposes to add these Fee Codes to the Fee Code Modifiers table on the IEX Fee Schedule as follows (internal footnotes omitted):

Additional fee codes	Description	Fee
B	Tape B security	See Relevant Fee Code Combinations Below.
K	Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity (Tape B).	See Relevant Fee Code Combinations Below.

Additionally, IEX proposes to add nine new Fee Code Combinations to the Additional Fee Code Combinations and Associated Fees table that reflect the fees IEX proposes to assess for executions involving a Tape B security: [26]

[14] ''Sub-dollar'' refers to orders or executions priced at less than $1.00 per share.

[15] *See* IEX Rule 11.190(b)(10).

[16] *See* IEX Rule 11.190(b)(19).

[17] *See* IEX Rule 11.190(b)(9).

[18] *See* IEX Rule 11.190(b)(8).

[19] *See* IEX Rule 1.160(u).

[20] *See* IEX Rule 11.230(a)(4)(D).

[21] *See* IEX Rule 11.190(b)(20).

[22] When an incoming Post Only order matches a resting order with a Trade Now instruction, the resting order converts into an executable order that removes liquidity against the incoming Post Only order, and the incoming Post Only order becomes the liquidity adding order. *See* IEX Rule 11.190(b)(21). A Trade Now instruction cannot be added to a D-Peg or P-Peg order. *See* IEX Rules 11.190(b)(8) and 11.190(b)(10).

[23] *See* IEX Rule 11.190(b)(15).

[24] *See* IEX Rule 11.190(b)(14). Retail Liquidity Provider orders can only match with Retail orders and will always be assigned Fee Code Combination MIA (free execution), irrespective of if the execution is a Tape B security.

[25] Fee Code X applies to securities that trade in the Opening Cross. Fee Codes O, C, H, and P are the Auction Match fee codes. As reflected in proposed footnote 2, these fee codes will continue to apply to Tape B securities.

[26] As described above, all nine of the following Fee Code Combinations will be modified by proposed footnote 2.

• Fee Code Combination MIB would apply to an order that adds non-displayed liquidity in a Tape B security. These executions will be charged a fee of $0.0010 per share for executions at or above $1.00 and 0.10% of the TDV for sub-dollar executions.

• Fee Code Combination MLB would apply to an order that adds displayed liquidity in a Tape B security. These executions will be paid a rebate of $0.0014 per share for executions at or above $1.00 and execute for free for sub-dollar executions.

• Fee Code Combination MLYB would apply to a Post Only order that executes on entry with a contra-side order with the Trade Now instruction in a Tape B security. These executions will be paid a rebate of $0.0014 per share. Because the Exchange will disregard the Post Only instruction on sub-dollar orders,[27] IEX proposes to have the ''Executions below $1.00'' column of the Additional Fee Code Combinations and Associated Fees table column read ''N/A''.[28]

• Fee Code Combination TIB would apply to an order that removes non-displayed liquidity in a Tape B security. These executions will be charged a fee of $0.0010 per share for executions at or above $1.00 and 0.10% of TDV for sub-dollar executions.

• Fee Code Combination TIYB would apply to a Post Only order priced at $1.00 or more that removes non-displayed liquidity in a Tape B security on entry. These executions will be charged a fee of $0.0010 per share for executions at or above $1.00. Because the Exchange will disregard the Post Only instruction on sub-dollar orders,[29] IEX proposes to have the ''Executions below $1.00'' column of the Additional Fee Code Combinations and Associated Fees table read ''N/A''.[30]

• Fee Code Combination TLB would apply to an order that removes displayed liquidity in a Tape B security. These executions will be charged a fee of $0.0020 per share for executions at or above $1.00 and 0.09% of TDV for sub-dollar executions.

• Fee Code Combination TLBK would apply to a D-Peg, FM-Peg, M-Peg, or P-Peg order that removes displayed liquidity in a Tape B security. These executions will be charged a fee of $0.0010 per share for executions at or above $1.00 and 0.09% of TDV for sub-dollar executions. As described above, Fee Code Combination TLBK will be modified by proposed footnote 2, which explains that M-Peg and FM-Peg orders with a Trade Now instruction that execute against an incoming Post Only order will be assigned Fee Code Combination TLWB, and will not be assigned Fee Code Combination TLBK.

• Fee Code Combination TLYB would apply to a Post Only order priced at $1.00 or more that removes displayed liquidity on entry in a Tape B security. These executions will be charged a fee of $0.0020 per share. Because the Exchange will disregard the Post Only instruction on sub-dollar orders,[31] IEX proposes to have the ''Executions below $1.00'' column of the Additional Fee Code Combinations and Associated Fees table read ''N/A''.[32]

• Fee Code Combination TLWB would apply to a resting non-displayed order with the Trade Now instruction that executes against an incoming Post Only order priced at $1.00 or more per share. These executions will be charged a fee of $0.0020 per share. Because the Exchange will disregard the Post Only instruction on an incoming sub-dollar orders,[33] that order will not trigger a resting order with the ''Trade Now'' instruction to become the taking order. Therefore, Fee Code Combination TLWB would never apply to a resting non-displayed order that matches with an incoming sub-dollar order with a Post Only instruction, and IEX proposes to have the ''Executions below $1.00'' column of the Additional Fee Code Combinations and Associated Fees table column read ''N/A''.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)[34] of the Act in general and furthers the objectives of Sections 6(b)(4)[35] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed fee change is reasonable, fair and equitable, and non-discriminatory.

IEX has concluded that, in the context of current regulatory requirements governing access fees and rebates, it is not able to sufficiently compete with other exchanges for order flow in Tape B securities without offering higher rebate incentives. Based on informal discussions with market participants, IEX believes that Members and other market participants may be more willing to send displayed orders in Tape B securities to IEX if the proposed fee structure was adopted.

Accordingly, IEX has designed the proposed access fee and rebate to attract and incentivize displayed orders in Tape B securities as well as order flow seeking to trade with such displayed orders. Moreover, increases in displayed liquidity of Tape B securities would contribute to the public price discovery process which would benefit all market participants and protect investors and the public interest.

As it has stated repeatedly, IEX believes that the existing access fee level of $0.0030 per share set by Rule 610 of Regulation NMS[36] heavily affects the way that exchanges compete for order flow and has led to various market distortions and inefficiencies. It has also created a collective action problem that substantially hinders the ability of exchanges to compete by offering better execution quality and without relying on high access fees and correspondingly high rebates. The Commission can resolve this problem and help to promote more displayed liquidity by adjusting the access fee cap to $0.0010 per share, a level consistent with other market-based trading cost measures and one favored by a broad spectrum of market participants and virtually all institutional investors that have commented on this issue.[37] IEX hopes to be able to further adjust its transaction prices in the near future to reflect a market-wide adoption of lower access fees as a result of this critically-needed reform.

[27] *See* IEX Rule 11.190(b)(20)(A).

[28] An incoming sub-dollar order for a Tape B security with a disregarded Post Only instruction will not trigger a resting order with the ''Trade Now'' instruction to become the taking order and will not be treated as the displayed liquidity adding order. Thus, Fee Code Combination MLYB would never apply. If the incoming order matched with a resting non-displayed or displayed order, it will result in a Fee Code Combination of TLB or TIB, with fees of 0.09% or 0.10% of TDV, respectively.

[29] *See supra* note 24.

[30] An incoming sub-dollar order with a disregarded Post Only instruction that executes on entry with a resting non-displayed order will result in a Fee Code Combination of TIB (''Removes non-displayed liquidity (Tape B)'') on the execution report and be charged the normal sub-dollar dark taking fee of 0.10% of the Total Dollar Value (''TDV'').

[31] *See supra* note 24.

[32] An incoming sub-dollar order with a disregarded Post Only instruction that executes on entry with a resting displayed order will result in a Fee Code Combination of TLB (''Removes displayed liquidity (Tape B)'') on the execution report and be charged the normal sub-dollar lit taking fee of 0.09% of the TDV.

[33] *See supra* note 24.

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(4).

[36] 17 CFR 242.610

[37] *See* IEX comment letters on S7–30–22, Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better-Priced Orders: *https://www.sec.gov/comments/s7-30-22/s73022-20160364-328968.pdf; https://www.sec.gov/comments/s7-30-22/s73022-276579-672162.pdf; https://www.sec.gov/comments/s7-30-22/s73022-434239-1076742.pdf.*

Accordingly, IEX has designed this proposed rebate to attract and incentivize displayed order flow in Tape B securities as well as order flow seeking to trade with displayed order flow in Tape B securities. Moreover, increases in displayed liquidity of Tape B securities would contribute to the public price discovery process which would benefit all market participants and protect investors and the public interest.

The Exchange believes that the proposed fee structure for providing and removing displayed liquidity in Tape B securities is reasonable and consistent with the Act. Specifically, the Exchange believes that for securities that trade at or above $1.00 per share, it is reasonable to provide an increased rebate of $0.0014 per share for providing displayed liquidity in Tape B securities and to increase the fee for removing displayed liquidity in Tape B securities from $0.0010 per share to $0.0020 per share, which is designed to keep IEX's displayed trading prices for Tape B securities competitive with those of other exchanges.[38] In this regard, IEX notes that while many competing exchanges pay rebates to provide displayed liquidity in Tape B securities that are substantially higher than those proposed, others charge fees to provide displayed liquidity for Tape B securities that trade at or above $1.00 per share.[39] Further, IEX notes that for securities that trade at or above $1.00 per share, many competing exchanges charge substantially higher fees to remove displayed liquidity than those charged by IEX.[40] And, as discussed in the Purpose section, other exchanges also offer specific fee incentives for Tape B securities.[41] Consequently, IEX believes that the proposed fee structure for providing and removing displayed liquidity in Tape B securities is within the range charged by competing exchanges and does not raise any new or novel issues not already considered by the Commission in the context of other exchanges' fees.

Further, IEX believes that it is reasonable and consistent with the Act not to modify the fees charged to D-Peg, FM-Peg, M-Peg, and P-Peg orders that remove displayed liquidity (except for M-Peg and FM-Peg orders with a Trade Now instruction that remove displayed liquidity from an incoming Post Only order), even if it is in a Tape B security. As discussed in the Purpose section, these four order types are designed to interact with non-displayed liquidity, but in unexpected circumstances can trade with displayed liquidity. IEX understands that, in general, Members seek fee determinism, *i.e.,* the ability to know in advance the transaction fees that will apply to particular orders at the time they send the orders, and a lack thereof could operate to disincentive order flow. Consequently, IEX believes it is fair and equitable to continue charging $0.0010 per share for displayed liquidity removing executions of these four order types to avoid this impact. Further, IEX notes that any Member can submit a D-Peg, FM-Peg, M-Peg, or P-Peg order, and therefore this fee will apply equally to all Members.

However, if an incoming Post Only[42] order for a Tape B security executes against a resting M-Peg or FM-Peg order with the Trade Now[43] instruction, IEX proposes to charge the M-Peg or FM-Peg order a fee of $0.0020 per share, not the $0.0010 per share fee that would otherwise apply had the M-Peg or FM-Peg order executed against a displayed order for a Tape B security, as described in the preceding paragraph. IEX is proposing to make this distinction because the Member who included a Trade Now instruction on its M-Peg or FM-Peg order specified its willingness to match with incoming Post Only orders, and thus indicated its willingness to pay the $0.0020 per share fee IEX will charge for taking displayed liquidity in Tape B securities.

Correspondingly, IEX believes that it is reasonable and consistent with the Act to modify the fees charged to M-Peg and FM-Peg orders with a Trade Now instruction that remove displayed liquidity from an incoming Post Only order in a Tape B security. As discussed in the Purpose section, the Member who included a Trade Now instruction on its M-Peg or FM-Peg order specified its willingness to match with incoming Post Only orders, and thus indicated its willingness to pay the $0.0020 per share fee IEX will charge for taking displayed liquidity in Tape B securities.

The Exchange also believes that it is reasonable and consistent with the Act not to modify its displayed fees for sub-dollar executions to synchronize those fees with the proposed fees for executions at or above $1.00 per share. The Exchange believes that the existing fee structure for such executions continues to be reasonably designed to incentivize displayed order flow (and orders seeking to trade with displayed order flow) in such securities.

Further, IEX believes that it is reasonable and consistent with the Act not to change the fees applicable to the execution of Retail orders that remove liquidity, which will continue to execute for free. In this regard, the Exchange believes that the existing fee structure continues to be reasonably designed to incentivize the entry of Retail orders and Retail Liquidity Provider orders, and notes that the Commission, in approving IEX's Retail Price Improvement Program, acknowledged the value of exchanges' offering incentives to attract both retail investor orders and orders specifically designated to execute only with retail orders.[44]

The Exchange further believes that the proposed fee change is consistent with the Act's requirement that the Exchange provide for an equitable allocation of

[38] As discussed in the Purpose section, IEX's proposed rebate of $0.0014 per share for displayed liquidity adding orders in Tape B securities priced at $1.00 or more is below the rebate ranges of $0.0015 to $0.0035 per share and $0.0028 to $0.0036 per share paid by MEMX and Nasdaq, respectively, for displayed liquidity adding orders. And IEX's proposed fee of $0.0020 for removing displayed liquidity in Tape B securities priced at $1.00 or more is also below the $0.0030 per share fee charged by both MEMX and Nasdaq for displayed liquidity removing orders. *See supra* note 10.

[39] *See e.g.,* Nasdaq BX Equity 7 Section 118(a) ($0.0020 fee per share to add displayed liquidity in Tape B securities priced at or above $1.00 per share), available at *https://listingcenter.nasdaq.com/rulebook/bx/rules/BX%20Equity%207;* Cboe BYX Equities Fee Schedule ($0.0020 fee per share to add displayed liquidity in Tape B securities priced at or above $1.00 per share, available at *https://www.cboe.com/us/equities/membership/fee_schedule/byx/;* Cboe EDGA Equities Fee Schedule ($0.0030 fee per share to add displayed liquidity in Tape B securities priced at or above $1.00 per share, available at *https://www.cboe.com/us/equities/membership/fee_schedule/edga/.*

[40] *See e.g.,* Cboe BZX Equities Fee Schedule ($0.0030 fee per share to remove displayed liquidity in Tape B securities priced at or above $1.00 per share), available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* MIAX Pearl Equities Exchange Fee Schedule ($0.00295 fee per share to remove displayed liquidity in in Tape B securities priced at or above $1.00 per share), available at *https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_04012024.pdf;* MEMX Fee Schedule ($0.0030 fee per share to remove displayed liquidity in in Tape B securities priced at or above $1.00 per share), available at *https://info.memxtrading.com/fee-schedule/;* Nasdaq Equity 7 Section 118(a) (up to $0.0030 fee per share to remove displayed liquidity in in Tape B securities priced at or above $1.00 per share), available at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-equity-7;* New York Stock Exchange Price List 2024 ($0.00275 fee per share to remove displayed liquidity in in Tape B securities priced at or above $1.00 per share), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

[41] *See supra* note 9.

[42] *See* IEX Rule 11.190(b)(20).

[43] When an incoming Post Only order matches a resting order with a Trade Now instruction, the resting order converts into an executable order that removes liquidity against the incoming Post Only order, and the incoming Post Only order becomes the liquidity adding order. *See* IEX Rule 11.190(b)(21).

[44] *See* Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769, 41771 (August 15, 2019) (SR–IEX–2019–05).

fees that is also not unfairly discriminatory.

First, the fees for adding and removing displayed liquidity in Tape B securities will apply on a per share basis in an equal and nondiscriminatory manner to all Members, without regard to the volume of orders submitted by a Member or other factors.

Second, because the fees would apply on a flat, per share basis—like IEX's existing fees—they will continue to be fully deterministic, in that a Member will be able to determine the Exchange fees for each execution in a Tape B security. IEX believes this aspect of its fee proposal will assist all Members in making decisions about routing of orders without the uncertainties associated with volume tiers or other requirements that cannot be determined at the time of the trade. IEX notes that applying fees in this way is consistent with the purpose of the Commission's proposal to require that exchange fees be set in a manner such that the amount of a fee or rebate related to each trade is determinable at the time of the trade.[45]

Additionally, the Exchange believes that it is reasonable to add footnote 2 to the Fee Codes section of the Fee Schedule to clarify that only Fee Code Combinations that include new Fee Code B are for executions of Tape B securities. Adding this footnote will avoid any potential confusion as to the applicable fees and rebates for each execution.

Finally, to the extent the proposed change is successful in incentivizing the entry and execution of displayed orders on IEX, such greater liquidity will benefit all market participants by increasing price discovery and price formation (on IEX and market-wide) as well as market quality and execution opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX believes that the proposed rule change will not result in 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 intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed fee change is designed to enhance IEX's competitiveness with other venues, as described in the Statutory Basis section. In this context, the Exchange does not believe that the proposed fees would burden competition on competing venues or their participants. Moreover, as noted in the Statutory Basis section, the Exchange believes that the proposed changes do not raise any new or novel issues not already considered by the Commission.

The Exchange believes that the proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed in some circumstances, these different fees are not based on the type of Member entering the orders that match or on the volume of orders submitted by a Member but on the type of order entered or if the security at issue is a Tape B security, and all Members can submit any type of order for any type of security and will be subject to the same fee for that type of order and security. IEX believes that applying a flat, per share fee or rebate for each type of order avoids imposing a burden on competition by ensuring that individual Members do not gain a competitive advantage over other Members based solely on their size or volume of orders they are able to submit to the Exchange. Further, the proposed fee changes are designed to encourage market participants to bring increased order flow to the Exchange, which benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[46] of the Act.

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 under Section 19(b)(2)(B)[47] 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–IEX–2024–06 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–IEX–2024–06. 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–IEX–2024–06 and should be submitted on or before May 15, 2024.

[45] *See* Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266, 80292–93 (December 29, 2022) (File No. S7–30–22).

[46] 15 U.S.C. 78s(b)(3)(A)(ii).

[47] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–08682 Filed 4–23–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99990; File No. SR–IEX–2024–07]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Activation Value in IEX Rule 11.190(g)(2)

April 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 April 12, 2024, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 11.190(g)(2) to incrementally optimize the effectiveness of the proprietary mathematical calculation used to make quote instability determinations for certain orders, and to correct two cross-reference errors and one typographical error. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend IEX Rule 11.190(g)(2) to incrementally optimize the proprietary mathematical calculation used to make quote instability determinations for certain orders (*i.e.,* to assess the probability of a ''crumbling quote''—an imminent change to the current Protected NBB[7] to a lower price or the current Protected NBO[8] to a higher price for a particular security). This calculation is referred to as the ''crumbling quote indicator'' or ''CQI''. This proposed rule change would only modify the functionality of CQI 2,[9] which is the CQI version used to make quote instability determinations for all Discretionary Limit (''D-Limit'')[10] orders, and for Discretionary Peg (''D-Peg''),[11] primary peg (''P-Peg''),[12] and Corporate Discretionary Peg (''C-Peg'')[13] orders for which the User[14] selected CQI 2 (collectively ''CQI 2 enhanced pegged orders'').[15]

The Exchange also proposes to correct two cross-reference errors and one typographical error in the rule text defining the CQI 2.

Background

When CQI 2 generates a quote instability determination (*i.e.,* it is ''on'' pursuant to IEX Rule 11.190(g)(2)), CQI 2 enhanced pegged orders resting on the Order Book[16] do not exercise price discretion to meet the limit price of an active (*i.e.,* taking) order, and remain pegged to a price that is the less aggressive of one (1) minimum price variant (''MPV'')[17] less aggressive than the primary quote (*i.e.,* one MPV below (above) the NBB[18] (NBO[19]) for buy (sell) orders) or the order's limit price, if any.[20]

Relatedly, D-Limit orders priced at or more aggressively than the quote instability determination price level (''CQI Price'') are re-priced when CQI 2 is on.[21] Specifically, if the System[22] receives a D-Limit buy (sell) order when CQI 2 is on, and the D-Limit order has a limit price equal to or higher (lower) than the CQI Price, the price of the order will be automatically adjusted by the System to a price one (1) MPV lower (higher) than the CQI Price (the ''effective limit price''). Similarly, when unexecuted shares of a D-Limit buy (sell) order are posted to the Order Book, if a quote instability determination is made and such shares are ranked and displayed (in the case of a displayed order) by the System at a price equal to or higher (lower) than the CQI Price, the price of the order will be automatically adjusted by the System to a price one MPV lower (higher) than the CQI Price.[23]

Once the price of a D-Limit order that has been posted to the Order Book is automatically adjusted by the System to its effective limit price, the order will continue to be ranked and displayed (in the case of a displayed order) at the adjusted price,[24] unless subject to another automatic adjustment; if the order is subject to the price sliding provisions of IEX Rule 11.190(h); or if the User elects, pursuant to IEX Rule 11.190(b)(7)(E)(i), that the order will be re-priced if resting at a price that is less aggressive than the NBB (for a buy order) or NBO (for a sell order) ten (10) milliseconds after the most recent quote

[48] 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.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* IEX Rule 1.160(cc).

[8] *See* IEX Rule 1.160(cc).

[9] IEX supports two versions of the CQI—Option 1 Crumbling Quote (which is based on the CQI in effect when IEX began operating as a national securities exchange in 2016) (''CQI 1'') and Option 2 Crumbling Quote (''CQI 2''). *See* IEX Rule 11.190(g)(1) and (g)(2), respectively. CQI 1 is not affected by this proposed rule change.

[10] *See* IEX Rule 11.190(b)(7).

[11] *See* Rule 11.190(b)(10).

[12] *See* Rule 11.190(b)(8).

[13] *See* Rule 11.190(b)(16).

[14] *See* IEX Rule 1.160(qq).

[15] Users may select which CQI version to apply to D-Peg, P-Peg, and C-Peg orders (pegged orders eligible to exercise price discretion to their discretionary price except during periods of quote instability). *See* IEX Rules 11.190(b)(8)(K), 11.190(b)(10)(K), and 11.190(b)(16)(K).

[16] *See* IEX Rule 1.160(p).

[17] *See* IEX Rule 11.210.

[18] *See* IEX Rule 1.160(u).

[19] *See* IEX Rule 1.160(u).

[20] C-Peg orders are also constrained by the consolidated last sale price of the security, and therefore cannot trade, book, or exercise discretion at a price that is more aggressive than the consolidated last sale price. *See* IEX Rule 11.190(b)(16).

[21] *See* IEX Rules 11.190(b)(7)(A) and (B).

[22] *See* IEX Rule 1.160(nn).

[23] *See* IEX Rule 11.190(b)(7)(C) and (D).

[24] *See* IEX Rule 11.190(b)(7)(F).

instability determination. Otherwise, a D-Limit order operates in the same manner as either a displayed or non-displayed limit order, as applicable.[25]

Overview of CQI 2

The Exchange has made incremental changes to optimize and enhance the effectiveness of CQI 1 in determining whether a crumbling quote exists three times since Exchange launch [26] and in 2022, introduced CQI 2.[27] CQI 2 is designed to incrementally increase the coverage [28] of the quote instability determinations in predicting whether a particular quote is unstable by adjusting the logic underlying the quote instability calculation and introducing enhanced functionality designed to increase the number of crumbling quotes identified, while maintaining CQI 1's accuracy rate [29] in predicting the direction and timing of the next price change in the NBB or NBO, as applicable.

IEX introduced CQI 2 into its System on March 31, 2023 (*i.e.,* it began generating quote instability determinations for informational and planning purposes), and CQI 2 became optionally available for D-Peg, P-Peg, and C-Peg orders on May 16, 2023 [30] and for all D-Limit orders on November 10, 2023.[31]

CQI 2 utilizes real time relative quoting activity of certain Protected Quotations [32] and a ''quote instability calculation'' in which nine separate ''quote instability rules'' [33]—each with specific conditions based on either the price, size, or price and size of the Signal Exchanges to assess the probability of a crumbling quote. Each of these rules can trigger a quote instability determination for either the NBB (for buy orders) the NBO (for sell orders), or both, of a particular security, meaning the System treats the quote as unstable and CQI 2 is on at that price level for two milliseconds.[34] During all other times, the quote is considered stable, and CQI 2 is off. The System independently assesses the stability of the Protected NBB and Protected NBO for each security.

CQI 2 includes four categories of rules designed to predict whether the Protected NBB or Protected NBO is unstable, as follows:

- Disappearing bids (or offers)—This category includes four rules that focus on whether one or more of the Signal Exchanges is no longer disseminating a bid or offer at the Signal Best Bid [35] or Signal Best Offer [36] as applicable; [37]
- Recent changes in quote size—This category includes two rules that focus on whether there is an imbalance in the size of bids and offers at the Signal Best Bid or Signal Best Offer; [38]
- Locked or crossed market—This category includes one rule that focuses on situations where the Signal Best Bid and Signal Best Offer are locked or crossed; [39] and
- Quotation Changes—This category includes two rules that focus on changes to the Signal Best Bid or Signal Best Offer.[40]

On a security-by-security basis, if the specified conditions of any of the quote instability rules are met, then the rule is deemed to be ''True'' for that security. Each rule also must be active before it can trigger a quote instability determination. When one or more quote instability rules is deemed to be True and any of such rules are active, the System will treat the quote as unstable.

For CQI 2, the Exchange maintains an activation value (''Activation Value'') for each quote instability rule, which is used to determine if each rule is active. Each rule's Activation Value is computed (on a security-by-security basis for both the Bid side and the Offer side) in real time as a function of the number of times the quote moves to a less aggressive price within the two milliseconds following the time the rule was True and the total number of times the rule was True. Whenever the Activation Value for a given rule exceeds a fixed predetermined activation threshold specific to that rule (''Activation Threshold''),[41] the rule is active (*i.e.,* it is eligible to trigger a quote instability determination when True). If a rule's Activation Value is below its Activation Threshold, it will not trigger a quote instability determination when True.

The Activation Value and Activation Threshold computations are designed to optimize the overall accuracy of the quote instability determinations by providing a mechanism to turn off a particular rule when market conditions are such that it is relatively less accurate in predicting a crumbling quote. IEX believes that utilizing Activation Thresholds is a useful innovation because it enables the use of rules that can be highly predictive in certain market conditions but not in others. The Activation Thresholds are tailored for each rule based on the rule's expected general accuracy in predicting a crumbling quote, based on IEX's market data analysis, so that a rule that has a higher potential to be less accurate has a higher activation threshold burden to meet. The Activation Thresholds are designed to enable increased coverage for CQI 2 by enabling more frequent triggers with accuracy control safeguards.

The Exchange utilizes an initial activation value of 0.50 for all rules at the start of the Regular Market Session,[42] which is then modified during the course of the Regular Market Session to reflect each rule's predictive performance. Specifically, each time a rule is True [43] its existing Activation Value is multiplied by a Decay Factor of 0.94. In addition, each time the Protected NBB or Protected NBO moves to a less aggressive price within two milliseconds of a rule being True at that

[25] *See* IEX Rule 11.190(b)(7).

[26] *See* Securities Exchange Act Release 34–78510 (August 9, 2016), 81 FR 54166 (August 15, 2016) (SR–IEX–2016–11); Securities Exchange Act Release No. 80202 (March 10, 2017), 82 FR 14058 (March 16, 2017) (SR–IEX–2017–06); Securities Exchange Act Release No. 83048 (April 13, 2018), 83 FR 17467 (April 19, 2018) (SR–IEX–2018–07).

[27] *See* Securities Exchange Act Release No. 96014 (October 11, 2022), 87 FR 62903 (October 17, 2022) (''CQI 2 Proposal''); Securities Exchange Act Release No. 96416 (December 1, 2022), 87 FR 75099 (December 7, 2022) (''CQI 2 Approval Order'') (SR–IEX–2022–06).

[28] ''Coverage'' means the percentage of all ''adverse'' NBBO changes per symbol (lower for bids, higher for offers) that were predicted by CQI 2 (meaning CQI 2 was ''on'' at the time of the adverse NBBO change).

[29] ''Accuracy rate'' means the percentage of time that CQI 2 accurately predicted the direction of the next price change.

[30] *See* IEX Trading Alert # 2023–010, available at *https://iextrading.com/alerts/#/217; see also* CQI 2 Approval Order, *supra* note 27.

[31] *See* IEX Trading Alert # 2023–023, available at *https://iextrading.com/alerts/#/231; see also* Securities Exchange Act Release No. 98625 (September 28, 2023), 88 FR 68709 (October 4, 2023) (SR–IEX–2023–10).

[32] Specifically, IEX utilizes real time relative quoting activity of Protected Quotations from the ''Signal Exchanges'', which are the following eleven exchanges: Cboe BZX Exchange (''BATS''), Cboe BYX Exchange (''BATY''), Cboe EDGA Exchange (''EDGA''), Cboe EDGX Exchange (''EDGX''), MIAX Pearl (''EPRL''), MEMX LLC (''MEMX''), the Nasdaq Stock Market (''XNGS''), Nasdaq BX (''XBOS''), Nasdaq PHLX (''XPHL''), the New York Stock Exchange (''XNYS''), and NYSE Arca (''ARCX''). *See* IEX Rule 11.190(g).

[33] *See* IEX Rule 11.190(g)(2)(C).

[34] The nine rules are designed to work together in determining whether a quote instability determination is triggered, so if a User selects the alternative model all nine rules would be applicable. Users cannot elect that only some of the rules would apply.

[35] ''Signal Best Bid'' means the highest Protected Bid of the Signal Exchanges. *See* IEX Rule 11.190(g)(2)(B)(i).

[36] ''Signal Best Offer'' means the lowest Protected Offer of the Signal Exchanges. *See* IEX Rule 11.190(g)(2)(B)(v).

[37] *See* IEX Rule 11.190(g)(2)(C)(i).

[38] *See* IEX Rule 11.190(g)(2)(C)(ii).

[39] *See* IEX Rule 11.190(g)(2)(C)(iii).

[40] *See* IEX Rule 11.190(g)(2)(C)(iv).

[41] The Activation Thresholds for the quote instability rules range from 0 to .50.

[42] *See* IEX Rule 1.160(gg).

[43] Excluding instances where the rule was already True at the same unchanged price level in the prior two milliseconds.

price level, 0.06 will be added to that rule's existing Activation Value (*i.e.,* (1 − decay factor) + previous Activation Value) as specified in IEX Rule 11.190(g)(2)(D)(ii).

Whenever a rule is True, the System evaluates if its Activation Value exceeds its Activation Threshold, regardless of whether the rule is active. If a rule is True and its Activation Value exceeds its Activation Threshold, the rule is active and will trigger the System to treat the relevant quote as unstable. If a rule is True but its Activation Value does not exceed its Activation Threshold, the rule is inactive, and it will not trigger the System to treat the relevant quote as unstable. If one or more rules are True, and if any one of such rules has an Activation Value that exceeds the rule's Activation Threshold, the System will treat the relevant quote as unstable. The System continues to update the Activation Value for rules that are inactive, and if the Activation Value subsequently exceeds the rule's Activation Threshold, the System will reactivate the rule.

IEX believes that these Activation Thresholds provide a dynamic performance evaluation methodology that is designed to optimize the frequency and accuracy of the quote instability calculation, by enabling IEX to utilize a broader array of rules that may be predictive of a crumbling quote in certain market conditions but not others.

IEX Rule 11.190(g)(3) provides that IEX reserves the right to modify the quote instability calculations as appropriate, subject to a filing of a proposed rule change with the SEC. Pursuant to this provision, IEX identified a modification to CQI 2 that it believes will enhance its effectiveness, as described below.

Proposal

IEX conducted an analysis of the efficacy of CQI 2 in predicting whether a crumbling quote would occur, by reviewing randomly selected market data from the second half of 2023 and the first quarter of 2024. These results were then validated by testing different randomly selected dates from the same time period. Based upon this analysis, IEX proposes to make an incremental change to the CQI 2 Activation Value calculation process, which is designed to enhance CQI 2's accuracy by better reflecting market conditions. Specifically, the Exchange is proposing to extend the amount of time the System waits after a quote instability rule is True to assess if the quote moved to a less aggressive price. Currently, the System waits two milliseconds following the time a quote instability rule was True to assess whether the quote instability rule accurately predicted that the next price change would be to a less aggressive price. IEX proposes to modify IEX Rule 11.190(g)(2)(D)(ii), so that the System would wait up to one second after a quote instability rule is True to assess if the next price change is to a less aggressive price (hereafter the ''CQI 2 Update''). If the next price change occurs within one second after a quote instability rule is True and is to a less aggressive price, the System would add .06 to that rule's previous Activation Value. However, if one second passes from the time that a quote instability rule's conditions are met with no price change, or if the next price change was to a more aggressive price, then the System will not update that quote instability rule's Activation Value.

In deciding to propose increasing the interval for the Activation Value calculation process to assess if the next price change was to a less aggressive price (from two milliseconds to one second), the Exchange considered that a predicted price change may take more than two milliseconds to occur for several reasons. For example, large reserve orders might take more than two milliseconds to fully exhaust the reserve volume allowing a price change to occur. Additionally, periods of relatively higher market volume (or bursts of market data) can impact the time it takes for price changes to materialize because of increased time for markets to process incoming orders and executions. During periods of market volatility, trading functions such as order processing, order matching, and the publishing of market data may be delayed due to higher message rates (which are correlated with the Exchange making quote instability determinations). Significantly, during these time periods of increased market activity and volatility, latency arbitrage strategies have an opportunity to be more prevalent because there are more opportunities to react to market volatility to take advantage of resting orders.

In light of the foregoing, IEX believes a modest increase of the time used in the Activation Value calculation process is a narrowly tailored approach to enhance the efficacy of CQI 2 in predicting an imminent quote change to a price adverse to a resting order.

IEX's market data analysis [44] evidences that the proposed CQI 2 Update would result in an incremental enhancement to the efficacy of CQI 2 as set forth in the chart below:

[44] As noted above, IEX analyzed the efficacy of CQI 2 and developed the proposed incremental enhancement in this rule filing using market data from the second half of 2023 and the first quarter of 2024. However, for Charts 1, 2, and 3, IEX used all the trading days in January and February 2024, which, according to IEX's market data analysis, were representative of regular trading activity throughout the calendar year.

Chart 1

Metric	CQI 2	CQI 2 Update
Average time on[a] (average of all symbols)	3.6 seconds	6.5 seconds
Average time on (volume weighted)	32.6 seconds	52.4 seconds
Coverage (volume weighted)[b]	63.3%	69.7%
Accuracy Rate (volume weighted)[c]	78%	80%
% of the Day CQI is "On" (volume-weighted)	0.139%	0.224%
% of the day D-Limit is available at specified limit price	99.861%	99.776%

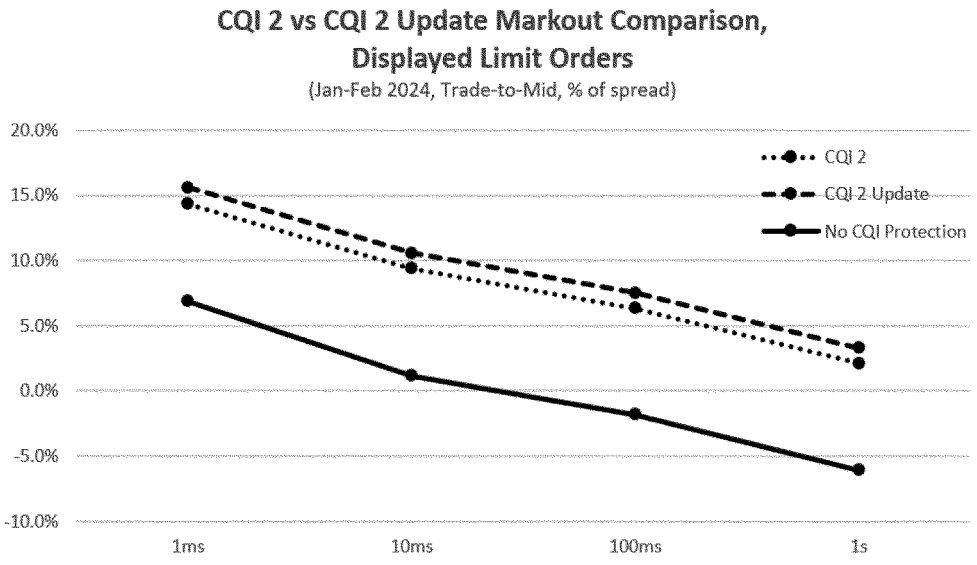
[a] "Time on" means the average time CQI 2 is on during a day per symbol.

[b] See supra note 28.

[c] "Accuracy" means the percent of time that following CQI 2 being "on" the NBB or NBO (as applicable) moves in the predicted direction on the next price change.

Thus, IEX believes that the CQI 2 Update will incrementally enhance the existing protection provided by D-Limit orders by providing greater coverage (*i.e.,* identifying more potentially crumbling quotes) with increased accuracy. IEX estimated the impact of the CQI 2 Update (compared to the existing CQI 2) on standard limit order executions by simulating the markouts [45] had the orders been subject to the protection of the current CQI 2 or the CQI 2 Update. Assessment of these executions is designed to simulate differences in adverse selection protection from the current CQI 2 and the CQI 2 Update. As shown in the chart below, both the current CQI 2 and the CQI 2 Update result in improved markouts over executions without CQI protection, but the CQI 2 Update would have provided incrementally enhanced protection compared to the current CQI 2 (as measured by markouts) because it is better at identifying situations when adverse selection is most likely:

Chart 2

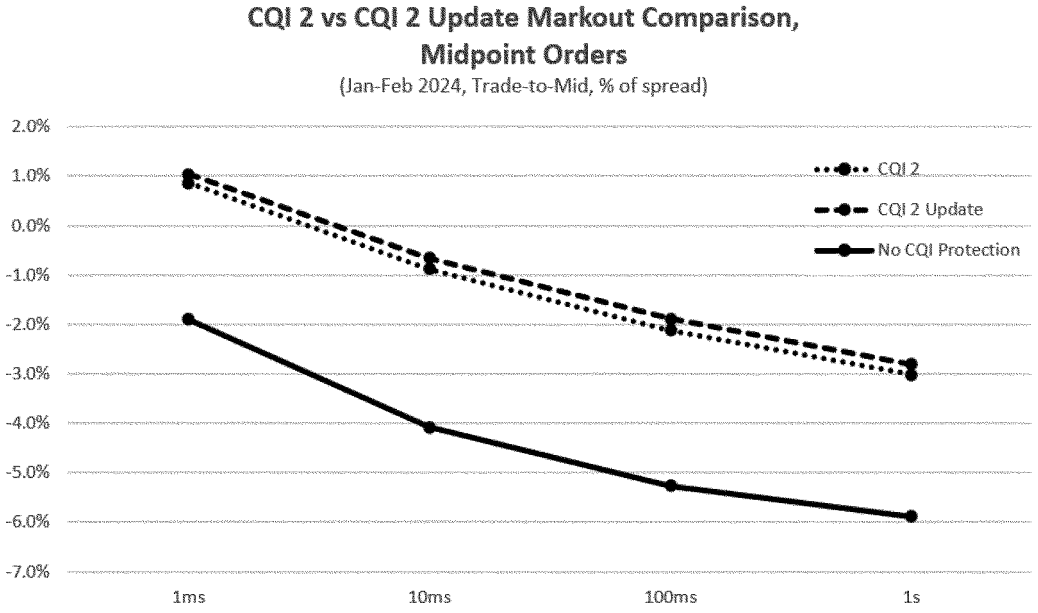


Similarly, IEX believes that the CQI 2 Update will incrementally enhance the existing protection CQI 2 offers pegged orders by providing greater coverage (*i.e.,* identifying more potentially crumbling quotes) with increased accuracy. IEX estimated the impact of the CQI 2 Update (compared to the existing CQI 2) on traditional midpoint order executions by simulating the markouts had the orders been subject to the protection of the current CQI 2 or

[45] Markouts measure the direction and degree to which the market moved after an execution, and are often measured as the difference between the execution price and the midpoint of the NBBO at various time intervals after a trade. Markouts are typically used as a way to measure the ''quality'' of a trade. In particular, short-term markouts of several milliseconds after the time of execution, are often used to assess whether an order was subject to ''adverse selection'' that can occur when a liquidity providing order is executed at a price that was about to become stale as a result of certain speed-based trading strategies.

the CQI 2 Update. Assessment of these executions is designed to simulate differences in adverse selection protection from CQI 2 and CQI 2 Update. As shown in the chart below, both CQI 2 and the CQI 2 Update result in improved markouts over executions without CQI protection, but CQI 2 Update would have provided incrementally enhanced protection compared to CQI 2 (as measured by markouts) because it is better at identifying situations when adverse selection is most likely:

Chart 3



IEX believes that this proposed minor change in methodology for the calculation of Activation Values would increase CQI 2's efficacy by better reflecting the market activity in a particular security, as described above. Specifically, IEX believes that it is appropriate to provide slightly more time to determine if the next price change is adverse (*i.e.,* consistent with the quote instability determination prediction), and thus consistent with the quote instability determination that the quote in question was about to become stale and thus subject to potential latency arbitrage, in calculating whether the rule's Activation Value should be increased. IEX believes that one second is an appropriate time period to wait based on an analysis of the effectiveness of various potential time frames (including the current two milliseconds) in predicting whether a crumbling quote would occur, by reviewing randomly selected market data from the second half of 2023 and the first quarter of 2024.

Accordingly, based on this analysis, the Exchange believes that extending the time period used to calculate Activation Value changes to one second is a narrowly tailored approach that would incrementally increase the effectiveness of CQI 2 in predicting whether a crumbling quote will occur.

Cross-Reference and Typographical Error Fixes

IEX also proposes to correct two internal cross-reference errors in IEX Rule 11.190(g)(2). Specifically, IEX proposes to modify the cross reference in IEX Rule 11.190(g)(2)(B) to refer to IEX Rule 11.190(g)(2)(C), instead of IEX Rule 11.190(g)(1)(C), and to modify the cross reference in IEX Rule 11.190(g)(2)(D)(i) to refer to IEX Rule 11.190(g)(2)(A), instead of IEX Rule 11.190(g)(1)(A). While these two cross-references cite to the rule provisions for CQI 1 instead of CQI 2, IEX notes that the context of the rule text mitigates any possible confusion since each is within the rule provisions describing CQI 2. Moreover, the third paragraph of IEX Rule 11.190(g), which provides a summary description of CQI 2, accurately describes the functionality that is described in the two rule provisions containing cross-reference errors.

Finally, IEX proposes to make a typographical correction to IEX Rule 11.190(g)(2)(B)(vii) by adding a missing period to the end of the text.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trading Alert at least ten business days in advance of such implementation date and within 90 days of effectiveness of this proposed rule change.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b) [46] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,[47] 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. As discussed in the Purpose section, the proposed minor change is based on the Exchange's analysis of market data, which supports that the proposed change would incrementally optimize the effectiveness

[46] 15 U.S.C. 78f.

[47] 15 U.S.C. 78f(b)(5).

of CQI 2 by better reflecting market conditions that could delay a predicted quote change being realized until more than two milliseconds (but less than one second) has passed. Further, as noted in Chart 1 in the Purpose section, the proposed CQI 2 Update would increase CQI 2's volume-weighted coverage by 6.4% (from 63.3% to 69.7%) while increasing its volume-weighted accuracy by 2% (from 78% to 80%). Thus, the Exchange believes that it is consistent with the Act to expand the amount of time used to calculate Activation Value updates because it is designed to provide additional protection to D-Limit orders and CQI-enhanced pegged orders from adverse selection associated with latency arbitrage during periods of quote instability, thus protecting investors and the public interest. Moreover, IEX's market data analysis, as described in the Purpose section and demonstrated in Chart 1, evidences that, as with CQI 2, the CQI 2 Update would be ''on'' for only a small portion of the trading day while providing robust protection in a narrowly tailored manner that balances the ability of long-term investors to access displayed liquidity in the ordinary course against the current structural advantages enjoyed by short-term latency arbitrage trading strategies that rely on superior access to the fastest data and connectivity.

Additionally, the Exchange believes that the proposed rule change may result in more and larger sized displayed and non-displayed D-Limit orders and CQI 2 enhanced pegged orders being entered on IEX as a result of the improved coverage and continued accuracy of CQI 2. To the extent more orders are entered, the increased liquidity would benefit all IEX members and their customers. And to the extent that more displayed D-Limit orders are entered, price discovery and price formation will be enhanced on IEX and in the market generally to the benefit of all IEX Members and market participants. Furthermore, the Exchange notes that all Members and their customers are eligible to use D-Limit orders and CQI 2 enhanced pegged orders, and therefore all Members and their customers are eligible to benefit from the proposed enhanced protections against adverse selection in the CQI 2 Update. Thus, the Exchange believes that application of the rule change is equitable and not unfairly discriminatory.

Additionally, the Exchange notes that the existing CQI 2 is a narrowly tailored fixed formula specified transparently in IEX rules, that was previously approved by the SEC.[48] The Exchange is not proposing to add any new functionality, but merely to enhance an SEC approved quote instability calculation as described in the Purpose Section. And as proposed, CQI 2 will continue to be a fixed formula specified transparently in IEX's rules. Thus, IEX does not believe that the proposal raises any new or novel issues that have not already been considered by the Commission, in that the CQI 2 functionality was previously approved by the Commission.[49]

Also, IEX Rule 11.190(g)(3) specifically contemplates that the Exchange will periodically modify the quote instability calculations as appropriate, and the proposed rule change is consistent with this provision.

Furthermore, the Exchange believes that the proposed corrections of the two internal cross-reference errors in IEX Rule 11.190(g)(2)(B) and IEX Rule 11.190(g)(2)(D)(i) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to update internal rule references. As noted in the Purpose section, the overall context of CQI 2's rule text mitigates any possible confusion attributable to the erroneous cross-references. Nevertheless, the Exchange believes that Users would benefit from the increased clarity of correct cross-reference citations, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

Additionally, IEX believes that the proposed addition of a period at the end of IEX Rule 11.190(g)(2)(B)(vii) is consistent with Section 6(b)(5) of the Act because it will eliminate any confusion regarding IEX rules by correcting an inadvertent typographical error without changing the substance of such rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, as discussed in the Statutory Basis section, the proposal is designed to enhance competition by incentivizing additional liquidity.

With regard to intra-market competition, the proposed change to CQI 2 would apply equally to all Members on a fair, impartial and nondiscriminatory basis without imposing any new burdens on the Members because D-Limit is an optional order type, and CQI 2 is one of two choices of CQI that Members may apply to their eligible pegged orders. The Commission has already approved CQI 2.[50] As discussed in the Purpose and Statutory Basis sections, the proposed rule change is designed to provide a narrowly tailored enhancement to an SEC approved quote instability calculation; therefore, no new burdens are being proposed.

With regard to inter-market competition, other exchanges are free to adopt similar quote instability calculations subject to the SEC rule filing process. In this regard, the Exchange notes that NYSE American LLC until recently had a ''discretionary pegged order type'', see former NYSE American LLC Rule 7.31E(h)(3)(D), which copied an earlier iteration of the Exchange's quote instability calculation.[51]

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.[52]

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

[48] *See supra* note 27.

[49] *See supra* note 27.

[50] *See supra* note 27.

[51] *See* Securities Exchange Act Release 34–99827 (March 21, 2024), 89 FR 21302 (March 27, 2024) (SR–NYSEAMER–2024–21) (modifying NYSE American's discretionary pegged order type to remove its quote instability calculation).

[52] 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.

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–IEX–2024–07 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–IEX–2024–07. 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–IEX–2024–07 and should be submitted on or before May 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–08683 Filed 4–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99988; File No. SR–FINRA–2024–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend FINRA Rule 3240 (Borrowing From or Lending to Customers) To Strengthen the General Prohibition Against Borrowing and Lending Arrangements

April 18, 2024.

I. Introduction

On January 2, 2024, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–FINRA–2024–001) to amend FINRA Rule 3240 (Borrowing From or Lending to Customers). As stated in the Notice, the proposed rule change would strengthen the general prohibition against borrowing and lending arrangements, narrow some of the existing exceptions to that general prohibition, modernize the immediate family exception, and enhance the requirements for giving notice to members and obtaining members' approval of such arrangements.[3]

The proposed rule change was published for public comment in the **Federal Register** on January 22, 2024.[4] The public comment period closed on February 12, 2024. The Commission received comment letters in response to the Notice.[5] On February 21, 2024, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to April 19, 2024.[6]

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act [7] to institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

FINRA Rule 3240 generally prohibits, with exceptions, registered persons from borrowing money from, or lending money to, their customers. The rule has five tailored exceptions,[8] available only when the registered person's member firm has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member,[9] the borrowing or lending arrangements meet the conditions applicable to the relevant exception and, when required, the registered person notifies the member of a borrowing or lending arrangement, prior to entering into such arrangement, and obtains the member's pre-approval in writing.[10] FINRA stated that the exceptions are for limited situations where the likelihood that the registered person and customer entered into the borrowing or lending arrangement by virtue of the broker-customer relationship is reduced, and the potential risks are outweighed by the potential benefits of allowing registered persons to enter into arrangements with such customers.[11]

B. Proposed Rule Change

1. The General Prohibition on Borrowing From or Lending to Customers

The proposed rule change would amend the title of FINRA Rule 3240 from ''Borrowing From or Lending to Customers'' to ''Prohibition on Borrowing From or Lending to Customers,'' and change the title of Rule

[53] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 99351 (Jan. 16, 2024), 89 FR 3968 (Jan. 22, 2024) (File No. SR–FINRA–2024–001) (''Notice''), *https://www.govinfo.gov/content/pkg/FR-2024-01-22/pdf/2024-01068.pdf.*

[4] Notice at 3968–3979.

[5] The comment letters are available at *https://www.sec.gov/comments/sr-finra-2024-001/srfinra2024001.htm.*

[6] *See* letter from Ilana Reid, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated February 21, 2023 [sic], *https://www.finra.org/sites/default/files/2024-02/SR-FINRA-2024-001-Extension1.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Rule 3240(a)(2)(A) (the ''immediate family exception''); Rule 3240(a)(2)(B) (the ''financial institution exception''); Rule 3240(a)(2)(C) (the ''registered persons exception''); Rule 3240(a)(2)(D) (the ''personal relationship exception''); Rule 3240(a)(2)(E) (the ''business relationship exception'').

[9] *See* Rule 3240(a)(1).

[10] *See* Rules 3240(a)(3) and 3240(b).

[11] *See* Notice at 3969.

3240(a) from ''Permissible Lending Arrangements; Conditions'' to ''General Prohibition; Permissible Borrowing or Lending Arrangements; Conditions.'' [12]

The proposed rule change would also make the following substantive changes to the general prohibition.

a. Pre-Existing Relationships

The proposed rule change would amend Rule 3240(a) to clarify that the rule's general requirements concerning borrowing and lending arrangements—including the general prohibition—apply to arrangements that pre-exist a new broker-customer relationship.[13] Specifically, the proposed rule change would amend the introductory clause in Rule 3240(a) to prohibit registered persons from initiating a broker-customer relationship with a person with whom the registered person has an existing borrowing or lending arrangement.[14]

b. Definition of Customer

The proposed rule change would extend the rule's limitations to borrowing or lending arrangements entered into within six months after a broker-customer relationship terminates.[15] Specifically, the proposed rule change would add new FINRA Rule 3240.02 (Customer) to define ''customer,'' for purposes of Rule 3240, as including any customer who has, or in the previous six months had, a securities account assigned to the registered person at any member.[16]

c. Borrowing and Lending Arrangements With Related Parties

The proposed rule change would extend the rule's requirements to borrowing or lending arrangements that involve similar conflicts as ones presented by arrangements directly between registered persons and their customers.[17] Specifically, the proposed rule change would add new FINRA Rule 3240.05 (Arrangements with Persons Related to Either the Registered Person or the Customer) to provide that ''[a] registered person instructing or asking a customer to enter into a borrowing or lending arrangement with a person related to the registered person (*e.g.,* the registered person's immediate family member or outside business) or to have a person related to the customer (*e.g.,* the customer's immediate family member or business) enter into a borrowing or lending arrangement with the registered person would present similar conflict of interest concerns as borrowing or lending arrangements between the registered person and the customer and would not be consistent with this Rule [3240] unless the conditions set forth in [Rule 3240(a)(1), (2), and (3)] are satisfied.'' [18]

d. Owner-Financing Arrangements

The proposed rule change would add Rule 3240.03 (Owner-Financing Arrangements) to state that, for purposes of Rule 3240, ''borrowing or lending arrangements include owner-financing arrangements.'' [19] For example, Rule 3240 would apply to situations where a registered person purchases real estate from his customer, the customer agrees to finance the purchase, and the registered person provides a promissory note for the entire purchase price or arranges to pay in installments.[20]

2. The ''Immediate Family'' Definition

Currently, one exception to Rule 3240's general prohibition is for borrowing or lending arrangements with a customer who is a member of the registered person's immediate family.[21] Rule 3240(c) defines ''immediate family'' to mean ''parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person whom the registered person supports, directly or indirectly, to a material extent.'' [22]

The proposed rule change would modernize the ''immediate family'' definition.[23] Specifically, the proposed rule change would amend Rule 3240(c) to replace ''husband or wife'' with ''spouse or domestic partner'' and amend the definition so that it ''includes step and adoptive relationships.'' [24] In addition, the proposed rule change would amend the ''any other person'' clause to limit it to ''any other person who resides in the same household as the registered person and the registered person financially supports, directly or indirectly, to a material extent.'' [25]

3. The Personal Relationship and Business Relationship Exceptions

Currently, Rule 3240 provides an exception to the rule's general prohibition for arrangements based on a ''personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker-customer relationship'' (the ''personal relationship exception'').[26] The proposed rule change would narrow the personal relationship exception to arrangements that are based on a ''bona fide, close personal relationship between the registered person and the customer maintained outside of, and formed prior to, the broker-customer relationship.'' [27] Similarly, current Rule 3240 provides an exception to the rule's general prohibition for arrangements based on a ''business relationship outside of the broker-customer relationship'' (the ''business relationship exception'').[28] The proposed rule change would also narrow the business relationship exception to arrangements that are based on a ''bona fide business relationship outside of the broker-customer relationship.'' [29]

In addition to narrowing the personal relationship and business relationship exceptions, the proposed rule change would add new Rule 3240.04 (Close Personal Relationships; Business Relationships), which would provide factors for evaluating whether a borrowing or lending arrangement is based on a close personal relationship or a business relationship. The proposed factors would include, but would not be limited to, ''when the relationship began, its duration and nature, and any facts suggesting that the relationship is not bona fide or was formed with the purpose of circumventing the purpose of Rule 3240.'' [30] Proposed Rule 3240.04 would also provide examples of ''close personal relationships,'' including, ''a childhood or long-term friend or a godparent.'' [31] Additionally, proposed Rule 3240.04 would provide examples of a ''business relationship,'' including ''a loan from a registered person to a small outside business that the registered person co-owned for years for the sole purpose of providing the

[12] Proposed Rule 3240 and Proposed Rule 3240(a).

[13] *See* Notice at 3969.

[14] Proposed Rule 3240(a).

[15] *See* Notice at 3969.

[16] Proposed Rule 3240.02.

[17] *See* Notice at 3969.

[18] Proposed Rule 3240.05.

[19] Proposed Rule 3240.03.

[20] *See Notice at 3969.*

[21] *See* Rule 3240(a)(2)(A).

[22] Rule 3240(c).

[23] *See* Notice at 3970.

[24] Proposed Rule 3240(c).

[25] *Id.*

[26] Rule 3240(a)(2)(D).

[27] Proposed Rule 3240(a)(2)(D).

[28] Rule 3240(a)(2)(E).

[29] Proposed Rule 3240(a)(2)(E).

[30] Proposed Rule 3240.04.

[31] *Id.*

business with additional operating capital.'' [32]

4. Notification and Approval Requirements

Currently, Rule 3240(b) contains notification and approval requirements for borrowing or lending arrangements within the five exceptions, which vary depending on which exception applies.[33] The proposed rule change would make the following changes to the notification and approval requirements.

a. Notification and Approval Requirements With Respect to the Personal Relationship, Business Relationship, and Registered Persons Exceptions

Current Rule 3240(b)(1)(A) provides that a registered person shall notify the member of borrowing or lending arrangements made under the personal relationship exception,[34] business relationship exception,[35] or the registered persons exception [36] prior to entering into such arrangements, and that the member shall pre-approve in writing such arrangements.[37] The proposed rule change would amend Rule 3240(b)(1)(A) to clarify that, although registered persons are required to obtain the member's prior approval of arrangements within the close personal relationship, business relationship, or registered persons exceptions, the member is not required to approve such arrangements.[38] Specifically, the proposed rule change would delete the ''shall pre-approve'' language and instead require the registered person to provide the member with notice of the arrangements or modifications ''prior to entering into such arrangements'' or ''prior to the modification of such arrangements'' and ''obtain the member's approval.'' [39]

Further, the proposed rule change would amend Rule 3240(b)(1) to clarify that it also would apply to pre-existing arrangements. Specifically, proposed Rule 3240(b)(1)(B) would require registered persons, prior to the initiation of a broker-customer relationship at the member with a person with whom the registered person has an existing borrowing or lending arrangement, to notify the member in writing of existing arrangements within the registered persons, personal relationship and business relationship exceptions and obtain the member's approval in writing of the broker-customer relationship.[40]

b. Notification and Approval Requirements With Respect to the Immediate Family Member

Current Rule 3240(b)(2) provides, in pertinent part, that a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval of arrangements within the immediate family exception.[41] The proposed rule change would amend Rule 3240(b)(2) to clarify that the same approach would apply to arrangements that pre-exist the broker-customer relationship.[42] Specifically, the proposed rule change would amend Rule 3240(b)(2) to provide that the member's procedures may indicate that registered persons are not required to notify the member or receive member approval of such arrangements either prior to or subsequent to initiating a broker-customer relationship.[43] FINRA stated, however, that proposed Rule 3240(b)(2) implies that members may choose to require such notice and approval of those arrangements.[44]

c. Notification and Approval Requirements With Respect to the Financial Institution Exception

Current Rule 3240(b)(3) provides, in pertinent part, that a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval of arrangements within the financial institution exception,[45] provided that ''the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose and creditworthiness.'' [46] The proposed rule change would amend Rule 3240(b)(3) to clarify that it also would apply to arrangements that pre-exist the broker-customer relationship.[47] Specifically, the proposed rule change would amend Rule 3240(b)(3) to provide that the member's procedures may also indicate that registered persons are not required to notify the member or receive member approval of such arrangements either prior to or subsequent to initiating a broker-customer relationship.[48]

d. Notifications in Writing

Currently, Rule 3240 does not specify that notice must be given in writing, and the record-retention provision in Rule 3240.01 requires members only to preserve written approvals.[49] The proposed rule change would require that all notices required under Rule 3240 be in writing and retained by the member.[50] Specifically, the proposed rule change would require registered persons to give written notice and require members to preserve records of such written notice for at least three years.[51] The proposed rule change would also amend Rule 3240.01 to provide that the record-retention requirements would be for purposes of complying with proposed Rule 3240(b) regarding notification and approval requirements for borrowing or lending arrangements within the five exceptions, if any apply, not just borrowing or lending arrangements within the exceptions referenced in current Rule 3240(b)(1).[52]

e. Reasonable Assessment by Member of the Risks Created by the Borrowing or Lending Arrangement

The proposed rule change also would add new Rule 3240.06 (Obligations of Member Receiving Notice). Proposed Rule 3240.06 would provide that upon receiving written notice under Rule 3240, the member ''shall perform a reasonable assessment of the risks created by the borrowing or lending arrangement with a customer, modification to the borrowing or lending arrangement with a customer, or existing borrowing or lending arrangement with a person who seeks to be a customer of the registered person.'' [53] It would further provide that the member ''shall also make a reasonable determination of whether to approve the borrowing or lending arrangement, modification to the borrowing or lending arrangement, or, where there is an existing borrowing or lending arrangement with a person who seeks to be a customer of the registered person, the broker-customer

[32] *Id.*

[33] *See* Notice at 3970.

[34] Rule 3240(a)(2)(D).

[35] Rule 3240(a)(2)(E).

[36] Rule 3240(a)(2)(C).

[37] Rule 3240(b)(1)(A).

[38] *See* Notice at 3970.

[39] *See* proposed Rule 3240(b)(1)(A).

[40] *See* proposed Rule 3240(b)(1)(B).

[41] Rule 3240(b)(2).

[42] *See* Notice at 3971.

[43] *See* proposed Rule 3240(b)(2).

[44] *See* Notice at note 21.

[45] The ''financial institution exception'' states that no person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person, unless the customer (i) is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business and (ii) is acting in the course of such business. *See* Rule 3240(a)(2)(B).

[46] Rule 3240(b)(3).

[47] See Notice at 3971.

[48] *See* proposed Rule 3240(b)(3).

[49] *See* Notice at 3971.

[50] *Id.*

[51] *See* proposed Rules 3240(b)(1)(A) and (b)(1)(B) and proposed Rule 3240.01.

[52] *See* proposed Rule 3240.01.

[53] Proposed Rule 3240.06.

relationship.'' [54] FINRA stated that it expects that a member's ''reasonable assessment'' would take into consideration several factors, such as:

(1) any potential conflicts of interest in the registered person being in a borrowing or lending arrangement with a customer;

(2) the length and type of relationship between the customer and registered person;

(3) the material terms of the borrowing or lending arrangement;

(4) the customer's or the registered person's ability to repay the loan;

(5) the customer's age;

(6) whether the registered person has been a party to other borrowing or lending arrangements with customers;

(7) whether, based on the facts and circumstances observed in the member's business relationship with the customer, the customer has a mental or physical impairment that renders the customer unable to protect his or her own interests;

(8) any disciplinary history or indicia of improper activity or conduct with respect to the customer or the customer's account (*e.g.,* excessive trading); and

(9) any indicia of customer vulnerability or undue influence of the registered person over the customer.[55]

FINRA also stated that it would expect a member to try to discuss the arrangement with the customer, as part of the member's reasonable assessment of the risks.[56]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–FINRA–2024–001 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.[57] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration.[58] The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[59]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by May 15, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 29, 2024.

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–2024–001 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–2024–001. 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–2024–001 and should be submitted on or before May 15, 2024. If comments are received, any rebuttal comments should be submitted on or before May 29, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–08681 Filed 4–23–24; 8:45 am]

BILLING CODE 8011–01–P

[54] *Id.*

[55] *See* Notice at 3971.

[56] *See id.* at 3972.

[57] 15 U.S.C. 78s(b)(2)(B).

[58] *Id.*

[59] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[60] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

DEPARTMENT OF STATE

[Public Notice: 12385]

Proposal To Extend the Cultural Property Agreement Between the United States and Ecuador

ACTION: Public notice.

SUMMARY: Proposal to extend the *Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Ecuador Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Ecuador.*

FOR FURTHER INFORMATION CONTACT: Allison Davis Lehmann, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (771) 204–4765;

culprop@state.gov; include ''Ecuador'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the *Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Ecuador Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Ecuador* is hereby proposed.

A copy of the *Memorandum of Understanding,* the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–08707 Filed 4–23–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12384]

Proposal To Extend the Cultural Property Agreement Between the United States and Jordan

ACTION: Public notice.

SUMMARY: Proposal to extend the *Memorandum of Understanding between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Jordan.*

FOR FURTHER INFORMATION CONTACT: Virginia Herrmann, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 728–0533; *culprop@state.gov;* include ''Jordan'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the *Memorandum of Understanding between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Jordan* is hereby proposed.

A copy of the *Memorandum of Understanding,* the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–08706 Filed 4–23–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12383]

Cultural Property Advisory Committee; Notice of Meeting

SUMMARY: The Department of State announces the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee (''the Committee'').

DATES: The Committee will meet virtually from June 4–6, 2024, from 9 a.m. to 5 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Allison Davis, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (771) 204–4765; (*culprop@state.gov*).

SUPPLEMENTARY INFORMATION:

Participation: The public may participate in, or observe, the virtual open session on June 4, 2024, from 2 p.m. to 3 p.m. (EDT). More information below.

The Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') in accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601–2613) (''the Act''). A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review a request from the Government of Ukraine seeking import restrictions on archaeological and ethnological materials, the proposed extension of an agreement with the Government of the Hashemite Kingdom of Jordan, and the proposed extension of an agreement with the Government of the Republic of Ecuador. In addition, the Committee will undertake a continuing review of the effectiveness of other cultural property agreements and emergency actions currently in force.

The Open Session: The public can observe the virtual open session on June 4, 2024. Registered participants may provide oral comments for up to a maximum of five (5) minutes each. The Department provides specific instructions on how to observe or provide oral comments at the open session at *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-june-4-6-2024.*

Oral Comments: Register to speak at the open session by sending an email with your name and organizational affiliation, as well as any requests for reasonable accommodation, by May 27, 2024. Written comments are not required to make an oral comment during the open session.

Written Comments: The Committee will review written comments if received by 11:59 p.m. (EDT) on May 27, 2024. Written comments may be submitted in two ways, depending on whether they contain confidential information:

☐ *General Comments:* For general comments, use *https://www.regulations.gov,* enter the docket [DIR will insert the number], and follow the prompts.

☐ *Confidential Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to *culprop@state.gov.* Include ''Ukraine,'' ''Ecuador,'' and/or ''Jordan'' in the subject line.

☐ *Disclaimer:* The Cultural Heritage Center website contains additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions: *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-june-4-6-2024.* Comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via regulations.gov are not private and are posted at *https://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments

that they do not want publicly disclosed.

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–08710 Filed 4–23–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12386]

Notice of Receipt of Request From the Government of Ukraine Under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

ACTION: Public notice.

SUMMARY: Notice of receipt of request from Ukraine for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Chelsea Freeland, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (771) 204–6344; *culprop@state.gov;* include ''Ukraine'' in the subject line.

SUPPLEMENTARY INFORMATION: The Government of Ukraine made a request to the Government of the United States on March 5, 2024, under Article 9 of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.* Ukraine's request seeks U.S. import restrictions on archaeological and ethnological materials representing Ukraine's cultural patrimony. The Cultural Heritage Center website provides instructions for public comment and additional information on the request, including categories of material that may be included in import restrictions: *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-june-4-6-2024.* This notice is published pursuant to authority vested in the Assistant Secretary of State for Educational and Cultural Affairs and pursuant to 19 U.S.C. 2602(f)(1).

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–08708 Filed 4–23–24; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Charter Renewal of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the TVA Board of Directors has renewed the Regional Resource Stewardship Council (RRSC) charter for an additional fifteen-month period.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, *bhaliti@tva.gov,* 931–349–1894.

SUPPLEMENTARY INFORMATION: Pursuant to FACA and its implementing regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA) in accordance with 41 CFR 102–3.60(a), notice is hereby given that the RRSC has been renewed for a fifteen-month period. The RRSC will provide advice to TVA on its issues affecting natural resources and stewardship activities. The RRSC was originally established in 2000 to advise TVA on its natural resources and stewardship activities and the priority to be placed among competing objectives and values. It has been determined that the RRSC continues to be needed to provide an additional mechanism for public input regarding natural resources and stewardship issues. The charter can be found at *www.tva.com/rrsc.*

Dated: April 17, 2024.

Melanie Farrell,

Vice President, External Stakeholders and Regulatory Oversight, Tennessee Valley Authority.

[FR Doc. 2024–08772 Filed 4–23–24; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1978]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Advanced Qualification Program (AQP) Subpart Y to 14 CFR 121

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 22, 2023. The Advanced Qualification Program uses data informed quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

DATES: Written comments should be submitted by May 24, 2024.

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: Sandra L. Ray by email at: *Sandra.ray@faa.gov;* phone: 412–546–7344.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0701.

Title: Advanced Qualification Program (AQP) Subpart Y to 14 CFR 121.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 22, 2023 (88 FR 65423). Under 14 CFR part 121, subpart Y, Advanced Qualification Program (AQP), the FAA provides certificated air carriers, as well as training centers they employ, with a regulatory alternative for training, checking, qualifying, and certifying aircrew personnel subject to the requirements of 14 CFR parts 121 and 135. Data collection and analysis processes ensure that the certificate holder provides performance information on its crewmembers, flight

instructors, and evaluators that will enable them and the FAA to determine whether the form and content of training and evaluation activities are satisfactorily accomplishing the overall objectives of the curriculum.

Respondents: 25 Respondents with approved Advanced Qualification Programs.

Frequency: Monthly.

Estimated Average Burden per Response: 7 Hours.

Estimated Total Annual Burden: 2,100 Hours.

Issued in Washington, DC, on April 19, 2024.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2024–08719 Filed 4–23–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Active Transportation Infrastructure Investment Program

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA is announcing that a Notice of Funding Opportunity (NOFO) for the Active Transportation Infrastructure Investment Program (ATIIP) is now available.

DATES: Applications must be received by Monday, June 17, 2024.

ADDRESSES: All application materials should be submitted electronically through grants.gov. Refer to Catalog of Federal Domestic Assistance Number: 20.205.

FOR FURTHER INFORMATION CONTACT: Hector Santamaria, Agreement Officer, *ATIIP@dot.gov,* (202) 493–2402.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Office of the Federal Register's home page at: *www.federalregister.gov/,* the U.S. Government Publishing Office's web page at: *www.gpo.gov/fdsys/,* and at *www.grants.gov* (Opportunity Number: 693JJ324NF00012).

Background

Section 11529 of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58, Nov. 15, 2021), established ATIIP. The purpose of ATIIP is to provide discretionary grants to eligible entities to plan, design, and construct eligible projects that provide safe and connected active transportation infrastructure in an active transportation network or active transportation spine (BIL sec. 11529(a)).

The ATIIP projects will help improve the safety, efficiency, and reliability of active transportation networks and communities; improve connectivity between active transportation modes and public transportation; enhance the resiliency of on- and off-road active transportation infrastructure and help protect the environment; and improve quality of life in disadvantaged communities through the delivery of connected active transportation networks and expanded mobility opportunities.

The ATIIP grants will allow communities to identify, prioritize, and implement improvements to the largest barriers to safe, accessible, and equitable pedestrian and bicycle network connectivity through the development of infrastructure that will provide substantial additional opportunities for walking and bicycling.

The FHWA is publishing this notice pursuant to section 11529 of BIL to notify stakeholders of the availability of the NOFO located on *grants.gov*.

Shailen P. Bhatt,

Administrator, Federal Highway Administration.

[FR Doc. 2024–08758 Filed 4–23–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0003]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On February 21, 2024, FRA published a notice providing a 60-day period for public comment on the ICR. FRA received no comments in response to the notice.

DATES: Interested persons are invited to submit comments on or before May 24, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285; or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On February 21, 2024, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 89 FR 13140. FRA has received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for

FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Safety and Health Requirements Related to Camp Cars.

OMB Control Number: 2130–0595.

Abstract: Subparts C and E of 49 CFR part 228 address the construction of railroad-provided sleeping quarters (camp cars) and set certain safety and health requirements for such camp cars. Specifically, subpart E of part 228 prescribes minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees (covered-service employees) and individuals employed to maintain its right-of-way. Subpart E requires railroad-provided camp cars to be clean, safe, and sanitary, and be equipped with indoor toilets, potable water, and other features to protect the health of car occupants. Subpart C of part 228 prohibits a railroad from positioning a camp car intended for occupancy by individuals employed to maintain the railroad's right-of-way in the immediate vicinity of a switching or humping yard that handles railcars containing hazardous materials. Generally, the requirements of subparts C and E of part 228 are intended to provide covered-service employees an opportunity for rest free from the interruptions caused by noise under the control of the railroad.

The information collected under this rule is used by FRA to ensure railroads operating camp cars comply with all the requirements mandated in this regulation to protect the health and safety of camp car occupants.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses (railroads).

Form(s): N/A.

Respondent Universe: 1 Railroad.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 6,125.

Total Estimated Annual Burden: 994 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $82,734.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Deputy Chief Counsel.

[FR Doc. 2024–08789 Filed 4–23–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0054]

Alaska Railroad's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on April 5, 2024, Alaska Railroad (ARR) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA involves a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by May 14, 2024. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0054. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on April 5, 2024, ARR submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System, which seeks FRA's approval of several updates to ARR's Back Office Server. That RFA is available in Docket No. FRA–2010–0054.

Interested parties are invited to comment on ARR's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information,

please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2024–08765 Filed 4–23–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2023–0136]

Pipeline Safety: Request for Special Permit; Southern Natural Gas Company, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Southern Natural Gas Company, LLC (SNG). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by May 24, 2024.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov website: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: There is a privacy statement published on *http://www.regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and 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 notice contain commercial or financial information that is customarily treated as private, that you treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential;'' (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Earnest Scott by telephone at 202–909–7529, or by email at *earnest.scott@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from SNG, a subsidiary of Kinder Morgan, on December 27, 2023, seeking a waiver from the Federal pipeline safety regulations in 49 CFR 192.611(a), (d), and 192.619(a), where a gas transmission pipeline segment have undergone changes from a Class 1 to Class 3 location.

The Cypress Line Pipeline segment is a 24-inch diameter natural gas transmission pipeline, 0.176 miles in length, located in Chatham County, Georgia. The maximum allowable operating pressure for the Cypress Line Pipeline segment is 1,250 pounds per square inch gauge. This special permit is being requested to allow SNG to operate the Cypress Line Pipeline Segment 727 in a Class 3 location at its current operating pressure by implementing enhanced integrity management procedures in lieu of replacing pipe or lowering the operating pressure, as required by part 192.

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the above listed SNG pipeline segment are available for review and public comment in Docket Number PHMSA 2023–0136. PHMSA invites interested persons to review and submit comments on the special permit request, proposed special permit with conditions, and DEA in the docket. Please submit comments on any potential safety, environmental, and other relevant considerations implicated by the special permit request. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, on April 19, 2024, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–08774 Filed 4–23–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0224; Notice No. 2024–07]

Hazardous Materials: Notice of Public Meetings in 2024 for International Standards on the Transport of Dangerous Goods

AGENCY: Pipeline and Hazardous Materials Safety Administration

(PHMSA), Office of Hazardous Materials Safety, Department of Transportation (DOT).

ACTION: Notice of 2024 public meetings.

SUMMARY: This notice announces that PHMSA's Office of Hazardous Materials Safety will host three public meetings during 2024 in advance of certain international meetings. The first meeting will be held in preparation of the 64th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) scheduled for June 24–July 3, 2024, in Geneva, Switzerland. The second meeting will be held in preparation of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) Working Group 24 (WG/24) tentatively scheduled for October 2024 in Montreal, Canada. The third meeting will be held in preparation of the 65th session of the UNSCOE TDG scheduled for November 25–December 3, 2024, in Geneva, Switzerland. For each of these meetings, PHMSA will solicit public input on current proposals.

Time and Location: Each public meeting will take place approximately two weeks preceding the international meeting at DOT Headquarters, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. A remote participation option will also be available. Specific information for each meeting will be posted when available on the PHMSA website at *www.phmsa.dot.gov/international-program/international-program-overview* under ''Upcoming Events.'' This information will include the public meeting date, time, remote access login, conference dial-in number, and details for advance registration.

FOR FURTHER INFORMATION CONTACT: Steven Webb or Aaron Wiener, PHMSA, U.S. Department of Transportation, by phone at 202–366–8553.

SUPPLEMENTARY INFORMATION: This notice is published under the authority of Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*). Section 49 U.S.C. 5120 authorizes the Secretary to consult with interested international authorities to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with the standards adopted by international authorities. The Secretary has delegated the authority granted in the Federal Hazardous Materials Transportation Law to the PHMSA Administrator at 49 CFR 1.97(b).

The purpose of PHMSA's public meetings held in advance of certain international meetings is to allow the public to give input on the current proposals being considered by the international standards setting bodies.

The 64th and 65th sessions of the UNSCOE TDG will represent the third and fourth meetings scheduled for the 2023–2024 biennium. The UNSCOE TDG will consider proposals for the 24th Revised Edition of the *United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations* (Model Regulations), which may be implemented into relevant domestic, regional, and international regulations starting January 1, 2027. Copies of working documents, informal documents, the agenda, and the post-meeting final report may be obtained from the United Nations Transport Division's website at *www.unece.org/trans/danger/danger.html.*

The ICAO DGP–WG/24 meeting will represent the first meeting of the 2024–2025 biennium. The ICAO DGP will consider proposals for the 2027–2028 edition of the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284). Copies of working papers, information papers, the agenda, and the post-meeting final report may be obtained from the ICAO DGP website at *www.icao.int/safety/DangerousGoods/Pages/DGPMeetings.aspx.*

Signed in Washington, DC.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2024–08788 Filed 4–23–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and these vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

A. On February 23, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons subject to U.S. jurisdiction are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals

1. ZAGORNOV, Maksim Aleksandrovich, United Arab Emirates; DOB 08 Jun 1973; POB Tashkent, Uzbekistan; nationality Russia; Gender Male; Tax ID No. 744716075030 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) as amended by Executive Order 14114 of December 22, 2023, "Taking Additional Steps With Respect to the Russian Federation's Harmful Activities," 88 FR 89271 (Dec. 22, 2023) (E.O. 14114), for operating or having operated in the engineering sector of the Russian Federation economy.

2. MOLOTOV, Igor Yevgenyevich, Russia; DOB 06 Mar 1962; POB Moscow, Russia; nationality Russia; Gender Male; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; National ID No. 4509154695 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

3. POGIBLOV, Georgii Semenovich (a.k.a. POGIBLOV, Georgiy Semenovich), Novosibirsk, Russia; DOB 13 Nov 1968; POB Novosibirsk, Russia; nationality Russia; Gender Male; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Passport 752790751 (Russia) expires 04 Feb 2026; Tax ID No. 5003110950 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

4. DIEGELMANN, Bernd Guenter, United Arab Emirates; DOB 12 Sep 1990; nationality Germany; Gender Male; Passport C4YL28X5C (Germany) (individual) [RUSSIA-EO14024] (Linked To: RHEINGOLD EDELMETALL AG).

   Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or

services to or in support of, RHEINGOLD EDELMETALL AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. DIEGELMANN, Axel Paul, Liechtenstein; DOB 24 Feb 1965; nationality Germany; Gender Male (individual) [RUSSIA-EO14024] (Linked To: RHEINGOLD EDELMETALL AG).

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of RHEINGOLD EDELMETALL AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. DIEGELMANN, Fritz, Liechtenstein; DOB 28 May 1993; POB Kulmbach, Germany; nationality Germany; Gender Male; Passport CGTG1HW3Z (Germany) (individual) [RUSSIA-EO14024] (Linked To: RHEINGOLD EDELMETALL AG).

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of RHEINGOLD EDELMETALL AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. DRAGAS, Dragan, Serbia; DOB 20 Jun 1982; nationality Serbia; Gender Male; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114. (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

8. SVORCAN, Marko, Serbia; DOB 07 May 1967; nationality Serbia; Gender Male; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114. (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

9. GAFAR ZADA, Mehti (a.k.a. GAFAR ZADE, Mekhti Fikret; a.k.a. GAFAR ZADE, Mekhti Fikret Oglu; a.k.a. KAFAR ZADE, Mekhti Fikret Ogly; a.k.a. MEHTI, Gafar Zada), Moscow, Russia; DOB 30 Nov 1978; POB Azerbaijan; nationality Azerbaijan; Gender Male; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114;

Passport C03895864 (Azerbaijan) issued 11 Apr 2022 expires 10 Apr 2032; National ID No. 0V9WV73 (Azerbaijan) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

10. ALEKSEYEV, Sergey Sergeyevich (a.k.a. "ALEKSEEV, Sergei"; a.k.a. "ALEKSEEV, Sergey"), Tatarstan, Russia; DOB 26 Mar 1983; nationality Russia; Gender Male; Passport 720371125 (Russia) expires 24 Jul 2022 (individual) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA).

    Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. FLOROV, Aleksei Vadimovich (Cyrillic: ФЛОРОВ, АЛЕКСЕЙ ВАДИМОВИЧ) (a.k.a. "FLOROV, Aleksei"), Russia; DOB 10 Sep 1983; nationality Russia; Gender Male; Passport 644804652 (Russia) expires 28 Oct 2016; Tax ID No. 501814379947 (Russia) (individual) [RUSSIA-EO14024] (Linked To: ALBATROS OOO).

    Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of ALBATROS OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. SHAGIVALEEV, Timur Nailevich (Cyrillic: ШАГИВАЛЕЕВ, Тимур Наилевич) (a.k.a. SHAGIVALEEV, Timur), Tatarstan, Russia; DOB 28 Jan 1978; POB Kazan, Russia; nationality Russia; Gender Male; Passport 753129173 (Russia) expires 29 Apr 2026; National ID No. 9201745357 (Russia) (individual) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA).

    Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA, a person whose property and interests in property are blocked pursuant to E.O. 14024.

13. SNITKO, Artem Alexandrovich (a.k.a. "SNITKO, Artem"), Tatarstan, Russia; DOB 25 Aug 1988; nationality Russia; Gender Male; Passport 530658754 (Russia) expires 17 Jun 2024 (individual) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA).

    Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA, a person whose property and interests in property are blocked pursuant to E.O. 14024.

14. TAZUTDINOV, Ildar Rashitovich (a.k.a. "TAZUTDINOV, Ildar"), Tatarstan, Russia; DOB 01 Oct 1977; nationality Russia; Gender Male; Passport 757011338 (Russia) expires 21 Feb 2028; National ID No. 9201516121 (Russia) (individual) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA).

    Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA, a person whose property and interests in property are blocked pursuant to E.O. 14024.

15. VORONKOV, Ilya Vladimirovich (Cyrillic: ВОРОНКОВ, ИЛЬЯ ВЛАДИМИРОВИЧ) (a.k.a. VORONKOV, Ilya), Pushkino, Russia; DOB 23 Sep 1993; POB Pushkino, Russia; nationality Russia; Gender Male; Passport 762164380 (Russia) expires 29 Dec 2029; National ID No. 4613211883 (Russia); Tax ID No. 503821710850 (Russia) (individual) [RUSSIA-EO14024] (Linked To: ALBATROS OOO).

    Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of ALBATROS OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

16. CHEPURNOI, Mikhail Yuryevich (a.k.a. CHEPURNOY, Mikhail Yuryevich), Moscow, Russia; DOB 26 Feb 1970; POB Moscow, Russia; nationality Russia; Gender Male; Tax ID No. 772805025904 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

17. KOSTIN, Vladislav Vyacheslavovich, Russia; DOB 28 Oct 1983; nationality Russia; Gender Male; Tax ID No. 772410397702 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

18. LUZHANSKAYA, Anna Yuryevna, Russia; DOB 03 Jun 1983; nationality Russia; Gender Female; Passport 750275444 (Russia); Tax ID No. 773770174460 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy. </EXTRACT>

Entities

1. NEW IDEA GUANGZHOU TECHNOLOGY CO. LTD. (Chinese Simplified: 新设想广州科技有限公司), 122 Self-edited 408 (A288), No. 36 Daguan South Rd, Tianhe District, Guangzhou 510660, China; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O.

14024, as amended by E.O. 14114; Organization Established Date 22 Dec 2020; Unified Social Credit Code (USCC) 91440101MA9W2FJX55 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

2. AKTSIONERNOE OBSHCHESTVO NAUCHNO ISSLEDOVATELSKI PROEKTNO KONSTRUKTORSKI I TEKHNOLOGICHESKI AKKUMULYATORNY INSTITUT ISTOCHNIK (a.k.a. JSC NIAI ISTOCHNIK), Ul. Dalya D. 10, Saint Petersburg 197376, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7813054982 (Russia); Registration Number 1027806861477 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

3. GEO HIT (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU GEO KHIT; a.k.a. "GEO KHIT"), Pl. Sovetsko-Chekhoslovatskoi Druzhby, Saratov 410059, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Maintenance and repair of motor vehicles; Tax ID No. 6451422711 (Russia); Registration Number 1086451002890 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

4. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU ALFA ENERGO, Ul. Krasnobogatyrskaya D. 6, Str. 5, Moscow 107564, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7720746451 (Russia); Registration Number 1127746249949 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

5. SMART BATTERIES (a.k.a. "OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU SMART BETTERIZ"), Proezd Zavoda Serp I Molot D. 3, Korp. 2, Et. 10, Kom. 1, Moscow 111250, Russia; Sh. Khoroshevskoe D. 32A, ET 4, POM.VIA, OF 415/2, Moscow 125284, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Maintenance and repair of motor vehicles; Tax ID No. 7714450590 (Russia); Registration Number 1197746509234 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

6. CLOSED JOINT STOCK COMPANY SPECIAL TRANSPORTATION SERVICES (a.k.a. "STS COMPANY"), Ul. Gilyarovskogo D. 40, Moscow 129110, Russia; Tax ID No. 7706129200 (Russia); Registration Number 1027739002873 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

7. JOINT STOCK COMPANY FOREIGN ECONOMIC ASSOCIATION ALMAZYUVELIREXPORT (a.k.a. FEDERAL STATE OWNED UNITARY ENTERPRISE FOREIGN TRADE ASSOCIATION ALMAZJUVELIREXPORT; a.k.a. VO ALMAZYUVELIREKSPORT AO), BR Zubovskii D. 25, K. 1, Moscow 119021, Russia; Ul. Ostozhenka D. 22/1, Moscow 119034, Russia; Tax ID No. 7704485379 (Russia); Registration Number 1197746226886 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

8. LIMITED LIABILITY COMPANY SFINKS SECURE LOGISTICS, Ul. Dubininskaya D. 57, Str. 2, Moscow 125493, Russia; Ul. Smolnaya D. 12, Office 07A, Moscow 125493, Russia; Tax ID No. 7743698003 (Russia); Registration Number 1087746798908 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

9. TBSS LIMITED LIABILITY COMPANY (a.k.a. COMPANY LIMITED TBSS), Ul. Smolnaya D. 12, Pom. 4, Moscow 125493, Russia; Tax ID No. 7716030866 (Russia); Registration Number 1027700043832 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

10. LIMITED LIABILITY COMPANY GROUP OF COMPANIES MKC (a.k.a. GRUPPA KOMPANII MKS), Victorenko Str. 5, Building 1, Business Center, Victory Plaza, 9th Floor, Office 8A, Moscow 125167, Russia; Voronezhskaya Str. 5, Letter A, Section 27H, Office 224, St. Petersburg 191119, Russia; Kirova Str. 63, Office 206, Beryozovsky 623700, Russia; Tax ID No. 6604025432 (Russia); Registration Number 1096604002384 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the engineering sector of the Russian Federation economy.

11. IT1 DIGITAL SOLUTIONS LIMITED LIABILITY COMPANY, ul. Godovikova d. 9, str. 17, floor 6, ch. pomeshch. 7, Moscow 129085, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to

section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717102958 (Russia); Registration Number 1217700276859 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

12. IT1 KHOLDING, ul. Godovikova d. 9, str. 17, floor 6, ch. pomeshch. 5, Moscow 129085, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717096285 (Russia); Registration Number 1207700418331 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

13. LIMITED LIABILITY COMPANY GPB IT1, ul. Godovikova d. 9, str. 17, floor 6, ch. pomeshch. 7, Moscow 129085, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717102235 (Russia); Registration Number 1217700240504 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

14. LIMITED LIABILITY COMPANY IT1, ul. Godovikova d. 9, str. 17, str. 17, floor 6, pomeshch. 1,2,15,17,19, ch. 3,5,7, Moscow 129085, Russia; Tax ID No. 5010028861 (Russia); Registration Number 1065010021284 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

15. LIMITED LIABILITY COMPANY IT1 NOVATIONS, ul. Godovikova d. 9, str. 17, Moscow 129085, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717144517 (Russia); Registration Number 1237700663727 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

16. LIMITED LIABILITY COMPANY IT1 RTK, ul. Godovikova d. 9, str. 17, floor 6, ch. pomeshch. 7, Moscow 129085, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717097105 (Russia); Registration Number 1207700470273 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

17. LIMITED LIABILITY COMPANY IT1 SOLUTIONS, ul. Godovikova d. 9, str. 17, Moscow 129085, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717134195 (Russia); Registration Number 1237700297944 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

18. LIMITED LIABILITY COMPANY IT1 TECHNOLOGIES, Proezd triumfalnyi d. 1, Pgt. Sirius 354340, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 2367029103 (Russia); Registration Number 1232300003320 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

19. LIMITED LIABILITY COMPANY SERVICE PLATFORM, Proezd triumfalnyi d. 1, Pgt. Sirius 354340, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717107561 (Russia); Registration Number 1217700531652 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

20. TECHNOLOGY PLATFORM LIMITED LIABILITY COMPANY, ter. Innovatsionnogo Tsentra Skolkovo, b-r Bolshoi d. 42, str. 1, et/pom/rab.m 3/1160/10, Moscow 121205, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9731064013 (Russia); Registration Number 1207700169269 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

21. AKTSIONERNOE OBSHCHESTVO AKONIT ALABUGA (a.k.a. "AO AKONIT A"), Ter. Oez Alabuga, Ul. Sh-2 Str. 13A, Kab. 118, Yelabuga 423601, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1646048224 (Russia); Registration Number 1201600028387 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

22. AKTSIONERNOE OBSHCHESTVO AKONIT URAL (a.k.a. JSC AKONIT URAL; a.k.a. "AO AUR"), Ter. Oez Alabuga, Ul. Sh-2 Str. 13A, Kab. 213, Yelabuga 423601, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6685160839 (Russia); Registration Number 1196658020470 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

23. LIMITED LIABILITY COMPANY VERTIKAL ALABUGA (a.k.a. VERTIKAL ALABUGA LLC), Ter. Oez Alabuga, Ul. Sh-2 Str. 15/9, Yelabuga 423601, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1646034493 (Russia); Registration Number 1131674000963 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

24. ST ALABUGA, Ul. Sh-2 (Oez Alabuga Ter.), Str. 5/12, Pomeshch. 131, Yelabuga 423601, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1646044036 (Russia); Registration Number 1171690005816 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

25. TN ALABUGA, Ul. Sh-2, Oez Alabuga Ter, Zd 15/2A, Yelabuga 423601, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1646043219 (Russia); Registration Number 1161690137058 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

26. 148SH LIMITED TRADE DEVELOPMENT (a.k.a. OOO 148ESEYCH; a.k.a. "148SH LTD"), Ter. Oez Ppt Lipetsk Str. 4a, Office 021/40, Gryazi 398010, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base

pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4802014171 (Russia); Registration Number 1214800009291 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

27. BS PROTSESSING, Ter. Oez Ppt Lipetsk Str. 6, Gryazi 398010, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4802003236 (Russia); Registration Number 1164827053698 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

28. FENIKS (a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU FENIKS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ФЕНИКС); a.k.a. "PHOENIX"), Ter. Oez Ppt Lipetsk Str. 4A, Office 021/25, Gryazi 398010, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Manufacture of articles of concrete, cement and plaster; Tax ID No. 4802013587 (Russia); Registration Number 1194827003128 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

29. GRAZHDANSKIE PRIPASY (a.k.a. "GP AMMO"), Ter. Oez Ppt Lipetsk Str. 71, Gryazi 398010, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4802011685 (Russia); Registration Number 1084802000832 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

30. HASH MAKER LIMITED LIABILITY COMPANY (a.k.a. OOO KHESH MEYKER), Ter. Oez Ppt Lipetsk Str. 4a, Office 021/41, Gryazi 398010, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4802014206 (Russia); Registration Number 1214800010523 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

31. SMART DC LIPETSK LIMITED LIABILITY COMPANY, Ter. Oez Ppt Lipetsk Str. 4a, Office 213, Pomeshch. 16, Gryazi 398010, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4802014291 (Russia); Registration Number 1224800000105 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

32. ZAVOD LIPETSKTEKHNOLIT, Ter. Oez Ppt Lipetsk Str. 4A, Office 021/50, Gryazi 398010, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4802014622 (Russia); Registration Number 1234800001930 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

33. ALFALODZHIK (a.k.a. ALPHALOGIC), Ter. Portovaya Osobaya Ekonomicheskaya Zona, Pr-d Industrialnyi Zd. 12, Str. 1, Floor 2, S.p. Mirnovskoe 433405, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7328095687 (Russia); Registration Number 1177325019343 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

34. EKOTEKHPLAST (a.k.a. ECOTECHPLAST LLC), Ter. Portovaya Osobaya Ekonomicheskaya Zona, Pr-d Industrialnyi Zd. 15, Str. 1, Pomeshch. 4, S.p. Mirnovskoe 433405, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7300003541 (Russia); Registration Number 1227300007263 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

35. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 1A, Ter. Portovaya Osobaya Ekonomicheskaya Zona, Pr-d Industrialnyi Zd. 12, Str. 1, S.p. Mirnovskoe 433405, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7329020395 (Russia); Registration Number 1157329003480 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

36. POSTAVSHCHIK DALNEGO VOSTOKA, Ter. Portovaya Osobaya Ekonomicheskaya Zona, Pr-d Pervykh Rezidentov Zd. 3, S.p. Mirnovskoe 433405, Russia; Tax ID No. 7329023100 (Russia); Registration Number 1167325074762 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

37. VINSAVER, Ter. Portovaya Osobaya Ekonomicheskaya Zona, Pr-d Industrialnyi Zd. 15, Str. 1, Pomeshch. 15, S.p. Mirnovskoe 433405, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7724907766 (Russia); Registration Number 1147746081251 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

38. VOSTOKINTERPROM LIMITED LIABILITY COMPANY, Ter. Portovaya Osobaya Ekonomicheskaya Zona, Pr-d Industrialnyi Zd. 15, Str. 1, Pomeshch. 4, S.p. Mirnovskoe 433405, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7329036074 (Russia); Registration Number 1217300010960 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

39. NIZHNY NOVGOROD JOINT STOCK COMPANY HYDROMASH NAMED AFTER VI LUZYANIN (a.k.a. JSC HYDROMASH NAMED AFTER VI LUZYANIN), Pr-kt Gagarina D. 22, Nizhniy Novgorod 603022, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5262008630 (Russia); Registration Number 1025203720189 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

40. OKSI BALT (a.k.a. OKSEA BALT LTD), Proezd Garazhnyi D.1 Liter I, Saint Petersburg 192289, Russia; Ul. Tashkentskaya D. 4, K. 2, Lit. U, Pomeshch. 16-N, Pomeshch. 1, Saint Petersburg 196006, Russia; Tax ID No. 7804079571 (Russia); Registration Number 1037808019908 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

41. GENERATION TRADING FZE (Arabic: جينيراشن تريدينغ م.م.ح) (a.k.a. GENERATION TRADING FREE ZONE ESTABLISHMENT), Al-Sabkha Tower, Baniyas Road, 109, Floor 8, Suite 810, Al-Sabkha, Deira, Dubai, United Arab Emirates; Business Center, Rakez, Ras al-Khaimah, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 25 Nov 2018; License 5020355 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

    Designated pursuant to 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 3 CFR, 2019 Comp., p. 356., as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

42. INAND INDUSTRIES COMPANY LIMITED (a.k.a. CONG TY TNHH INAND INDUSTRIES), Floor 9, Building Minori, 67A Truong Dinh, Ward Truong Dinh, District Hai Ba Trung, Hanoi, Vietnam; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 2022; Tax ID No. 0110203228 (Vietnam) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

43. CUBIT SEMICONDUCTOR LIMITED, Milltown Court, 2 Milltown Road, Dublin D06E849, Ireland; 1671 Bong Myong Dong, Bon,, Office 1st Floor, Chungcheongbuk-Do, Cheongju-si 28452, Korea, South; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. IE9794222F (Ireland); Registration Number 499093 (Ireland) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

44. PJSC TRANSCONTAINER (a.k.a. PUBLIC JOINT STOCK COMPANY CENTER FOR CARGO CONTAINER TRAFFIC TRANSCONTAINER), 19, Oruzheyniy Pereulok, Moscow 125047, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7708591995 (Russia); Registration Number 1067746341024 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

45. GTS GRUPP, Ul. Rossolomio D. 17, Str. 2, Pomeshch. XI, Kom 3-6, Moscow 119021, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717063811 (Russia); Registration Number 117746940260 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

46. JOINT STOCK COMPANY NEVSKY ZAVOD (a.k.a. NEVSKIY ZAVOD CLOSED COMPANY), Obukhovskoi Oborony Pr D. 51, St. Petersburg 192029, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7806369727 (Russia); Registration Number 1077847587003 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

47. LIMITED LIABILITY COMPANY BODOR, Sh. Schelkovskoe D. 5, Str. 1, Office 520, 523, Moscow 105122, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9718083987 (Russia); Registration Number 5177746314169 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

48. LLC TRADING HOUSE STANKOMASHSTROY (a.k.a. TRADING COMPANY SMS LIMITED; a.k.a. "LLC TD SMS"), Ul. Bugrovka M. D. 20, Penza 440011, Russia; 9A Germana Titova St., Penza 440028, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5835109448 (Russia); Registration Number 1145835004545 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

49. PRIMINER RUSSLAND, Pl. Privokzalnaya D. 1A, Kabinet 90, Rabochee Mesto 5, Odintsovo 143007, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as

amended by E.O. 14114; Tax ID No. 3663154931 (Russia); Registration Number 1213600009600 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

50. PUBLIC JOINT STOCK COMPANY CHELYABINSK FORGE AND PRESS PLANT (a.k.a. CHKPZ; a.k.a. PUBLICHNOE AKTSIONERNOE OBSCHESTVO CHELYABINSKIY KUZNECHNO PRESSOVIY ZAVOD), Gorelova Street, Chelyabinsk 454012, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7449006184 (Russia); Registration Number 1027402696023 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

51. JOINT STOCK COMMERCIAL BANK CHELINDBANK, 80, Karla Marksa Ul, Chelyabinsk 454091, Russia; SWIFT/BIC CHLBRU4C; Website www.chelindbank.ru; Target Type Financial Institution; Tax ID No. 7453002182 (Russia); Registration Number 1027400000110 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

52. JOINT STOCK COMPANY COMMERCIAL BANK MODULBANK (a.k.a. REGIONAL CREDIT; a.k.a. REGIONALNY KREDIT), Pl. Oktyabrskaya, 1, Kostroma 156005, Russia; SWIFT/BIC MODBRU22; Website modulbank.ru; Target Type Financial Institution; Tax ID No. 2204000595 (Russia); Registration Number 1022200525841 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

53. JOINT STOCK COMPANY JOINT STOCK COMMERCIAL BANK INTERNATIONAL FINANCIAL CLUB (a.k.a. MFK BANK; a.k.a. "IFC BANK"), Presnenskaya Embankment, 10, Moscow 123112, Russia; SWIFT/BIC ICFIRUMM; Website www.mfk-bank.ru; Target Type Financial Institution; Tax ID No. 7744000038 (Russia); Registration Number 1027700056977 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

54. BEE PITRON LIMITED, Per. Vilenskii D. 4, Saint Petersburg 191014, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7801225979 (Russia); Registration Number 1037800000171 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

55. K SOFT INZHINIRING LLC (a.k.a. K SOFT ENGINEERING), LN. 26-ya V.O. D. 15, K. 2 LIT. A, Office 70N, Saint Petersburg 199106, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7801296835 (Russia); Registration Number 1157847432258 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

56. FIDESYS (a.k.a. FIDESIS LLC; a.k.a. LIMITED LIABILITY COMPANY FIDESIS), Ul. Leninskie Gory D. 1 Str. 77 Nauchnyi Park Mgu Im M V Lomonosova Office 402, Moscow 119234, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7725692471 (Russia); Registration Number 1107746291443 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

57. INTERCAD COMPANY LIMITED (a.k.a. LIMITED LIABILITY COMPANY INTERKAD), Pr-Kt Yuriya Gagarina D. 2, Lit. A, Pomeshch. 13-N Pom.28,29, Saint Petersburg 196105, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7813176194 (Russia); Registration Number 1027806880551 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

58. LIMITED LIABILITY COMPANY GROUP OF COMPANIES SPETSMETALLMASTER (a.k.a. THE LIMITED LIABILITY COMPANY GROUP OF THE COMPANIES SPECIALMETALLMASTER), Pr-Kt Ryazanskii D. 8A, Str. 24, Et/Pom/Komn 4/I/44-54, Moscow 109428, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7722326685 (Russia); Registration Number 1157746420512 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

59. LIMITED LIABILITY COMPANY POLYMER PIPE PLANT (a.k.a. MOSCOW PLANT FDPLAST; a.k.a. ZAVOD POLIMERNYKH TRUB), Ul. Velozavodskaya D. 11/1, Kv. 137, Moscow 115280, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation

economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7722370589 (Russia); Registration Number 1167746690638 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

60. SIU SYSTEM JOINT STOCK COMPANY (a.k.a. JOINT STOCK COMPANY NPO SYSTEM), Ul. Rochdelskaya 15/23, Moscow 123376, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7703676733 (Russia); Registration Number 5087746210041 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

61. TOP SYSTEMS LTD. (a.k.a. CLOSED JOINT STOCK COMPANY TOP SYSTEMS; a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO TOP SISTEMY; a.k.a. ZAO TOP SISTEMY), Ul. Kirovogradskaya D.5, Kv.35, Moscow 117587, Russia; 1 Timiryazevskaya St., Moscow 127422, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7726057955 (Russia); Registration Number 1037700101163 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

62. TOTAL Z LLC (a.k.a. LIMITED LIABILITY COMPANY TOTALZED), Km Kievskoe Shosse 22-I (P Moskovskii) Vld. 4, Str. 2, Moscow 142784, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7751011471 (Russia); Registration Number 1157746943419 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

63. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU SISTEMY PRAKTICHESKOI BEZOPASNOSTI (a.k.a. SPB OOO; a.k.a. "COMPANY PRACTICAL SECURITY SYSTEMS"), Ul. Politekhnicheskaya D. 22, Lit. A, Pomeshch 1-N/298, Saint Petersburg 194021, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7802869750 (Russia); Registration Number 1147847303867 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

64. PUBLIC JOINT STOCK COMPANY SPB BANK, 38 Dolgorukovskaya str., bld. 1, Moscow 127006, Russia; SWIFT/BIC RTSBRUMM; Website www.spbbank.com; Target Type Financial Institution; Tax ID No. 7831000034 (Russia); Registration Number 1037700041323 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

65. LIMITED LIABILITY COMPANY CRYPTO PRO (a.k.a. KRIPTO PRO OOO), Ul. Sushchevskii Val 18, Moscow 127018, Russia; Proezd Izmailovskii D. 10, K. 2, Pomeshch. 4/1, Moscow 105037, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7717107991 (Russia); Registration Number 1037700085444 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

66. JOINT STOCK COMPANY ASTRONOMICAL SCIENTIFIC CENTER (a.k.a. "ANC"; a.k.a. "AO ANTS"), sh. Entusziastov, d. 56, str. 25, Moscow 111123, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7733769696 (Russia); Registration Number 1117746444881 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

67. KELDYSH INSTITUTE OF APPLIED MATHEMATICS (a.k.a. KELDYSH INSTITUTE OF APPLIED MATHEMATICS OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. "KIAM"), pl. Miusskaya, d. 4, Moscow 125047, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7710063939 (Russia); Registration Number 1037739115787 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

68. LIMITED LIABILITY COMPANY SPACE COMMUNICATIONS (a.k.a. OOO KOSKOM; a.k.a. "KOSMICHESKIE KOMMUNIKATSII"), ul. Aviamotornaya, d. 53, k. 1, et. 6, kom. 91, Moscow 111024, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7704313605 (Russia); Registration Number 1157746350046 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

69. SMALL INNOVATION ENTERPRISE ISON BALLISTICS SERVICE (a.k.a. SIE ISON BALLISTICS SERVICE), ul. Rodnikovaya, d. 4, k. 6, kv. 14, Moscow 119297, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9710003002 (Russia); Registration Number 1157746952351 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

70. FINANSOVYE INFORMATSIONNYE SISTEMY (a.k.a. "FINANCIAL INFORMATION SYSTEMS"), Ul. Dusi Kovalchuk D. 179/5, Novosibirsk 630049, Russia; Ul. Musy Dzhalilya D. 3/1, Of. 823, Novosibirsk 630055, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5445255281 (Russia); Registration Number 1085445000046 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

71. KEIS STUDIO (a.k.a. "CASE PLATFORM"; a.k.a. "CASE STUDIO"), Ul. Nikolaeva D. 12, Office 804, Novosibirsk 630090, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5408006270 (Russia); Registration Number 1155476112770 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

72. AURIGA LIMITED LIABILITY COMPANY, sh. Varshavskoe d.125, STR.16A, Moscow 117587, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7726636575 (Russia); Registration Number 1097746556577 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

73. GENAITI (a.k.a. "GENIT"), b-r Bolshoi (Innovatsionnogo Tsentra Skolkovo ter) d. 42, str. 1, et/pom.1/335, Moscow 121250, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of

E.O. 14024, as amended by E.O. 14114; Tax ID No. 9701102208 (Russia); Registration Number 1187746256642 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

74. ICL ELECTRONICS LIMITED LIABILITY COMPANY, ul. Sovetskaya zd. 278, Office 17(1004), Stolbishche, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1684000390 (Russia); Registration Number 1211600058780 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

75. LIMITED LIABILITY COMPANY BIMEISTER (a.k.a. SNH MEISTERSOFT), Mikroraion Barybino, Bulv 60 let SSSR d 6. 13, Domodedovo 142060, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5009049994 (Russia); Registration Number 1055001518241 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

76. AI TI SI CO (a.k.a. "ITC ELECTRONICS"), Ul. Zyryanovskaya D. 53, Novosibirsk 630102, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 07 Aug 2003; Tax ID No. 5406259290 (Russia); Registration Number 1035402500825 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

77. LIMITED LIABILITY COMPANY I T C (a.k.a. AI TI SI), Ul. Akademika Konstantinova D. 4, K. 1 Lit. A, Pomeshch 7N, Office 202, Saint Petersburg 195427, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 07 Aug 2003; Tax ID No. 5406259282 (Russia); Registration Number 1035402500781 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

78. LIMITED LIABILITY COMPANY ITC (a.k.a. AITISI), Ul. Radio D. 24, K. 1, Office 008, Moscow 105005, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined

to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 22 Apr 2003; Tax ID No. 5406251910 (Russia); Registration Number 1035402483412 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

79. JOINT STOCK COMPANY FERROPRIBOR, Ul. Svobody D. 50, Krasnoe Selo 198320, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7807026923 (Russia); Registration Number 1027804594950 (Russia) [RUSSIA-EO14024].
Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

80. JOINT STOCK COMPANY LIT PHONON (a.k.a. OPEN JOINT STOCK COMPANY LIT FONON), Ul. Krasnobogatyrskaya D. 44, Str. 1, Moscow 107076, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7718016680 (Russia); Registration Number 1027700256616 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

81. JOINT STOCK COMPANY SCIENTIFIC PRODUCTION ENTERPRISE RADIY (a.k.a. AO NPP RADIY), Ul. Chasovaya D. 28, Moscow 125315, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7712001254 (Russia); Registration Number 1027700133141 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

82. JOINT STOCK COMPANY VREMYA CH, Ul. Osharskaya D. 67, Nizhniy Novgorod 603105, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5262007965 (Russia); Registration Number 1025203723478 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

83. JSC SUEK (a.k.a. AKTSIONERNOE OBSHCHESTVO SIBIRSKAYA UGOLNAYA ENERGETICHESKAYA KOMPANIYA), d. 53 str. 7, ul. Dubininskaya, Moscow

115054, Russia; Tax ID No. 7708129854 (Russia); Registration Number 1027700151380 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

84. ARTEKS LIMITED COMPANY, Ul. Dmitriya Ulyanova D. 19, Floor/Pomeshch./Kom. 1/I/52, Moscow 117292, Russia; Ul. Tvardovskogo D. 31, Of. Kv. 37, Moscow 123458, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7702815751 (Russia); Registration Number 1137746448542 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

85. RESEARCH AND DEVELOPMENT COMPANY TR INDUSTRIES (a.k.a. RDC TR INDUSTRIES DOO BEOGRAD; a.k.a. RESEARCH AND DEVELOPMENT COMPANY TR INDUSTRIES DOO BEOGRAD), Jurija Gagarina 231, Belgrade 11197, Serbia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 112966495 (Serbia); Registration Number 21778729 (Serbia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

86. LIMITED LIABILITY COMPANY BSF CAPITAL, Ul. Arbat D. 6/2, Pomeshch. 1/1/4, Office 303, Moscow 119019, Russia; Tax ID No. 9704160790 (Russia); Registration Number 1227700537360 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

87. LIMITED LIABILITY COMPANY INVESTMENT CONSULTANT ELBRUS CAPITAL, Nab. Presnenskaya D. 10, Floor 27, KOM. 11V, Moscow 123112, Russia; Tax ID No. 9703036511 (Russia); Registration Number 1217700261613 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

88. LIMITED LIABILITY COMPANY ORBITA CAPITAL PARTNERS (a.k.a. ORBITA KAPITAL PARTNERZ), Per. Bolshoi Savvinskii D. 8, Str. 1, Pomeshch. 1, Chast/Kom. 6, Moscow 119435, Russia; Tax ID No. 7706453157 (Russia); Registration Number 1187746417979 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

89. NONPROFIT ORGANIZATION INVESTMENT AND VENTURE FUND OF THE REPUBLIC OF TATARSTAN (a.k.a. NKO IVF RT), Ul. Peterburgskaya D. 50, Kazan 420107, Russia; Tax ID No. 1655087607 (Russia); Registration Number 1041621104304 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

90. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU GUARD KAPITAL, D. 3 Etazh 5 pom. I kom. 1, ul. Taganskaya, Moscow 109147, Russia; Tax ID No. 9709001723 (Russia); Registration Number 1177746511403 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

91. AKTSIONERNOE OBSHCHESTVO NAVIS ELEKTRONIKA, ul. Kulneva, d. 3, str. 1, pom. III, kom. 14A, Moscow 121170, Russia; Dmitrovskoe shosse, d. 157, str. 8, Moscow 127411, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7730702460 (Russia); Registration Number 1147746193891 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

92. AKTSIONERNOE OBSHCHESTVO NAVIS GRUPP, ul. Kulneva, d. 3, str. 1, pom. III, kom. 15, Moscow 121170, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7730671533 (Russia); Registration Number 1127746728670 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

93. AO KB NAVIS (a.k.a. "NAVIS INC."), ul. Kulneva, d. 3, str. 1, pom/kom III/5,6, Moscow 121170, Russia; sh. Dmitrovskoe, d. 157, k. 5, Moscow 127411, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7725075060 (Russia); Registration Number 1027700456024 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

94. JOINT STOCK COMPANY GAZPROM SPACE SYSTEMS (a.k.a. GAZPROM KOSMICHESKIE SISTEMY AO), ul. Moskovskaya, d. 77, lit. B, Shchelkovo 141108,

Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5018035691 (Russia); Registration Number 1025002045177 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

95. NVS NAVIGATION TECHNOLOGIES LTD (a.k.a. OOO NVS NAVIGATSIONNYE TEKHNOLOGII), ul. Kulneva, d. 3, str. 1, pom/kom III/25, Moscow 121170, Russia; Tax ID No. 7730637821 (Russia); Registration Number 1147746193891 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

96. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU SPUTNIKOVYE INNOVATSIONNYE KOSMICHESKIE SISTEMY (a.k.a. "OOO SPUTNIKS"; a.k.a. "SPUTNIX"), bulvar Bolshoi (Innovatsionnogo Tsentra Skolkovo Ter), d. 42, str. 1, pom. 3A0109 757, 1653, 1707, Moscow 121205, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5003096726 (Russia); Registration Number 1115003008306 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

97. JIANGXI LIANSHENG TECHNOLOGY CO., LTD (Chinese Simplified: 江西连胜科技有限公司), No. 1015, Jinsha Third Rd., Xiaolan Economic Development Area, Nanchang, Jiangxi 330029, China; Website www.jxlszb.com; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 24 Jun 2011; Unified Social Credit Code (USCC) 91360121576138918O (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

98. LIMITED LIABILITY COMPANY FORT DIALOG (a.k.a. "FORT DIALOGUE"), Ul. Pushkina D. 33, Korpus 2, Office 209, Ufa 450093, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 0275908848 (Russia); Registration Number 1160280122573 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

99. LIMITED LIABILITY COMPANY FORT DIALOG SERVICE (a.k.a. FORT DIALOG SERVIS OOO), Pr-Kt Moskovskii D. 140, Naberezhnyye Chelny 423812, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1650092709 (Russia); Registration Number 1021602021935 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

100. LIMITED LIABILITY COMPANY MANAGEMENT COMPANY FORT DIALOG (a.k.a. UPRAVLYAYUSHCHAYA KOMPANIYA FORT DIALOG), Pr-Kt Moskovskii D. 140, Office 215, Naberezhnyye Chelny 423812, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1650164664 (Russia); Registration Number 1071650026139 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

101. LIEMETA AG, Schliessa 16, Triesen 9495, Liechtenstein; Organization Established Date 10 Mar 2016; Legal Entity Number 875500HOXPGEOJIZCR36; Registration Number FL-0002.516.776-6 (Liechtenstein) [RUSSIA-EO14024] (Linked To: DIEGELMANN, Axel Paul).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, DIEGELMANN, Axel Paul, a person whose property and interests in property are blocked pursuant to E.O. 14024.

102. RHEINGOLD EDELMETALL AG, Schliessa 16, Triesen 9495, Liechtenstein; Organization Established Date 25 Oct 2013; Legal Entity Number 529900GOU6HP25LK7R63; Registration Number FL-0002.465.218-0 (Liechtenstein) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

103. RHEINGOLD EDELMETALL GMBH, Gewerbepark Edelweiss 2, Weissensberg 88138, Germany; Organization Established Date 23 Nov 2015; Registration Number HRB 15254 (Germany) [RUSSIA-EO14024] (Linked To: RHEINGOLD EDELMETALL AG).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, RHEINGOLD EDELMETALL AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

104. LIMITED LIABILITY COMPANY ALABUGA EXIM (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АЛАБУГА ЭКСИМ) (a.k.a. LLC ALABUGA EXIM (Cyrillic: ООО АЛАБУГА ЭКСИМ)), ul. Sh-2 (OEZ Alabuga Ter.), Str. 5/12, Pomeshch. 102, Yelabuga, Republic of Tatarstan 423601, Russia (Cyrillic: УЛ Ш-2 (ТЕР. ОЭЗ АЛАБУГА), СТР. 5/12, ПОМЕЩ. 102, Елабуга, Республика Татарстан 423601, Russia); Organization Established Date 03 Oct 2022; Organization Type: Other transportation support activities; Tax ID No. 1674003017 (Russia); Government Gazette Number 78356100 (Russia); Registration Number 1221600079634 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, ALABUGA DEVELOPMENT OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

105. LIMITED LIABILITY COMPANY DRAKE (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ДРЕЙК) (a.k.a. LIMITED LIABILITY COMPANY DREYK; a.k.a. "LLC DRAKE" (Cyrillic: "ООО ДРЕЙК")), ul. Sh-2 (OEZ Alabuga Ter.), Str. 5/12, Pomeshch. 126, Yelabuga, Republic of Tatarstan 423601, Russia (Cyrillic: УЛ Ш-2 (ОЭЗ АЛАБУГА ТЕР.), СТР. 5/12, ПОМЕЩ. 126, Елабуга, Республика Татарстан 423601, Russia); Organization Established Date 08 May 2019; Tax ID No. 1646047020 (Russia); Government Gazette Number 39455544 (Russia); Registration Number 1191690040519 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA, a person whose property and interests in property are blocked pursuant to E.O. 14024.

106. LIMITED LIABILITY COMPANY NR-DEL (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НР-ДЕЛ) (a.k.a. LLC NR-DEL (Cyrillic: ООО НР-ДЕЛ)), ul. Sh-2 (OEZ Alabuga Ter.), Str. 5/12, Pomeshch. 202, Yelabuga, Republic of Tatarstan 423601, Russia (Cyrillic: УЛ Ш-2 (ТЕР. ОЭЗ АЛАБУГА), СТР. 5/12, ПОМЕЩ. 202, Елабуга, Республика Татарстан 423601, Russia); Organization Established Date 12 Oct 2022; Tax ID No. 1674003095 (Russia); Government Gazette Number 71723222 (Russia); Registration Number 1221600082296 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, ALABUGA DEVELOPMENT OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

107. LIMITED LIABILITY COMPANY SPECIALIZED DEVELOPER ALABUGA SOUTH PARK (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СПЕЦИАЛИЗИРОВАННЫЙ ЗАСТРОЙЩИК АЛАБУГА ЮЖНЫЙ ПАРК) (a.k.a. LLC SPECIALIZED DEVELOPER ALABUGA SOUTH PARK (Cyrillic: ООО СПЕЦИАЛИЗИРОВАННЫЙ ЗАСТРОЙЩИК АЛАБУГА ЮЖНЫЙ ПАРК)), ul. Sh-2 (OEZ Alabuga Ter.), D. 15/5, Pomeshch. 3, Yelabuga,

Republic of Tatarstan 423601, Russia (Cyrillic: УЛ Ш-2 (ТЕР. ОЭЗ АЛАБУГА), Д. 15/5, ПОМЕЩ. 3, Елабуга, Республика Татарстан 423601, Russia); Organization Established Date 06 Jun 2023; Organization Type: Construction of buildings; Tax ID No. 1674005078 (Russia); Government Gazette Number 52120883 (Russia); Registration Number 1231600029825 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, ALABUGA DEVELOPMENT OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

108. LIMITED LIABILITY COMPANY ZIMENS YOKOGAWA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЗИМЕНС ЯКАГАВА) (a.k.a. LLC ZIMENS YOKOGAWA (Cyrillic: ООО ЗИМЕНС ЯКАГАВА)), ul. Sh-2 (OEZ Alabuga Ter.), Str. 5/12, Pomeshch. 201, Yelabuga, Republic of Tatarstan 423601, Russia (Cyrillic: УЛ Ш-2 (ТЕР. ОЭЗ АЛАБУГА), СТР. 5/12, ПОМЕЩ. 201, Елабуга, Республика Татарстан 423601, Russia); Organization Established Date 03 Oct 2022; Tax ID No. 1674003024 (Russia); Government Gazette Number 78387980 (Russia); Registration Number 1221600079645 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, ALABUGA DEVELOPMENT OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

109. KLINPAUER (a.k.a. "CLEANPOWER"), Ul. Smirnovskaya D. 25, Str. 8, Floor 1, Pomeshch. 16V, Moscow 109052, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7743346040 (Russia); Registration Number 1207700314381 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

110. OAO KRASNOARMEYSKIY MEKHANICHESKIY ZAVOD (a.k.a. "JSC KMZ"), Ul. Zavodskaya D.10, Krasnoarmeysk 412801, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6442005951 (Russia); Registration Number 1026401731531 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

111. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU AMBRELLA INDASTRIAL (a.k.a. "UMBRELLA INDUSTRIAL"), Pr-D Zavodskoi D. 2, Office 636, Fryazino 141190, Russia; Tax ID No. 5050136084 (Russia); Registration Number 1185050000300 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

112. PROMETHEUS LIMITED TRADE DEVELOPMENT (a.k.a. PROMETHEUS ENERGY; a.k.a. "PROMETHEUS LTD"), Per. Baskov D. 36, Lit. A, Pomeshch. 1N, Office 2, Saint Petersburg 191014, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4223712739 (Russia); Registration Number 1104223001057 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

113. UNIMATIK MSK (a.k.a. "UNIMATIC"), B-R Osennii D. 23, Pomeshch. I, Kom. 5, Moscow 121609, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7714460133 (Russia); Registration Number 1207700161789 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

114. LIMITED LIABILITY COMPANY INKOR (a.k.a. LLC INKOR), Ul. Goleva D. 10A, Perm 614081, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 12 Sep 2014; Tax ID No. 5905950978 (Russia); Government Gazette Number 35770183 (Russia); Registration Number 1145958052844 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

115. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU ALYANS (a.k.a. ALYANS OOO), Ul. Plekhanova D. 4A, Komnata 14K, Moscow 111123, Russia; d. 5 pomeshch./etazh 1.1-2/Tsokolny N 0, ul. Parkovaya D. Sukhanovo Vidnoe, Moscow region 142702, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 11 Dec 2006; Tax ID No. 7710655004 (Russia); Government Gazette Number 98911549 (Russia); Registration Number 1067760832259 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

116. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KOMPANIYA INTERVESP (a.k.a. KOMPANIYA INTERVESP OOO), d. 6B pom. 605, ul. Artyukhinoi, Moscow 109390, Russia; Secondary sanctions risk: this person is

designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 29 Nov 2017; Tax ID No. 9723038796 (Russia); Government Gazette Number 20366523 (Russia); Registration Number 5177746268530 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

117. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU PERITON INZHINIRING (a.k.a. OOO PERYTON ENGINEERING; a.k.a. PERITON INZHINIRING OOO), PR-D Staropetrovskii D. 7A, Str. 5, ET 2, Office 1, Moscow 125130, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 02 May 2017; Tax ID No. 7703426927 (Russia); Government Gazette Number 15529479 (Russia); Registration Number 1177746442488 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

118. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VEBER KOMEKHANIKS (a.k.a. VEBER KOMEKHANIKS OOO; a.k.a. WEBER COMECHANICS LTD), d. 4 k. 25 kom. 1, ul. Sharikopodshipnikovskaya, Moscow 115088, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 26 Apr 2000; Tax ID No. 7709307370 (Russia); Government Gazette Number 52754033 (Russia); Registration Number 1027700354076 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

119. KOMINVEX DOO BEOGRAD (a.k.a. PREDUZECE ZA TRGOVINU I INZENJERING POSLOVE KOMINVEX DOO BEOGRAD RAKOVICA), Nikole Marakovica 21/VI/36, Belgrade 11090, Serbia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 104004847 (Serbia); Registration Number 20047038 (Serbia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

120. LIMITED LIABILITY COMPANY VELESSTORE, Ul. Galernaya D. 20-22, Lit. A, Pomeshsch. 144N, 145N, 153N, 155N, 156N, 157N, 158N, Office 401, Saint Petersburg 190098, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by

E.O. 14114; Tax ID No. 7838098822 (Russia); Registration Number 1217800174140 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

121. SOHA INFO DOO NOVI BANOVCI, Pionirska 3, Novi Banovci 22304, Serbia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 113105844 (Serbia); Registration Number 21802808 (Serbia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

122. LIMITED LIABILITY COMPANY VLADIKAVKAZ TECHNOLOGIKAL CENTER BASPIK (a.k.a. LIMITED LIABILITY COMPANY VLADIKAVKAZ TECHNOLOGY CENTER BASPIK; a.k.a. OOO VTTS BASPIK), Ul. Nikolaeva 44, Korp. 6, Vladikavkaz 362021, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1503002091 (Russia); Registration Number 1021500671719 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

123. SPECIAL SYSTEMS PHOTONICS LIMITED LIABILITY COMPANY, Pr-Kt Bolshoi Sampsonievskii D. 64, Lit. E, Pomeshch 2-N, Office 706, Saint Petersburg 194044, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7802570752 (Russia); Registration Number 1167847155068 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

124. YUVENTA (a.k.a. JUVENTA), B-r Kronshtadtskii D. 39, K. 1, Pomeshch. I, Kom. 45, Rm. 5-9, Moscow 125499, Russia; Ul. Izhorskaya D. 13, Str. 2, Moscow 125412, Russia; Office 45/RM5-9, Bldg. 1, 39, Kronshtadtskiy Bulvar, Moscow 125499, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7743146073 (Russia); Registration Number 1167746276202 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

125. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU UKON (a.k.a. UCON LLC; a.k.a. "UCON COMPANY"), Str. Bokonbaeva 204, Bishkek 720001, Kyrgyzstan; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 24 Aug 2022; Tax ID No. 02408202210349 (Kyrgyzstan) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

126. NATIONAL PAYMENT CARD SYSTEM JOINT STOCK COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO NATSIONALNAYA SISTEMA PLATEZHNYKH KART; a.k.a. NSPK JSC), ul. Bolshaya Tatarskaya D. 11, Moscow 115184, Russia; Tax ID No. 7706812159 (Russia); Registration Number 1147746831352 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

127. ALABUGA DEVELOPMENT OOO (Cyrillic: ООО АЛАБУГА ДЕВЕЛОПМЕНТ) (a.k.a. LIMITED LIABILITY COMPANY ALABUGA DEVELOPMENT; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU ALABUGA DEVELOPMENT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АЛАБУГА ДЕВЕЛОПМЕНТ)), Ter. OEZ Alabuga, ul. Sh-2, K. 4, Pomeshch. 8, 9, 11, 12, 13, 14, Yelabuga, Volga federal region, Republic of Tatarstan, Russia; Organization Established Date 25 Nov 2016; Organization Type: Construction of buildings; Tax ID No. 1646043699 (Russia); Registration Number 1161690175338 (Russia); alt. Registration Number 05726291 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA, a person whose property and interests in property are blocked pursuant to E.O. 14024.

128. ALBATROS OOO (Cyrillic: ООО АЛЬБАТРОС) (a.k.a. ALBATROS LLC; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU ALBATROS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АЛЬБАТРОС)), str. 5/12 pom. 253, ul. Sh-2 Ter. Oez Alabuga, Yelabuga, Tatarstan 423601, Russia (Cyrillic: М.Р-Н ЕЛАБУЖСКИЙ, Г.П. ГОРОД ЕЛАБУГА, ТЕР. ОЭЗ АЛАБУГА, УЛ Ш-2, СТР. 5/12, ПОМЕЩ. 253, Елабуга, Республика Татарстан 423601, Russia); Pushkino, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy

determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 27 Apr 2017; Organization Type: Manufacture of air and spacecraft and related machinery; Tax ID No. 5038127220 (Russia); Registration Number 1175050004161 (Russia); alt. Registration Number 15516028 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

129. GEA OOO (Cyrillic: ООО ГЭА) (a.k.a. LIMITED LIABILITY COMPANY GEA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ГЭА); a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU GEA), Ter. OEZ Alabuga, Ul. Sh-2, Str. 5/12, Pomeshch. 36, Yelabuga, Volga federal region, Tatarstan, Russia; Organization Established Date 26 Mar 2020; Organization Type: Manufacture of pulp, paper and paperboard; Tax ID No. 1646048200 (Russia); Registration Number 1201600024878 (Russia); alt. Registration Number 43974020 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA, a person whose property and interests in property are blocked pursuant to E.O. 14024.

130. JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО ОСОБАЯ ЭКОНОМИЧЕСКАЯ ЗОНА ПРОМЫШЛЕННО-ПРОИЗВОДСТВЕННОГО ТИПА АЛАБУГА; Cyrillic: АО ОЭЗ ППТ АЛАБУГА) (a.k.a. AKTSIONERNOE OBSHCHESTVO OSOBAYA EKONOMICHESKAYA ZONA PROMYSHLENNO-PROIZVODSTVENNOGO TIPA ALABUGA; a.k.a. AO OEZ PPT ALABUGA), ul. Sh-2 (Oez Alabuga Ter.) 4/1, Yelabuga, Tatarstan 423600, Russia (Cyrillic: ТЕРРИТОРИЯ ОЭЗ АЛАБУГА, УЛИЦА Ш-2, КОРПУС 4/1, Елабужский Район, Республика Татарстан 423600, Russia); Promploshchadka Alabuga, ul. Sh-2, Korp. 4/1, Yelabuga, Volga federal region, Republic of Tatarstan 423600, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 24 Jul 2006; Tax ID No. 1646019914 (Russia); Registration Number 1061674037259; alt. Registration Number 95427882 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

131. LIMITED LIABILITY COMPANY ALABUGA MACHINERY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АЛАБУГА МАШИНЕРИ) (a.k.a. LLC ALABUGA MACHINERY (Cyrillic: ООО АЛАБУГА МАШИНЕРИ)), Ter. OEZ Alabuga, ul. Sh-2, 5/12, Pomeshch. 110, Yelabuga, Volga federal region, Tatarstan, Russia; Organization Established Date 03 Oct 2022; Tax ID No. 1674003000 (Russia); Registration Number 1221600079623 (Russia); alt. Registration Number 78358398 (Russia) [RUSSIA-EO14024] (Linked To: JOINT

STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE OF INDUSTRIAL PRODUCTION ALABUGA, a person whose property and interests in property are blocked pursuant to E.O. 14024.

132. GIGANT KOMPLEKSNYE SISTEMY (a.k.a. "GKS"; a.k.a. "JSC LTD GCS"), Proezd Zavodskoi D. 2, Pomeshch. 560, Fryazino 141190, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5050129707 (Russia); Registration Number 1165050057556 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

133. INFOTECH BALAKOVO LIMITED LIABILITY COMPANY, Ul. Chapaeva D. 26, Pomeshch. 7, Kormezhka 413835, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6439098794 (Russia); Registration Number 1216400002576 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

134. LEVIN FOTONIKS (a.k.a. LEVIN PHOTONICS LLC), Pr-d Zavodskoi D. 2, Pomeshch. 704-707, Fryazino 141190, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9723084440 (Russia); Registration Number 1197746285626 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

135. LIMITED LIABILITY COMPANY INFERIT, Proezd Zavodskoi D. 2, K. 1, Office 512, Fryazino 141190, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5050155270 (Russia); Registration Number 1225000052661 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

136. NAUCHNO PROIZVODSTVENNOE PREDPRIYATIE MIKROSISTEMA (a.k.a. LLC SPC MICROSYSTEMS; a.k.a. NPP MIKROSISTEMA; a.k.a. "PHAUF"), Pr-d

Zavodskoi D. 2, K. 1, Pomeshch. 132, Fryazino 141190, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5050130928 (Russia); Registration Number 1175050002434 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

137. SARATOVSKII PROIZVODSTVENNO INZHINIRINGOVYI TSENTR (a.k.a. SARATOV PRODUCTION AND ENGINEERING CENTER LLC; a.k.a. "SPITS"), Mkr Engels-19, Ul. 5i Kvartal Zd. 1Zh, Privolzhskiy 413119, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6454142335 (Russia); Registration Number 1146454003332 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

138. BATTERY SERVICE LIMITED LIABILITY COMPANY (a.k.a. BETTERI SERVIS; a.k.a. "BS OOO"), Pr-Kt Leningradskii D. 80/39, Moscow 125190, Russia; UL. Flotskaya D. 7, Floor 3, Pom.11, Moscow 125581, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7743738295 (Russia); Registration Number 1097746161810 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

139. NAUCHNO TEKHNICHESKII TSENTR MODUL INNOVATSII (a.k.a. NAUCHNO TEKHNICHESKI TSENTR MODUL URAL OOO; a.k.a. NTTS MODUL INNOVATSII), Ul. Mamina-Sibiryaka Dom 58, Office 801, Yekaterinburg 620075, Russia; Ul. 8 Marta D. 70, Office 234, Yekaterinburg 620063, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6671452454 (Russia); Registration Number 1146671012861 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

140. NOVGORODSKAYA AKKUMULYATORNAYA KOMPANIYA (a.k.a. "NOVAK OOO"), Ul. Severnaya 15, Velikiy Novgorod 173008, Russia; Ul. Rabochaya D. 55, K.1, Velikiy Novgorod 173008, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as

amended by E.O. 14114; Tax ID No. 5321073271 (Russia); Registration Number 1025300786060 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

141. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU METALLOOBRABOTKA, Pr-Kt Leninskogo Komsomola D.40, LIT. V37, Office 3, Kursk 305026, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4632116871 (Russia); Registration Number 1104632000945 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

142. SISTEMY AVTONOMNOI ENERGII (a.k.a. AUTONOMOUS ENERGY SYSTEMS; a.k.a. "SAE OOO"), Dor. Torfyanaya D. 7, Lit. F, Pomeshch. 17-N, KAB. 13 (1120-1121), Saint Petersburg 197374, Russia; Poligrafmashevsky pr. 3A, Saint Petersburg, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7813645488 (Russia); Registration Number 1207800085701 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

143. LIMITED LIABILITY COMPANY TUBOR, Ul. Ivana Franko d. 48, Str. 1, Moscow 121351, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5246018014 (Russia); Registration Number 1027739221290 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

144. LIMITED LIABILITY COMPANY VELIKOLUKSKY BATTERY PLANT IMPULS (a.k.a. VELIKOLUKSKII AKKUMULYATORNYI ZAVOD IMPULS; a.k.a. "VAZ IMPULS"), Ul. Gogolya D. 3, Pomeshch 3, Velikiye Luki 182115, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7722384856 (Russia); Registration Number 5167746421431 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

145. AKTSIONERNOE OBSHCHESTVO ZAVOD ELEKON (a.k.a. ZAVOD ELECON), Ul. Korolenko D. 58, Kazan 420094, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1657032272 (Russia); Registration Number 1021603145541 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

146. JOINT STOCK COMPANY STATE RESEARCH INSTITUTE OF INSTRUMENT ENGINEERING (a.k.a. AKTSIONERNOE OBSHCHESTVO GOSUDARSTVENNYI NAUCHNO ISSLEDOVATELSKII INSTITUT PRIBOROSTROENIIA; a.k.a. AO GOSNIIP), PR-KT Mira D. 125, Moscow 129226, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7717693545 (Russia); Registration Number 1117746132811 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

147. RESEARCH AND PRODUCTION CENTER FOR AUTOMATION AND INSTRUMENTATION NAMED AFTER ACADEMIC NA PILYUGIN (a.k.a. AO NPTSAP; a.k.a. JSC ACADEMICIAN PILYUGIN CENTER), Ul. Vvedenskogo D. 1, Moscow 117342, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9728050571 (Russia); Registration Number 1217700553344 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

148. ICL TECHNO LIMITED LIABILITY COMPANY, Ul. Dorozhnaya D. 42, Usady 422624, Russia; Ul. Sovetskaya ZD. 278, Office 18 (1005), Stolbishche, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1624014670 (Russia); Registration Number 1161690055075 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

149. INNODRIVE LIMITED LIABILITY COMPANY (a.k.a. INNODRAIV), Ul. Pionerskaya D. 30, Lit. B, Pomeshch. 306, Saint Petersburg 197110, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No.

7811697554 (Russia); Registration Number 1187847162106 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

150. RED SOFT, Ul. Nobelya (Innovatsionnogo Tsentra Skolkovo Ter) D. 5, Et 2 Pom. 4, Moscow 121205, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9705000373 (Russia); Registration Number 5147746028216 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

151. CLOSED JOINT STOCK COMPANY TECHNOLOGICAL COSMONAUTIKA PARK LINKOS (a.k.a. CLOSED JOINT STOCK COMPANY TECHNOLOGICAL PARK OF COSMONAUTICS LINKOS; a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO TEKHNOLOGICHESKII PARK KOSMONAVTIKI LINKOS), Dorozhnaya Ul D 5, Shcherbinka 142172, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7733061279 (Russia); Registration Number 1027739037886 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

152. JOINT STOCK COMPANY PLANT N9 (a.k.a. JSC ZAVOD NO. 9), Pl. 1I Pyatiletki, Yekaterinburg 620012, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6673189640 (Russia); Registration Number 1086673012920 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

153. LIMITED LIABILITY COMPANY MOSCOW ARMS COMPANY (a.k.a. MOSKOVSKAYA ORUZHEINAYA KOMPANIYA; a.k.a. "BESPOKE GUN"), Ul. Novoslobodskaya Vld. 1, Stroenie 1, Mytishchi 141009, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5012086643 (Russia); Registration Number 1145012005335 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

154. LIMITED LIABILITY COMPANY NAVIGATOR (a.k.a. NAVIGATOR GROUP OF COMPANIES), Pr. Mira D. 176, Moscow 129366, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7716688038 (Russia); Registration Number 1117746328590 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

155. LLC CITYIMPEX (a.k.a. CITIIMPEX; a.k.a. SITIIMPEKS), Ul. Leninskaya Sloboda D. 26, Pomeshch 32/124, Moscow 115280, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9725112364 (Russia); Registration Number 1237700066900 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

156. INNFOCUS LIMITED LIABILITY COMPANY, Ul. Stakhanovskaya D. 54, Str. P, Office 211, Perm 614066, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5904343931 (Russia); Registration Number 1165958115730 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

157. JOINT STOCK COMPANY GLOBATEK GROUP (a.k.a. AO GLOBATEK; a.k.a. GLOBATEK 3D), Sh Varshavskoe D. 42, Moscow, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7724739790 (Russia); Registration Number 1107746187999 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

158. LIMITED LIABILITY COMPANY 3D MALL (a.k.a. "3D MOLL"; a.k.a. "3DMALL"), Sh. Dmitrovskoe D. 9A, Str. 1, Et./Pomeshch. 2/Iii, Kom. 18, 35, 35A, Moscow 127434, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7731323828 (Russia); Registration Number 1167746742602 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

159. LLC COMPANY RUSMARKET (a.k.a. KOMPANIYA RUSMARKET), Ul. Dekabristov D. 2, K. 2, Kv. 115, Moscow 127562, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9710035597 (Russia); Registration Number 1177746959950 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

160. OFITRADE (a.k.a. LIMITED LIABILITY COMPANY OFITREYD; a.k.a. OFITREID), Ul. Sholokhova D. 7, Kv. 145, Moscow 119634, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7729779003 (Russia); Registration Number 1147746897396 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

161. TOP 3D GROUP (a.k.a. TOP 3D GRUPP), Pr-Kt Ryazanskii D. 2, Str. 49, Office Et. 5, Pom.I, Office 505, Moscow 109052, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717077003 (Russia); Registration Number 1197746116094 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

162. TRIANGULATICA (a.k.a. TRIANGULYATIKA), Sh. Petergofskoe D. 73, K. 10 Lit. Azh, Pom.1-N Et.1 Kom.16, Saint Petersburg 198206, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7807229899 (Russia); Registration Number 1197847140930 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

163. JOINT STOCK COMPANY STANKOMASHKOMPLEKS (a.k.a. AKTSIONERNOE OBSHCHESTVO STANKOMASHKOMPLEKS; a.k.a. STANKOMACHCOMPLEX COMPANY), Ul. Akademika Tupoleva D. 124, Tver 170019, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6901093347 (Russia); Registration Number 1056900216350 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

164. KVALITET, Ul. Prigranichnaya D. 1, Floor 1, Vorota/Office 30/1, Novosibirsk 630068, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5473001698 (Russia); Registration Number 1215400050942 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

165. LIMITED LIABILITY COMPANY MILLING MACHINES (a.k.a. FREZERNYE STANKI; a.k.a. "ROUTER"), Alleya Berezovaya D. 8, Kv. 10, Zelenograd 124498, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5044115015 (Russia); Registration Number 1195007003212 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

166. LIMITED LIABILITY COMPANY PRODUCTION ASSOCIATION INSISTENCE (a.k.a. PROIZVODSTVENNOE OBYEDINENIE INSISTENS), Ul. Krasnolesya D. 139, Kv. 43, Yekaterinburg 620105, Russia; Blagodatnaya st., 76K, Yekaterinburg 620087, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6658486704 (Russia); Registration Number 1169658055335 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

167. LIMITED LIABILITY COMPANY RESURS (a.k.a. "LLC RESOURCE"), Ul. Aerodromnaya D. 6, Lit. B, Pomeshch. 7.2, Saint Petersburg 197348, Russia; PR-KT Lenina D. 1, Lit. A, Izhorskie Zavody Vkhod s Pr. Lenina D. 1, Cherez Glavnuyu Prokhodnuyu, Kolpino 196651, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7813543768 (Russia); Registration Number 1127847473533 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

168. VENDE GROUP LLC (a.k.a. VENDE GRUPP), Sh. Moskovskoe D. 13, Lit. A, Korpus 10, Saint Petersburg 196158, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy

determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7816580944 (Russia); Registration Number 1147847063088 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

169. UNISERVICE LIMITED LIABILITY COMPANY (Cyrillic: ООО ЮНИСЕРВИС) (a.k.a. UNISERVICE LLC), Obruchevykh st. 1, lit. A, ind. 2-H, of. 150, St. Petersburg, Russia; Ul. Obruchevykh D. 1, Lit. A, Chast Pomeshch. 2-N, Office 150, Saint Petersburg 195220, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 14 Mar 2023; Tax ID No. 7804700100 (Russia); Registration Number 1237800029807 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

170. GUANGZHOU AUSAY TECHNOLOGY CO., LIMITED (Chinese Simplified: 广州欧赛科技有限公司) (a.k.a. GUANGZHOU AUSAY TECHNOLOGY CO., LTD.), R301, Block A of No 3 Building, West Area of Tongda Industrial Zone, Hebian 5 She Helong Street, Baiyun District, Guangzhou, Guangdong, China; Website http://www.ausay.com/; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 19 Nov 2017; Unified Social Credit Code (USCC) 91440101MA5ALQNR86 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

171. GUANGZHOU HESEN IMPORT AND EXPORT CO., LTD (Chinese Simplified: 广州合森进出口有限公司), Room 4195, No. 1 Chunhui Street, Tongtai Road, Baiyun District, Guangzhou, China (Chinese Simplified: 4195 室, 同泰路春晖街 1 号, 白云区, 广州, China); Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 21 Mar 2023; Unified Social Credit Code (USCC) 91440111MACCQ31P0B (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

172. JOINT STOCK COMPANY RESEARCH AND PRODUCTION ASSOCIATION RUSSIAN BASIC INFORMATION TECHNOLOGIES (a.k.a. AO NPO RUSBITEKH; a.k.a. JOINT STOCK COMPANY RESEARCH AND PRODUCTION ASSOCIATION RUSBITECH; a.k.a. RPA RUSBITECH JSC), Sh. Varshavskoe D. 26, Str. 11, Moscow 117105, Russia; Secondary sanctions risk: this person is designated for operating or

having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7726604816 (Russia); Registration Number 5087746137023 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

173. LIMITED LIABILITY COMPANY SMARTS QUANTTELECOM (a.k.a. QUANTTELECOM LLC), LN. 6-YA V.O. D. 59, K. 1 Lit. B, Pomeshch. 17/6N, Saint Petersburg 199178, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7802875514 (Russia); Registration Number 1147847376720 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

174. LLC SECURITY CODE (Cyrillic: ООО КОД БЕЗОПАСНОСТИ) (a.k.a. KOD BEZOPASNOSTI), 1-I Nagatinskii Proezd D. 10, Str. 1, Moscow 115230, Russia; A/YA 66 Postbox 66, Moscow 115127, Russia; PR-D Murmanskii D. 14, K. 1, Moscow 129075, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Manufacture of computers and peripheral equipment; alt. Organization Type: Computer programming activities; Tax ID No. 7715719244 (Russia); Registration Number 5087746212241 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

175. BOLDREX (a.k.a. BOLDREKS), Ul. Baranova D. 33B, Pomeshch. 1, Izhevsk 426006, Russia; Office 21, Litera B, 5 Oblastnaya Str., Izhevsk 426028, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1832011983 (Russia); Registration Number 1031801650748 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

176. DZHENERAL LUBRIKANTS (a.k.a. "GENERAL LUBRICANTS"), Ul. 2-Ya Mashinostroeniya D. 17, Str. 1, Et 2 Pom. I Kom 75 Of 1, Moscow 115088, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7722487971 (Russia); Registration Number 1207700173317 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

177. GREMLOS, Elektrozavodskaya 7, Vladimir 600007, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 3302018810 (Russia); Registration Number 1033302001732 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

178. HOLV LUBRICANTS RUS LLC (a.k.a. KHOLV LUBRIKANTS RUS), Ul. Poltavskaya D. 30, Pomeshch. 1, Nizhniy Novgorod 603089, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5262328687 (Russia); Registration Number 1155262016755 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

179. LIMITED LIABILITY COMPANY NPF KAVIANT, Ul. Malysheva D. 12B, Office 403, Yekaterinburg 620014, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6686044680 (Russia); Registration Number 1146686005344 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

180. LLC OPTIMUS DRIVE (a.k.a. OPTIMUS DRAIV), Ul. Bolshaya Pochtovaya D. 26V, Str. 2, Pomeshch. 2/1, Moscow 105082, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9718040380 (Russia); Registration Number 5167746448260 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

181. LLC SONIS (Cyrillic: ООО СОНИС) (a.k.a. SONIS CO), Ul. Polkovnika Militsii Kurochkina D. 19, Pomeshch. 12, 13, Troitsk 108841, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Manufacture of chemicals and chemical products; Tax ID No. 7705768066 (Russia); Registration Number 1067760630937 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

182. OLEOKAM, PR-D Ogneborya D. 5, Naberezhnyye Chelny 423800, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1650071346 (Russia); Registration Number 1021602021715 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

183. RAKETA LUBRIKANTS (a.k.a. "LLC ROCKET LUBRICANTS"), Ul. Rozy Lyuksemburg Str. 22, Office 406, Yekaterinburg 620000, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6658521204 (Russia); Registration Number 1186658083556 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

184. SUPRIM LUBRIKANTS (a.k.a. "SUPREME LUBRICANTS"), Ul. Smolnaya D. 24A, Et./Pomeshch. 14/I, Kom./Office. 22/1416, Moscow 125445, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7728381322 (Russia); Registration Number 5177746027949 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

185. DATANA, Ul. Polkovaya D. 3, Moscow 127018, Russia; Bldg. 1, Murmansky Proezd 14, Moscow 129075, Russia; Website datana.ru; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Other information technology and computer service activities; Tax ID No. 9717079152 (Russia); Registration Number 1197746204677 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

186. NAUCHNO PROIZVODSTVENNAYA FIRMA KRUG (a.k.a. NPF KRUG; a.k.a. SCIENTIFIC PRODUCTION COMPANY KRUG; a.k.a. SPC KRUG), Ul Germana Titova 1, Penza 440028, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as

amended by E.O. 14114; Tax ID No. 5837003278 (Russia); Registration Number 1025801216748 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

187. STATANLY LIMITED LIABILITY COMPANY (a.k.a. STATANLY TECHNOLOGIES), Birzhevaya liniya 16, Saint Petersburg, Russia; B-r Aleksandra Grina D. 1, Str. 1, Pomeshch 917, Saint Petersburg 199225, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7801724456 (Russia); Registration Number 1237800072982 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

188. LIMITED LIABILITY COMPANY AVANTAGE ENGINEERING (a.k.a. "AVANTAZH INZHINIRING OOO"), Pl. Malaya Sukharevskaya, D. 12, Moscow 127051, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 10 Nov 2009; Tax ID No. 2317054947 (Russia); Registration Number 1092367003882 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

189. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU INZHINIRINGOVYE RESHENIYA (a.k.a. INZHINIRINGOVYE RESHENIYA OOO; a.k.a. OOO INZHINIRINGOVYE RESHENIIA), PR-KT Khasana Tufana D. 22/9, KV. 163, Naberezhnyye Chelny, Republic of Tatarstan 423823, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 19 Aug 2016; Tax ID No. 1650335670 (Russia); Registration Number 1161690140072 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

190. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU TEKHNOKRATIYA (a.k.a. OOO TEKHNOKRATIIA), Ul. Mikhaila Milya D. 65A, Office 202, Kazan, Republic of Tatarstan 420127, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 09 Feb 2011; Tax ID No. 1656060774 (Russia); Registration Number 1111690067818 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

191. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VALMA (a.k.a. "OOO VALMA"), Ul. Dorozhnaya D. 39, Office 314, Naberezhnyye Chelny, Republic of Tatarstan 423800, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 24 May 2021; Tax ID No. 1650402421 (Russia); Registration Number 1211600038396 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

192. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VIKTORIYA (a.k.a. OOO VIKTORIIA; a.k.a. VIKTORIYA OOO), Ul. Ordzhonikidze D. 18, KV. 4, Izhevsk, Republic of Udmurtia 426063, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 18 Nov 2005; Tax ID No. 1831107925 (Russia); Registration Number 1051800646920 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

193. AKTSIONERNOE OBSCHESTVO ARZAMASSKIY PRIBOROSTROITELNYI ZAVOD IMENI P I PLANDINA (a.k.a. ARZAMAS INSTRUMENT PLANT), 8A, 50let Vlksm Street, Arzamas, Nizhny Novgorod 607220, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5243001742 (Russia); Registration Number 1025201334850 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

194. NPO URALPODSHIPNIK, ul. Entuziastov D. 17, Yekaterinburg 620000, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6660145780 (Russia); Registration Number 1026604933090 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

195. JOINT STOCK COMPANY VERKHNETURINSKY MACHINE BUILDING PLANT (a.k.a. JOINT STOCK COMPANY VERHNETURINSKY MASHINOSTROITELNY ZAVOD), Ul. Mashinostroitelei D. 2, Verkhnyaya Tura 624320, Russia; Secondary

sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6681000827 (Russia); Registration Number 1126681000820 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

196. LIMITED LIABILITY COMPANY ALLRUS (a.k.a. ALLRUS GROUP), Ul. Krasnoproletarskaya D. 16, Str. 2, Floor 3, Moscow 127473, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7707637710 (Russia); Registration Number 1077759803362 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

197. LIMITED LIABILITY COMPANY INVEST STANKO, Ul. Spartakovskaya D. 5/7, Office 4, Khimki 141400, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5047120398 (Russia); Registration Number 1105047013752 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

198. LIMITED LIABILITY COMPANY PUMORI NORTHWEST (a.k.a. PUMORI NORTH WEST LLC), Ul. Sedova D. 11, Korp. 2 Lit. A, Saint Petersburg 192019, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7811354892 (Russia); Registration Number 5067847381290 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

199. LIMITED LIABILITY COMPANY PUMPING COMPANY KRON (a.k.a. NASOSNAYA KOMPANIYA KRON), Ul. Mosina D. 6, OF. 101, Tula 300041, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7103031370 (Russia); Registration Number 1037100122894 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

200. AKTSIONERNOE OBSHCHESTVO AVIA FED SERVICE (a.k.a. AVIA FED SERVICE JSC), Pl. Revolyutsii D. 6, Istra 143500, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7710023333 (Russia); Registration Number 1027739037160 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

201. LINKER FZE, Warehouse A2-037.P, Saif Zone M2, Sharjah International Airport, Sharjah, United Arab Emirates; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Registration Number 17979 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

202. GOLD SOLUTION OU, Mahtra TN 50A, Tallinn 13812, Estonia; Organization Type: Transportation and storage; Tax ID No. EE101233187 (Estonia); Registration Number 11504442 (Estonia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY PUMORI NORTHWEST).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, LIMITED LIABILITY COMPANY PUMORI NORTHWEST, a person whose property and interests in property are blocked pursuant to E.O. 14024.

203. CLOSED JOINT STOCK COMPANY ERASIB (a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO ERASIB), Sibiryakov-Gvardeitsev, 51/3 2 Floor, Novosibirsk 630088, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5404113697 (Russia); Registration Number 1025401484778 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

204. LIMITED LIABILITY COMPANY GULFWIND (a.k.a. HALFWIND LIMITED LIABILITY COMPANY; a.k.a. LIMITED LIABILITY COMPANY GALFVIND), Per. Neishlotskii D. 23, Lit. A, Pomeshch. 10N, Saint Petersburg 194044, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7804613602 (Russia); Registration Number 1187847004531 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

205. LIMITED LIABILITY COMPANY INTEGRATED ELECTRON OPTICAL SYSTEMS (a.k.a. "IEOS"), Ul. Volnaya D. 35, Et. 2 Pom. 1, Moscow 105187, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7701867725 (Russia); Registration Number 1107746151314 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

206. LIMITED LIABILITY COMPANY PLATAN ENERGO, Ul. Begovaya D. 6A, Kom. 4, Moscow 125284, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7734731776 (Russia); Registration Number 1147746983230 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

207. LIMITED LIABILITY COMPANY RESEARCH AND PRODUCTION COMPANY MAKROOPTIKA (a.k.a. MACROOPTICA LTD; a.k.a. NPK MAKROOPTIKA LLC), Proezd Yablochkova D. 5, Str. 47, Floor/Kom 2/2.5, Ryazan 390023, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7727768951 (Russia); Registration Number 5117746039439 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

208. ASIAN TRADE AGENCY LIMITED LIABILITY COMPANY (a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU AZIATSKOYE TORGOVOYE AGENTSTVO), Mgstr. Vokzalnaya D. 1/1, Office 704, Novosibirsk 630004, Russia; Tax ID No. 5404418441 (Russia); Registration Number 1105476039745 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

209. INTERMOST LOGISTICS EAST CO LTD (a.k.a. INTERMOST LOGISTIKA VOSTOK), Pr-Kt Vostochnyi D.3A, Nakhodka 692943, Russia; Tax ID No. 2508079685 (Russia); Registration Number 1072508002566 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

210. KORDELI, Ul. Mikhalkovskaya D. 63B, Str. 2, Et/Pom/Kom 4/XXI/1R, Moscow 125438, Russia; Tax ID No. 7743058187 (Russia); Registration Number 1037739256609 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

211. LIMITED LIABILITY COMPANY AVBIS, Pr-D Anadyrskii D. 21, Pomeshch. VI, Kom.6, Moscow 129327, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7701840794 (Russia); Registration Number 1097746340878 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

212. LLC MELYTEC (a.k.a. "MELITEK"), Ul. Obrucheva D. 34/63, Str. 2, Moscow 117342, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7728644821 (Russia); Registration Number 1077764798979 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

213. LTD NISSA DISTRIBUTION (a.k.a. OOO NISSA DISTRIBUTSIYA), Ul. Minskaya D. 1G, K. 2, Pom.II Kom 13, Of 5, 3, Moscow 119285, Russia; Proezd Mukomolnyi D. 4A/2, Moscow 123290, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7729374938 (Russia); Registration Number 1037739345115 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

214. MILLAB SYNTHESIS (a.k.a. MILLAB SINTEZ), Ul. Kolskaya D. 12, Str. 1, Et 2, Kom 2 Of 3, Moscow 129329, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7716714320 (Russia); Registration Number 1127746292871 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

215. OOO LOGFORTRA, Nab. Obvodnogo Kanala D. 150, K. 1 Lit. A, Pomeshch. 339.01, Saint Petersburg 190020, Russia; Tax ID No. 7805664470 (Russia); Registration Number 1147847402889 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

216. SOVTEST ATE (a.k.a. SOVTEST ATE LTD), Ul. Volodarskogo D. 49 A, Kursk 305000, Russia; Ul. Karla Marksa Zd. 135/6, Kursk 305014, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 4629047554 (Russia); Registration Number 1024600955521 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

217. TK LOGIMEKS (a.k.a. "LOGIMEX"), Ul. Svobody D. 99, K. 1, Pomeshch. XIII, Floor 2, Kom. 2, Office M-02, Moscow 125481, Russia; Tax ID No. 7733370809 (Russia); Registration Number 1217700318131 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

218. GOODFORWARDING DOO BEOGRAD, Jurija Gagarina 231, Belgrade 11070, Serbia; Tax ID No. 113097773 (Serbia); Registration Number 21801135 (Serbia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

219. HD PARTS OY, Koivupuistontie 30, Vantaa 01510, Finland; Organization Established Date 04 Feb 1977; Tax ID No. 01085974 (Finland) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

220. LIMITED LIABILITY COMPANY PITERSNAB, Ul. Ordinarnaya D. 20, Lit. A, Pomeshch. 15-N, Rabochee Mesto 2, Saint Petersburg 197136, Russia; St. Repishcheva 14R, Saint Petersburg, Russia; 13 Moskovskoe Highway, Saint Petersburg, Russia; Parnas, 5th Upper Lane, 15, Saint Petersburg, Russia; Tax ID No. 7813660013 (Russia); Registration Number 1227800000614 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

221. AVANGARD JOINT STOCK BANK (a.k.a. AVANGARD BANK), St. Bolshaya Yakimanka 1, Moscow 119180, Russia; Sadovnicheskaya Street 12, Bld. 1, Moscow 115035, Russia; SWIFT/BIC AVJSRUMM; Website www.avangard.ru; Target Type Financial Institution; Tax ID No. 7702021163 (Russia); Legal Entity Number

253400K1TTC1FABJCE13; Registration Number 1027700367507 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

222. BANK ROSTFINANCE (a.k.a. KAVKAZSKY KOMSELKHOZBANK; a.k.a. LLC COMMERCIAL BANK ROSTFINANCE; a.k.a. OOO CB ROSTFINANS; a.k.a. ROSTFINANS), St 1st Mayskaya, 13a/11a, Rostov-on-Don 344037, Russia; SWIFT/BIC ROSFRU2A; Website www.rostfinance.ru; Target Type Financial Institution; Tax ID No. 2332006024 (Russia); Legal Entity Number 253400LTWKWWN6SQCF62; Registration Number 1022300003021 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

223. JOINT STOCK COMPANY DATABANK (a.k.a. BANK IZHKOMBANK JSC; a.k.a. JOINT STOCK COMMERCIAL BANK IZHKOMBANK), Str Lenina 30, Izhevsk 426076, Russia; SWIFT/BIC IZHBRU31; Website www.izhcombank.ru; alt. Website online.databank.ru; Target Type Financial Institution; Tax ID No. 1835047032 (Russia); Registration Number 1021800000090 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

224. PUBLIC JOINT STOCK COMPANY BYSTROBANK (a.k.a. IZHLADABANK; a.k.a. JOINT STOCK COMPANY BYSTROBANK), Pushkinskaya Street 268, Izhevsk 426008, Russia; SWIFT/BIC BYJSRU33; Website www.bystrobank.ru; Target Type Financial Institution; Tax ID No. 1831002591 (Russia); Legal Entity Number 25340000QGMWTRG3X533; Registration Number 1021800001508 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

225. CENTER OF DIGITAL TECHNOLOGIES (a.k.a. AKTSIONERNOE OBSHCHESTVO TSENTR TSIFROVYKH TEKHNOLOGII), Ul. Pavlova 2 A, Kazan 420127, Russia; Ul. Dementyeva d. 1, Kazan 420036, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1661042795 (Russia); Registration Number 1141690092367 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

226. LIMITED LIABILITY COMPANY NEOVEYTUS (a.k.a. LLC NEOVEITUS; a.k.a. NEOVEITUS), Ul. Malaya Pirogovskaya D.16, Moscow 119435, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No.

7704838264 (Russia); Registration Number 1137746534430 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

227. LLC KB 78, Ul. Serdobolskaya D. 64, Lit. E, Pomeshch. 4-N, Kom. 13, Saint Petersburg 197342, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Manufacture of other special-purpose machinery; Tax ID No. 7842200726 (Russia); Registration Number 1227800027510 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

228. LLC MIR STANOCHKINA (a.k.a. LLC MIR STANOCHNIK), Ul. Narodnaya D. 14, Str. 3, Et Podval Pom.I Kom 2, Moscow 115172, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7705737205 (Russia); Registration Number 1067746716443 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

229. PRINTPRODUCT (a.k.a. PRINTPRODAKT), Ul. Chapaeva D. 25, Lit. B, Pomeshch. 33N, Saint Petersburg 197046, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7811591815 (Russia); Registration Number 1147847340046 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

230. RUSSIAN EXTRUSION COMPANY, Proezd 4922-I D. 4, Str. 5, Floor 1, Kom. 52, Zelenograd 124498, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5047143853 (Russia); Registration Number 1135047007831 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

231. ZENIT 3D (a.k.a. "ZENIT"), Ul. Karla Marksa D. 5/3, Floor 1, Kom. 28, Ramenskoe 140100, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by

E.O. 14114; Tax ID No. 5040139590 (Russia); Registration Number 1165040051263 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

232. FAWARIS LIMITED LIABILITY COMPANY (a.k.a. LIMITED LIABILITY COMPANY FAVARIS), Zavodskoi proezd, d. 2, k. 1, pom. 557, Fryazino 141190, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5050159050 (Russia); Registration Number 1235000047446 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

233. INSTAR LODZHISTIKS, OOO (a.k.a. INSTAR LOGISTICS), d. 20 str., 7 ofis 102V, ul. Elektrozavodskaya, Moscow 107023, Russia; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; Tax ID No. 7714136948 (Russia); Government Gazette Number 18631592 (Russia); Registration Number 1027739429981 (Russia) [UKRAINE-EO13661] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

234. KINGTAIM KHEDMAN RUS, Ul. Rabochaya D. 2A, K. 22A, Office 206V, Khimki 141401, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5047249930 (Russia); Registration Number 1215000033478 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

235. LIDERMASH STANKI, Ul. Kuskovskaya D. 20A, Kom. 6, Moscow 111141, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7707427544 (Russia); Registration Number 1197746134948 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

236. LIMITED LIABILITY COMPANY DURMA RUSYA, Ul. Neftegazovskaya D. 2, Nizhny Novgorod 603704, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as

amended by E.O. 14114; Tax ID No. 5260317048 (Russia); Registration Number 1115260023702 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

237. LIMITED LIABILITY COMPANY KMT, Ul. Bolshaya Semenovskaya D. 40, Str. 13, Floor 2, Pomeshch. 203, Moscow 107023, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9719010156 (Russia); Registration Number 1207700463145 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

238. OBLTRANSTERMINAL (a.k.a. TRANSPORT AND LOGISTICS CENTER ELEKTROUGLI), Ul. Zheleznodorozhnaya, Vld 29, Str. 1, Pomeshch. 88, Elektrougli 142455, Russia; Tax ID No. 5053042571 (Russia); Registration Number 1165053050579 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

239. UPRAVLYAYUSHCHAYA KOMPANIYA UZTM KARTEKS (a.k.a. UK UZTM KARTEX LLC), Nab. Ovchinnikovskaya D. 20, Str. 1, Floor 8, Komnata 50, Moscow 115035, Russia; Proezd 1-I Krasnogvardeiskii D. 15, Floor 34, Pomeshch. 28, Moscow 123112, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 77272298791 (Russia); Registration Number 1167746813453 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

240. JOINT STOCK COMPANY QUORUM (a.k.a. ZAO AO KVORUM), Per. 2-I Kozhevnicheskii D. 12, Moscow 115114, Russia; Sh. Entuziastov D. 31D, Moscow 111123, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7720123993 (Russia); Registration Number 1027700422628 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

241. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU FAKTOR TS, 1-I Magistralnyi PR-D D. 11, Str. 1, Moscow 123290, Russia; Ul. Donbasskaya D. 2, Str. 1, Vidnoye 142703, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined

to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7716032944 (Russia); Registration Number 1027700452108 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

242. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VALIDATA, Ul. Khutorskaya 2-YA D. 38A, Str. 1, Floor 7, Office 709, Moscow 127287, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7702250685 (Russia); Registration Number 1037739305559 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

243. 3D.RU (a.k.a. ZD.RU), Ul. Silikatnaya Vld. 51A, K. 1, Pomeshch. 45, Mytishchi 141013, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Manufacture of plastics products; Tax ID No. 5029176567 (Russia); Registration Number 1135029006947 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

244. LLC ADDITIVE ENGINEERING (a.k.a. ADDITIVNYI INZHINIRING), Pr-Kt Volgogradskii D. 42, Str. 24, Moscow 109316, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7703465098 (Russia); Registration Number 1187746795004 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

245. LLC APPLICATA (a.k.a. APPLIKATA; a.k.a. "3D FORMAT"), Pr-D Stroitelnyi D. 7A, K. 28, Pomeshch. 219, Moscow 125362, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7733287011 (Russia); Registration Number 1167746511008 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

246. LLC ENGINE OF PROGRESS (a.k.a. DVIGATEL PROGRESSA; a.k.a. "LIDER 3D"), Sh. Varshavskoe D. 17, Str. 6, Kom. 18, Moscow 117105, Russia; Secondary

sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 6230114074 (Russia); Registration Number 1196234010719 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

247. METAL SPRINT (a.k.a. METALL SPRINT), Ul. Elektrozavodskaya D. 21, Pomeshch. Lxxi Floor 2 Komn 38, Moscow 107023, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Manufacture of other fabricated metal products n.e.c.; Tax ID No. 9731032477 (Russia); Registration Number 1197746170126 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

248. RANGEVISION (a.k.a. RENDZHVIZHN), Ul. Lenina D. 5B, Pomeshch. Vi, Krasnogorsk 143404, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5024151174 (Russia); Registration Number 1155024000471 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

249. SCANFORM (a.k.a. SKANFORM), Ul. Rokossovskogo, Novoilyinskii District, D. 29, Kv. 160, Novokuznetsk 654044, Russia; Website scanform.ru; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Manufacture of computers and peripheral equipment; Tax ID No. 4253049068 (Russia); Registration Number 1204200016162 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

250. SPETSIALNOE KONSTRUKTORSKOE BYURO-14 VOLOGDA (a.k.a. "SKB 14 LLC"), Ul. Zosimovskaya D. 15, Office 29, Vologda 160000, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 3525409656 (Russia); Registration Number 1173525032537 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

251. STEREOTECH (a.k.a. STEREOTEK), Ul. Im. Tsiolkovskogo D. 9A, Office 14, Volgograd 400001, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 3459068062 (Russia); Registration Number 1163443057800 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

252. Z AXIS LLC (a.k.a. ZET AKSIS; a.k.a. ZET AXIS LLC), Per. Gagarinskii D. 22/8, Str. 1, Floor Tsokolnyi Kom 3, Moscow 119002, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Wholesale of other machinery and equipment; Tax ID No. 7704477392 (Russia); Registration Number 1197746112002 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

253. MARITIME JOINT STOCK BANK JOINT STOCK COMPANY (a.k.a. MARITIME BANK), Room 1/5, Varshavskoe Highway, Building 1a, Moscow 117105, Russia; SWIFT/BIC MJSBRUMM; Website www.maritimebank.com; Target Type Financial Institution; Tax ID No. 7714060199 (Russia); Legal Entity Number 253400UQS2QLH2209P60; Registration Number 1027700568224 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

254. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO MECHEL (a.k.a. MECHEL OAO; a.k.a. MECHEL PJSC; a.k.a. MECHEL STEEL GROUP OAO), 1, Krasnoarmeyskaya Street, Moscow 125167, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 19 Mar 2003; Tax ID No. 7703370008 (Russia); Legal Entity Number 253400C9GSPBSKERRP65; Registration Number 1037703012896 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

255. 3DATA, Ul. Novoryazanskaya D. 26, Str. 1, Pomeshch. 4/1/1, Moscow 105066, Russia; Website 3data.ru; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Computer programming activities; Tax ID No. 7702822710 (Russia); Registration Number 1137746838800 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

256. AI TEKO INZHINIRING, Pr-Kt Leninskii D. 42, K. 6, Pomeshch. 1/1, Moscow 119119, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7727453302 (Russia); Registration Number 1207700361890 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

257. LIMITED LIABILITY COMPANY SAFEDATA (a.k.a. TSENTR KHRANENIYA DANNYKH; a.k.a. "LIMITED LIABILITY COMPANY DATA STORAGE CENTER"), Nikitskii Per D.7 Str.1, Moscow 125009, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7703616170 (Russia); Registration Number 1067759957275 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

258. MIRAN LLC, Per. Evpatoriiskii D. 7, Lit. A, Chast Nezhilogo Pomeshcheniya 1-N, Chast Nezhilogo Pomeshcheniya 11-N, Saint-Petersburg 195277, Russia; Website miran.ru; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Other information technology and computer service activities; Tax ID No. 7801149990 (Russia); Registration Number 1027800560908 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

259. MP LIMITED LIABILITY COMPANY (a.k.a. TEGRUS SYSTEMS INTEGRATOR), Sh Kashirskoe D. 70/3, Moscow 115409, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 17 Oct 2008; Organization Type: Other information technology and computer service activities; Tax ID No. 7718726183 (Russia); Registration Number 5087746253634 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

260. NPO COMPUTER (a.k.a. NPO KOMPYUTER), Per. Severnyi D. 61, Kom. 100-108, Izhevsk 426011, Russia; Secondary sanctions risk: this person is designated for operating

or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 1831173910 (Russia); Registration Number 1151831003466 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

261. O2 KLAUD, Sh. Ochakovskoe D. 14, Pom.III K. 1, Moscow 119530, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9710050732 (Russia); Registration Number 1187746216437 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

262. SIROKKO TEKHNOLODZHI (a.k.a. LIMITED LIABILITY COMPANY SIROKKO TECHNOLOGY), Ul. Yunosti D. 13, Moscow 111395, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7718286334 (Russia); Registration Number 5157746099176 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

263. STACK TELECOM LTD, Ul. Bolshaya Akademicheskaya D. 5 A, Moscow 127299, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7743554611 (Russia); Registration Number 1057746521172 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

264. T1 HOLDING, Ul. Yunosti D. 13, Office 221, Moscow 111395, Russia; Website t1.ru; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Type: Other information technology and computer service activities; Tax ID No. 7720484492 (Russia); Registration Number 1197746617419 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

265. TRUSTINFO, Sh. Varshavskoe D.125, Str.16, Moscow 117587, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the

Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 7726584574 (Russia); Registration Number 1077764070625 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

266. VAIBOS (a.k.a. "VAYBOS"; a.k.a. "VYBOS"), Ul. Programmistov D. 4, Str. 3, Office 115, Dubna 141983, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 5017105360 (Russia); Registration Number 1155017000456 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

267. SHENZHEN BIGUANG TRADING CO., LTD (Chinese Simplified: 深圳比广贸易有限公司), 18E, Block B, World Trade Square, No. 9 Fuhong Road, Funnan Community, Futian Street, Futian District, Shenzhen, Guangdong, China (Chinese Simplified: 福田区福田街道福南社区福虹路 9 号世贸广场 B 座 18E, 深圳市, 广东省, China); Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 01 Dec 2020; Unified Social Credit Code (USCC) 91440300MA5GH3DL64 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

268. YILUFA ELECTRONICS LIMITED (Chinese Simplified: 深圳市亿路发科技有限公司), 1806, Hanguo Center, No. 3031 Shennan Middle Road, Futian District, Shenzhen, Guangdong, China (Chinese Simplified: 福田区福田街道福南社区深南中路 3031 号汉国城市商业中心 1806, 深圳市, 广东省, China); Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Organization Established Date 08 Dec 2004; Unified Social Credit Code (USCC) 91440300769188559R (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

269. JOINT STOCK COMPANY SOVCOMFLOT (a.k.a. JSC SOVCOMFLOT; a.k.a. PAO SOVCOMFLOT; a.k.a. PUBLIC JOINT STOCK COMPANY MODERN COMMERCIAL FLEET; a.k.a. PUBLICHNOE AKTSIONERNOE OBSCHESTVO SOVREMENNYY KOMMERCHESKIY FLOT; a.k.a. "SCF"; a.k.a. "SCF GROUP"), Ul. Gasheka D. 6, Moscow 125047, Russia; Nab. Reki Moiki d.3, Lit. A, Saint Petersburg 191186, Russia; Building 3, Letter A, Moyka River Embankment, Saint

Petersburg 191186, Russia; Website sovcomflot.ru; alt. Website www.scf-group.com; E.O. 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctionsdirectives; E.O. 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7702060116 (Russia); Legal Entity Number 253400DYLWR5A6YAWJ69; Registration Number 1027739028712 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the marine sector of the Russian Federation economy.

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

B. On February 23, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following vessels subject to U.S. jurisdiction are blocked under the relevant sanctions authority listed below.

Vessels

1. ANATOLY KOLODKIN (3E7525) Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9610808; MMSI 352003372 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

   Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

2. GEORGY MASLOV (TRBD9) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9610793; MMSI 626362000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

   Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

3. KRYMSK (TRBE3) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9270529; MMSI 626364000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

4. LITEYNY PROSPECT (TRBE6) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9256078; MMSI 626367000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

   Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

5. NEVSKIY PROSPECT (TRBE8) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9256054; MMSI 626369000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

   Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

6. NS ANTARCTIC (TRBF3) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9413559; MMSI 626372000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

   Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

7. NS BRAVO (TRBF8) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9412359; MMSI 626377000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

   Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

8. NS BURGAS (TRBF9) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9411020; MMSI 626378000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

   Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

9. NS CAPTAIN (TRBG2) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9341067; MMSI 626379000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

   Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

10. NS COLUMBUS (TRBG5) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9312884; MMSI 626382000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

    Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

11. NS CONSUL (TRBH3) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9341093; MMSI 626388000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

    Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

12. NS CREATION (TRBH5) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9312896; MMSI 626390000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

    Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

13. NS LION (TRBH8) Crude Oil Tanker Gabon flag; Vessel Registration Identification IMO 9339313; MMSI 626393000 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

    Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

14. SAKHALIN ISLAND (3E4139) Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9249128; MMSI 352002202 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY SOVCOMFLOT).

    Identified as property in which JOINT STOCK COMPANY SOVCOMFLOT, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

C. On April 18, 2024, OFAC updated the entry on the SDN List for the following persons, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

1. POGIBLOV, Georgii Semenovich (a.k.a. POGIBLOV, Georgiy Semenovich), Novosibirsk, Russia; DOB 13 Nov 1968; POB Novosibirsk, Russia; nationality Russia; Gender Male; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Passport 752790751 (Russia) expires 04 Feb 2026; Tax ID No. 540309234395 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

2. GTS GRUPP, Ul. Rossolomio D. 17, Str. 2, Pomeshch. XI, Kom 3-6, Moscow 119021, Russia; Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of E.O. 14024, as amended by E.O. 14114; Tax ID No. 9717063811 (Russia); Registration Number 1177746940260 (Russia) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

Dated: April 18, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–08726 Filed 4–23–24; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two entities and thirteen vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and this vessel are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Compliance, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On April 4, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and vessel subject are blocked under the relevant sanctions authority listed below.

Entity

1. OCEANLINK MARITIME DMCC (Arabic: اوشينلينك ماريتايم م.د.م.س), Unit 2808, Plot JLT-PH1-F2A, HDS Tower, Jumeirah Lakes Towers, Dubai, United Arab Emirates; Unit AG-11-H, AG Tower, Plot JLT-PH1-I1A, Jumeirah Lakes Towers, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 17 Mar 2023; Identification Number IMO 6450979; Trade License No. DMCC-881270 (United Arab Emirates); alt. Trade License No. DMCC-881271 (United Arab Emirates); Registration Number DMCC196521 (United Arab Emirates) [SDGT] [IFSR] (Linked To: SEPEHR ENERGY JAHAN NAMA PARS COMPANY).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 3 CFR, 2019 Comp., p. 356., as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SEPEHR ENERGY JAHAN NAMA PARS COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Vessels

1. ANTHEA (D6A3314) Crude Oil Tanker Comoros flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9281683; MMSI 620999315 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

2. BOREAS (D6A3315) Crude Oil Tanker Comoros flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9248497; MMSI 620999316 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

3. HECATE (D6A3379) Crude Oil Tanker Comoros flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9233753; MMSI 620999379 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

4. BAXTER (V3TF5) Oil Products Tanker Belize flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9282522; MMSI 312513000 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

5. CALYPSO GAS (V2YC2) LPG Tanker Antigua and Barbuda flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9131101; MMSI 304563000 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

6. CAPE GAS (D6A2739) LPG Tanker Comoros flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9002491; MMSI 620739000 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

7. DEMETER (HPGV) Oil Products Tanker Panama flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9258674; MMSI 370921000 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

8. ELSA (V3RZ8) Crude Oil Tanker Belize flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9256468; MMSI 312038000 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

9. GLAUCUS (D6A3421) Crude Oil Tanker Comoros flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9337389; MMSI 620999422 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

10. HEBE (D6A3378) Crude Oil Tanker Comoros flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9259185; MMSI 620999378 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

11. MERAKI (V2YB7) Crude Oil Tanker Antigua and Barbuda flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO

9194139; MMSI 304552000 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

12. OCEANUS GAS (D6A3372) LPG Tanker Comoros flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9397080; MMSI 620999373 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

13. OUREA (E5U5002) LPG Tanker Cook Islands flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9350422; MMSI 518999021 (vessel) [SDGT] (Linked To: OCEANLINK MARITIME DMCC).

Identified as property in which OCEANLINK MARITIME DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

On April 4, 2024, OFAC updated the entry on the SDN List for the following vessel, which continues to be blocked under the relevant sanctions authorities listed below.

Vessel

1. YOUNG YONG Oil Products Tanker Djibouti flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9194127; MMSI 621819067 (vessel) [SDGT] (Linked To: TECHNOLOGY BRIGHT INTERNATIONAL LIMITED).

-to-

SAINT LIGHT (a.k.a. STELLAR ORACLE; a.k.a. YOUNG YONG) (8RAR1) Oil Products Tanker Guyana flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9194127; MMSI 750514000 (vessel) [SDGT] (Linked To: TECHNOLOGY BRIGHT INTERNATIONAL LIMITED).

Identified as property in which TECHNOLOGY BRIGHT INTERNATIONAL LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Dated: April 4, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–08697 Filed 4–23–24; 8:45 am]

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Part II

Department of Justice

28 CFR Part 35
Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities; Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 35

[CRT Docket No. 144; AG Order No. 5919–2024]

RIN 1190–AA79

Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (''Department'') issues its final rule revising the regulation implementing title II of the Americans with Disabilities Act (''ADA'') to establish specific requirements, including the adoption of specific technical standards, for making accessible the services, programs, and activities offered by State and local government entities to the public through the web and mobile applications (''apps'').

DATES:

Effective date: This rule is effective June 24, 2024.

Compliance dates: A public entity, other than a special district government, with a total population of 50,000 or more shall begin complying with this rule April 24, 2026. A public entity with a total population of less than 50,000 or any public entity that is a special district government shall begin complying with this rule April 26, 2027.

Incorporation by reference: The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of June 24, 2024.

FOR FURTHER INFORMATION CONTACT: Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or 1–833–610–1264 (TTY). You may obtain copies of this rule in an alternative format by calling the ADA Information Line at (800) 514–0301 (voice) or 1–833–610–1264 (TTY). This rule is also available on *www.ada.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of and Need for the Rule

Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity.[1] The Department has consistently made clear that the title II nondiscrimination requirements apply to all services, programs, and activities of public entities (also referred to as ''government services''), including those provided via the web. It also includes those provided via mobile apps.[2] In this rule, the Department establishes technical standards for web content and mobile app accessibility to give public entities greater clarity in exactly how to meet their ADA obligations and to help ensure equal access to government services for individuals with disabilities.

Public entities are increasingly providing the public access to government services through their web content and mobile apps. For example, government websites and mobile apps often allow the public to obtain information or correspond with local officials without having to wait in line or be placed on hold. Members of the public can also pay fines, apply for State benefits, renew State-issued identification, register to vote, file taxes, obtain up-to-date health and safety resources, request copies of vital records, access mass transit schedules, and complete numerous other tasks via government websites. Individuals can perform many of these same functions on mobile apps. Often, however, State and local government entities' web- and mobile app-based services are not designed or built accessibly and as a result are not equally available to individuals with disabilities. Just as stairs can exclude people who use wheelchairs from accessing government buildings, inaccessible web content and mobile apps can exclude people with a range of disabilities from accessing government services.

It is critical to ensure that individuals with disabilities can access important web content and mobile apps quickly, easily, independently, privately, and equally. Accessible web content and mobile apps help to make this possible. By allowing individuals with disabilities to engage more fully with their governments, accessible web content and mobile apps also promote the equal enjoyment of fundamental constitutional rights, such as rights with respect to speech, assembly, association, petitioning, voting, and due process of law.

Accordingly, the Department is establishing technical requirements to provide concrete standards to public entities on how to fulfill their obligations under title II to provide equal access to all of their services, programs, and activities that are provided via the web and mobile apps. The Department believes, and public comments have reinforced, that the requirements described in this rule are necessary to assure ''equality of opportunity, full participation, independent living, and economic self-sufficiency'' for individuals with disabilities, as set forth in the ADA.[3]

B. Legal Authority

On July 26, 1990, President George H.W. Bush signed into law the ADA, a comprehensive civil rights law prohibiting discrimination on the basis of disability.[4] Title II of the ADA, which this rule addresses, applies to State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973 (''Rehabilitation Act''), as amended, 29 U.S.C. 794 (''section 504''), to all activities of State and local government entities regardless of whether the entities receive Federal financial assistance.[5] Part A of title II protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities of State and local government entities. Section 204(a) of the ADA directs the Attorney General to issue regulations implementing part A of title II but exempts matters within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.[6]

The Department is the only Federal agency with authority to issue regulations under title II, part A, of the ADA regarding the accessibility of State and local government entities' web content and mobile apps. In addition, under Executive Order 12250, the Department is responsible for ensuring consistency and effectiveness in the implementation of section 504 across the Federal Government (aside from provisions relating to equal

[1] 42 U.S.C. 12132. The Department uses the phrases ''State and local government entities'' and ''public entities'' interchangeably throughout this rule to refer to ''public entit[ies]'' as defined in 42 U.S.C. 12131(1) that are covered under part A of title II of the ADA.

[2] As discussed in the proposed definition in this rule, mobile apps are software applications that are downloaded and designed to run on mobile devices, such as smartphones and tablets.

[3] 42 U.S.C. 12101(a)(7).

[4] 42 U.S.C. 12101–12213.

[5] 42 U.S.C. 12131–12165.

[6] *See* 42 U.S.C. 12134. Section 229(a) and section 244 of the ADA direct the Secretary of Transportation to issue regulations implementing part B of title II, except for section 223. *See* 42 U.S.C. 12149(a), 12164.

employment).[7] Given Congress's intent for parity between section 504 and title II of the ADA, the Department must also ensure the consistency of any related agency interpretations of those provisions.[8] The Department, therefore, also has a lead role in coordinating interpretations of section 504 (again, aside from provisions relating to equal employment), including its application to web content and mobile apps, across the Federal Government.

C. Organization of This Rule

Appendix D to 28 CFR part 35 provides a section-by-section analysis of the Department's changes to the title II regulation and the reasoning behind those changes, in addition to responses to public comments received on the notice of proposed rulemaking (''NPRM'').[9] The section of appendix D entitled ''Public Comments on Other Issues in Response to NPRM'' discusses public comments on several issues that are not otherwise specifically addressed in the section-by-section analysis. The Final Regulatory Impact Analysis (''FRIA'') and Final Regulatory Flexibility Analysis (''FRFA'') accompanying this rulemaking both contain further responses to comments relating to those analyses.

D. Overview of Key Provisions of This Final Rule

In this final rule, the Department adds a new subpart H to the title II ADA regulation, 28 CFR part 35, that sets forth technical requirements for ensuring that web content that State and local government entities provide or make available, directly or through contractual, licensing, or other arrangements, is readily accessible to and usable by individuals with disabilities. Web content is defined by § 35.104 to mean the information and sensory experience to be communicated to the user by means of a user agent (*e.g.,* a web browser), including code or markup that defines the content's structure, presentation, and interactions. This includes text, images, sounds, videos, controls, animations, and conventional electronic documents. Subpart H also sets forth technical requirements for ensuring the accessibility of mobile apps that a public entity provides or makes available, directly or through contractual, licensing, or other arrangements.

The Department adopts an internationally recognized accessibility standard for web access, the Web Content Accessibility Guidelines (''WCAG'') 2.1 [10] published in June 2018, *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F*,[11] as the technical standard for web content and mobile app accessibility under title II of the ADA. As will be explained in more detail, the Department is requiring that public entities comply with the WCAG 2.1 Level AA success criteria and conformance requirements.[12] The applicable technical standard will be referred to hereinafter as ''WCAG 2.1.'' The applicable conformance level will be referred to hereinafter as ''Level AA.'' To the extent there are differences between WCAG 2.1 Level AA and the standards articulated in this rule, the standards articulated in this rule prevail. As noted below, WCAG 2.1 Level AA is not restated in full in this final rule but is instead incorporated by reference.

In recognition of the challenges that small public entities may face with respect to resources for implementing the new requirements, the Department has staggered the compliance dates for public entities according to their total population.[13] This final rule in § 35.200(b)(1) specifies that a public entity, other than a special district government,[14] with a total population of 50,000 or more must ensure that web content and mobile apps that the public entity provides or makes available, directly or through contractual, licensing, or other arrangements, comply with WCAG 2.1 Level AA success criteria and conformance requirements beginning two years after the publication of this final rule. Under § 35.200(b)(2), a public entity with a total population of less than 50,000 must comply with these requirements beginning three years after the publication of this final rule. In addition, under § 35.200(b)(2), all special district governments have three years following the publication of this final rule before they must begin complying with these requirements. After the compliance date, ongoing compliance with this final rule is required.

TABLE 1—COMPLIANCE DATES FOR WCAG 2.1 LEVEL AA

Public entity size	Compliance date
Fewer than 50,000 persons/special district governments	Three years after publication of the final rule.
50,000 or more persons	Two years after publication of the final rule.

In addition, the Department has set forth exceptions from compliance with the technical standard required under § 35.200 for certain types of content, which are described in detail below in the section-by-section analysis. If the content falls under an exception, that means that the public entity generally does not need to make the content conform to WCAG 2.1 Level AA.

As will be explained more fully, the Department has set forth five specific exceptions from compliance with the technical standard required under § 35.200: (1) archived web content; (2)

[7] E.O. 12250 secs. 1–201(c), 1–503 (Nov. 2, 1980), 45 FR 72995, 72995, 72997 (Nov. 4, 1980).

[8] U.S. Dep't of Just., *Disability Rights Section: Federal Coordination of Section 504 and Title II of the ADA,* C.R. Div. (Oct. 12, 2021), *https://www.justice.gov/crt/disability-rights-section#:~:text=Federal%20Coordination%20of%20Section%20504,required%20by%20Executive%20Order%2012250* [*https://perma.cc/S5JX-WD82*] (see Civil Rights Division (CRT) Memorandum on Federal Agencies' Implementation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act under the heading ''Section 504 and ADA Federal Coordination Resources'').

[9] 88 FR 51948 (Aug. 4, 2023).

[10] Copyright© 2023 W3C®. This document includes material copied from or derived from *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F.* As explained elsewhere, WCAG 2.1 was updated in 2023, but this rule requires conformance to the 2018 version.

[11] The Permalink used for WCAG 2.1 throughout this rule shows the 2018 version of WCAG 2.1 as it appeared on W3C's website at the time the NPRM was published.

[12] As explained in more detail under ''WCAG Conformance Level'' in the section-by-section analysis of § 35.200 in appendix D, conformance to Level AA requires satisfying the success criteria labeled Level A as well as those labeled Level AA, in addition to satisfying the relevant conformance requirements.

[13] Total population, defined in § 35.104 and explained further in the section-by-section analysis, is generally determined by reference to the population estimate for a public entity (or the population estimate for a public entity of which an entity is an instrumentality) as calculated by the United States Census Bureau.

[14] *See* U.S. Census Bureau, *Special District Governments, https://www.census.gov/glossary/?term=Special+district+governments* [*https://perma.cc/8V43-KKL9*]. ''Special district government'' is also defined in this rule at § 35.104.

preexisting conventional electronic documents, unless such documents are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities; (3) content posted by a third party, unless the third party is posting due to contractual, licensing, or other arrangements with the public entity; (4) conventional electronic documents that are about a specific individual, their property, or their account and that are password-protected or otherwise secured; and (5) preexisting social media posts. As discussed further, if one of these exceptions applies, then the public entity's web content or content in mobile apps that is covered by an exception would not need to comply with the rule's technical standard. The Department has developed these exceptions because it believes that requiring public entities to make the particular content described in these categories accessible under all circumstances could be too burdensome at this time. In addition, requiring accessibility in all circumstances may divert important resources from making accessible key web content and mobile apps that public entities provide or make available. However, upon request from a specific individual, a public entity may have to provide the web content or content in mobile apps to that individual in an accessible format to comply with the entity's existing obligations under other regulatory provisions implementing title II of the ADA. For example, archived town meeting minutes from 2011 might be covered by an exception from the requirement to conform to WCAG 2.1 Level AA. But if a person with low vision, for example, requests an accessible version, then the town would still need to address the person's request under its existing effective communication obligations in 28 CFR 35.160. The way that the town does this could vary based on the facts. For example, in some circumstances, providing a large-print version of the minutes might satisfy the town's obligations, and in other circumstances it might need to provide an electronic version that conforms to the aspects of WCAG 2.1 Level AA relevant to the person's particular access needs.

The final rule contains a series of other mechanisms that are designed to make it feasible for public entities to comply with the rule. The final rule makes clear in § 35.202 the limited circumstances in which ''conforming alternate versions'' of web content, as defined in WCAG 2.1, can be used as a means of achieving accessibility. As WCAG 2.1 defines it, a conforming alternate version is a separate version of web content that is accessible, up to date, contains the same information and functionality as the inaccessible web content, and can be reached in particular ways, such as through a conforming page or an accessibility-supported mechanism. However, the Department is concerned that WCAG 2.1 could be interpreted to permit a segregated approach and a worse experience for individuals with disabilities. The Department also understands that, in practice, it can be difficult to maintain conforming alternate versions because it is often challenging to keep two different versions of web content up to date. For these reasons, as discussed in the section-by-section analysis of § 35.202, conforming alternate versions are permissible only when it is not possible to make web content directly accessible due to technical or legal limitations. Also, under § 35.203, the final rule allows a public entity flexibility to show that its use of other designs, methods, or techniques as alternatives to WCAG 2.1 Level AA provides substantially equivalent or greater accessibility and usability of the web content or mobile app. Nothing in this final rule prohibits an entity from going above and beyond the minimum accessibility standards this rule sets out.

Additionally, the final rule in §§ 35.200(b)(1) and (2) and 35.204 explains that conformance to WCAG 2.1 Level AA is not required under title II of the ADA to the extent that such conformance would result in a fundamental alteration in the nature of a service, program, or activity of the public entity or in undue financial and administrative burdens.

The final rule also explains in § 35.205 the limited circumstances in which a public entity that is not in full compliance with the technical standard will be deemed to have met the requirements of § 35.200. As discussed further in the section-by-section analysis of § 35.205, a public entity will be deemed to have satisfied its obligations under § 35.200 in the limited circumstance in which the public entity can demonstrate that its nonconformance to the technical standard has such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app to access the same information, engage in the same interactions, conduct the same transactions, and otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities, in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use.

More information about these provisions is provided in the section-by-section analysis.

E. Summary of Costs and Benefits

To estimate the costs and benefits associated with this rule, the Department conducted a FRIA. This analysis is required for significant regulatory actions under Executive Order 12866, as amended.[15] The FRIA serves to inform the public about the rule's costs and benefits to society, taking into account both quantitative and qualitative costs and benefits. A detailed summary of the FRIA is included in Section IV of this preamble. Table 2 below shows a high-level overview of the Department's monetized findings. Further, this rule will benefit individuals with disabilities uniquely and in their day-to-day lives in many ways that could not be quantified due to unavailable data. Non-monetized costs and benefits are discussed in the FRIA.

Comparing annualized costs and benefits of this rule, monetized benefits to society outweigh the costs. Net annualized benefits over the first 10 years following publication of this rule total $1.9 billion per year using a 3 percent discount rate and $1.5 billion per year using a 7 percent discount rate (Table 2). Additionally, beyond this 10-year period, benefits are likely to continue to accrue at a greater rate than costs because many of the costs are upfront costs and the benefits tend to have a delay before beginning to accrue.

To consider the relative magnitude of the estimated costs of this regulation, the Department compares the costs to revenues for public entities. Because calculating this ratio for every public entity would be impractical, the Department used the estimated average annualized cost compared to the average annual revenue by each public entity type. The costs for each public entity type and size are generally estimated to be below 1 percent of revenues (the one exception is small independent community colleges, for which the cost-to-revenue ratio is 1.05 percent and 1.10 percent using a 3 percent and 7 percent

[15] *See* E.O. 14094, 88 FR 21879 (Apr. 6, 2023); E.O. 13563, 76 FR 3821 (Jan. 18, 2011); E.O. 13272, 67 FR 53461 (Aug. 13, 2002); E.O. 13132, 64 FR 43255 (Aug. 4, 1999); E.O. 12866, 58 FR 51735 (Sept. 30, 1993).

discount rate, respectively),[16] so the Department does not believe the rule will be unduly burdensome or costly for public entities.[17]

TABLE 2—10-YEAR AVERAGE ANNUALIZED COMPARISON OF COSTS AND BENEFITS

Figure	3% Discount rate	7% Discount rate
Average annualized costs (millions)	$3,331.3	$3,515.0
Average annualized benefits (millions)	$5,229.5	$5,029.2
Net benefits (millions)	$1,898.2	$1,514.2
Cost-to-benefit ratio	0.6	0.7

II. Relationship to Other Laws

The ADA and the Department's implementing regulation state that except as otherwise provided, the ADA shall not be construed to apply a lesser standard than title V of the Rehabilitation Act (29 U.S.C. 791) or its accompanying regulations.[18] They further state that the ADA does not invalidate or limit the remedies, rights, and procedures of any other laws that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.[19]

The Department recognizes that entities subject to title II of the ADA may also be subject to other statutes that prohibit discrimination on the basis of disability. Compliance with the Department's title II regulation does not necessarily ensure compliance with other statutes and their implementing regulations. Title II entities are also obligated to fulfill the ADA's title I requirements in their capacity as employers,[20] and those requirements are distinct from the obligations under this rule.

Education is another context in which entities have obligations to comply with other laws imposing affirmative obligations regarding individuals with disabilities. The Department of Education's regulations implementing the Individuals with Disabilities Education Act (''IDEA'') and section 504 of the Rehabilitation Act include longstanding, affirmative obligations for covered schools to identify children with disabilities, and both require covered schools to provide a free appropriate public education.[21] This final rule builds on, and does not supplant, those preexisting requirements. A public entity must continue to meet all of its existing obligations under other laws.

III. Background

A. ADA Statutory and Regulatory History

The ADA broadly protects the rights of individuals with disabilities in important areas of everyday life, such as in employment (title I), State and local government entities' services, programs, and activities (title II, part A), transportation (title II, part B), and places of public accommodation (title III). The ADA requires newly designed and constructed or altered State and local government entities' facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities.[22] Section 204(a) of title II and section 306(b) of title III of the ADA direct the Attorney General to promulgate regulations to carry out the provisions of titles II and III, other than certain provisions dealing specifically with transportation.[23] Title II, part A, applies to State and local government entities and protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities of State and local government entities.

On July 26, 1991, the Department issued its final rules implementing title II and title III, which are codified at 28 CFR part 35 (title II) and part 36 (title III),[24] and include the ADA Standards for Accessible Design (''ADA Standards'').[25] At that time, the web was in its infancy—and mobile apps did not exist—so State and local government entities did not use either the web or mobile apps as a means of providing services to the public. Thus, web content and mobile apps were not mentioned in the Department's title II regulation. Only a few years later, however, as web content of general interest became available, public entities began using web content to provide information to the public. Public entities and members of the public also now rely on mobile apps for critical government services.

B. History of the Department's Title II Web-Related Interpretation and Guidance

The Department first articulated its interpretation that the ADA applies to websites of covered entities in 1996.[26] Under title II, this includes ensuring that individuals with disabilities are

[16] However, the Department notes that revenue for small independent community colleges was estimated using the 2012 Census of Governments, so revenue for small independent community colleges would likely be underestimated if small independent community colleges had a greater share of total local government revenue in 2022 than in 2012. If this were true, the Department expects that the cost-to-revenue ratio for small independent community colleges would be lower.

[17] As a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a regulation may be ''significant'' is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. *See* U.S. Small Bus. Admin., *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* at 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/PWL9-ZTW6*]; *see also* U.S. Env't Prot. Agency, *EPA's Action Development Process: Final Guidance for EPA Rulewriters: Regulatory Flexibility Act,* at 24 (Nov. 2006), *https://www.epa.gov/sites/default/files/2015-06/documents/guidance-regflexact.pdf* [*https://perma.cc/9XFZ-3EVA*] (providing an illustrative example of a hypothetical analysis under the RFA in which, for certain small entities, economic impact of ''[l]ess than 1% for all affected small entities'' may be ''presumed'' to have ''no significant economic impact on a substantial number of small entities'').

[18] 42 U.S.C. 12201(a); 28 CFR 35.103(a).

[19] 42 U.S.C. 12201(b); 28 CFR 35.103(b).

[20] 42 U.S.C. 12111–12117.

[21] *See* 20 U.S.C. 1412; 29 U.S.C. 794; 34 CFR 104.32 through 104.33.

[22] 42 U.S.C. 12101 *et seq.*

[23] 42 U.S.C. 12134(a), 12186(b).

[24] Title III prohibits discrimination on the basis of disability in the full and equal enjoyment of places of public accommodation (privately operated entities whose operations affect commerce and fall within at least one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreational facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (facilities intended for nonresidential use by a private entity and whose operations affect commerce, such as factories, warehouses, and office buildings)—to comply with the ADA Standards. 42 U.S.C. 12181–12189.

[25] *See* 28 CFR 35.104, 36.104.

[26] *See* Letter for Tom Harkin, U.S. Senator, from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice (Sept. 9, 1996), *https://www.justice.gov/crt/foia/file/666366/download* [*https://perma.cc/56ZB-WTHA*].

not, by reason of such disability, excluded from participation in or denied the benefits of the services, programs, or activities offered by State and local government entities, including those offered via the web, such as education services, voting, town meetings, vaccine registration, tax filing systems, applications for housing, and applications for benefits.[27] The Department has since reiterated this interpretation in a variety of online contexts.[28] Title II of the ADA also applies when public entities use mobile apps to offer their services, programs, or activities.

As with many other statutes, the ADA's requirements are broad and its implementing regulations do not include specific standards for every obligation under the statute. This has been the case in the context of web accessibility under the ADA. Because the Department had not previously adopted specific technical requirements for web content and mobile apps through rulemaking, public entities have not had specific direction on how to comply with the ADA's general requirements of nondiscrimination and effective communication. However, public entities still must comply with these ADA obligations with respect to their web content and mobile apps, including before this rule's effective date.

The Department has consistently heard from members of the public—including public entities and individuals with disabilities—that there is a need for additional information on how to specifically comply with the ADA in this context. In June 2003, the Department published a document entitled ''Accessibility of State and Local Government websites to People with Disabilities,'' which provides tips for State and local government entities on ways they can make their websites accessible so that they can better ensure that individuals with disabilities have equal access to the services, programs, and activities that are provided through those websites.[29]

In March 2022, the Department released additional guidance addressing web accessibility for individuals with disabilities.[30] This guidance expanded on the Department's previous ADA guidance by providing practical tips and resources for making websites accessible for both title II and title III entities. It also reiterated the Department's longstanding interpretation that the ADA applies to all services, programs, and activities of covered entities, including when they are offered via the web.

The Department's 2003 guidance on State and local government entities' websites noted that ''an agency with an inaccessible website may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line,'' while also acknowledging that this is unlikely to provide an equal degree of access.[31] The Department's March 2022 guidance did not include 24/7 staffed telephone lines as an alternative to accessible websites. Given the way the modern web has developed, the Department no longer believes 24/7 staffed telephone lines can realistically provide equal opportunity to individuals with disabilities. Websites—and often mobile apps—allow members of the public to get information or request a service within just a few minutes, and often to do so independently. Getting the same information or requesting the same service using a staffed telephone line takes more steps and may result in wait times or difficulty getting the information.

For example, State and local government entities' websites may allow members of the public to quickly review large quantities of information, like information about how to register for government services, information on pending government ordinances, or instructions about how to apply for a government benefit. Members of the public can then use government websites to promptly act on that information by, for example, registering for programs or activities, submitting comments on pending government ordinances, or filling out an application for a government benefit. A member of the public could not realistically accomplish these tasks efficiently over the phone.

Additionally, a person with a disability who cannot use an inaccessible online tax form might have to call to request assistance with filling out either online or mailed forms, which could involve significant delay, added costs, and could require providing private information such as banking details or Social Security numbers over the phone without the benefit of certain security features available for online transactions. A staffed telephone line also may not be accessible to someone who is deafblind, or who may have combinations of other disabilities, such as a coordination issue impacting typing and an audio processing disability impacting comprehension over the phone. Finally, calling a staffed telephone line lacks the privacy of looking up information on a website. A caller needing public safety resources, for example, might be unable to access a private location to ask for help on the phone, whereas an accessible website would allow users to privately locate resources. For these reasons, the Department does not now believe that a staffed telephone line—even if it is offered 24/7—provides equal opportunity in the way that an accessible website can.

C. The Department's Previous Web Accessibility-Related Rulemaking Efforts

The Department has previously pursued rulemaking efforts regarding web accessibility under title II. On July 26, 2010, the Department's advance notice of proposed rulemaking (''ANPRM'') entitled ''Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations'' was published in the **Federal Register**.[32] The ANPRM

[27] *See* 42 U.S.C. 12132.

[28] *See* U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA, ADA.gov* (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/WH9E-VTCY*]; Settlement Agreement Between the United States of America and the Champaign-Urbana Mass Transit District (Dec. 14, 2021), *https://www.ada.gov/champaign-urbana_sa.pdf* [*https://perma.cc/VZU2-E6FZ*]; Consent Decree, *United States* v. *The Regents of the Univ. of Cal.* (Nov. 21, 2022), *https://www.justice.gov/opa/press-release/file/1553291/download* [*https://perma.cc/9AMQ-GPP3*]; Consent Decree, *Dudley* v. *Miami Univ.* (Oct. 13, 2016), *https://www.ada.gov/miami_university_cd.html*[*https://perma.cc/T3FX-G7RZ*]; Settlement Agreement Between the United States of America and Nueces County, Texas Under the Americans with Disabilities Act (effective Jan. 30, 2015), *https://archive.ada.gov/nueces_co_tx_pca/nueces_co_tx_sa.html* [*https://perma.cc/TX66-WQY7*]; Settlement Agreement Between the United States of America, Louisiana Tech University, and the Board of Supervisors for the University of Louisiana System Under the Americans with Disabilities Act (July 22, 2013), *https://www.ada.gov/louisiana-tech.htm* [*https://perma.cc/78ES-4FQR*]; Settlement Agreement Between the United States of America and the City and County of Denver, Colorado Under the Americans with Disabilities Act (Jan. 8, 2018), *https://www.ada.gov/denver_pca/denver_sa.html* [*https://perma.cc/U7VE-MBSG*].

[29] U.S. Dep't of Just., *Accessibility of State and Local Government websites to People with Disabilities, ADA.gov* (June 2003), *https://www.ada.gov/websites2.htm* [*https://perma.cc/Z7JT-USAN*].

[30] U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA, ADA.gov* (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/874V-JK5Z*].

[31] U.S. Dep't of Just., *Accessibility of State and Local Government websites to People with Disabilities, ADA.gov* (June 2003), *https://www.ada.gov/websites2.htm* [*https://perma.cc/Z7JT-USAN*].

[32] 75 FR 43460 (July 26, 2010).

announced that the Department was considering revising the regulations implementing titles II and III of the ADA to establish specific requirements for State and local government entities and public accommodations to make their websites accessible to individuals with disabilities.[33] In the ANPRM, the Department sought information on various topics, including what standards, if any, it should adopt for web accessibility; whether the Department should adopt coverage limitations for certain entities, like small businesses; and what resources and services are available to make existing websites accessible to individuals with disabilities.[34] The Department also requested comments on the costs of making websites accessible; whether there are effective and reasonable alternatives to make websites accessible that the Department should consider permitting; and when any web accessibility requirements adopted by the Department should become effective.[35] The Department received approximately 400 public comments addressing issues germane to both titles II and III in response to the ANPRM. The Department later announced that it had decided to pursue separate rulemakings addressing web accessibility under titles II and III.[36]

On May 9, 2016, the Department followed up on its 2010 ANPRM with a detailed Supplemental ANPRM that was published in the **Federal Register**.[37] The Supplemental ANPRM solicited public comment about a variety of issues regarding establishing technical standards for web access under title II.[38] The Department received more than 200 public comments in response to the title II Supplemental ANPRM.

On December 26, 2017, the Department published a document in the **Federal Register** withdrawing four rulemaking actions, including the titles II and III web rulemakings, stating that it was evaluating whether promulgating specific web accessibility standards through regulations was necessary and appropriate to ensure compliance with the ADA.[39] The Department has also previously stated that it would continue to review its entire regulatory landscape and associated agenda, pursuant to the regulatory reform provisions of Executive Order 13771 and Executive Order 13777.[40] Those Executive orders were revoked by Executive Order 13992 in early 2021.[41]

The Department is now reengaging in efforts to promulgate regulations establishing technical standards for web accessibility as well as mobile app accessibility for public entities. On August 4, 2023, the Department published an NPRM in the **Federal Register** as part of this rulemaking effort.[42] The NPRM set forth the Department's specific proposals and sought public feedback. The NPRM included more than 60 questions for public input.[43] The public comment period closed on October 3, 2023.[44] The Department received approximately 345 comments from members of the public, including individuals with disabilities, public entities, disability advocacy groups, members of the accessible technology industry, web developers, and many others. The Department also published a fact sheet describing the NPRM's proposed requirements in plain language to help ensure that members of the public understood the rule and had an opportunity to provide feedback.[45] In addition, the Department attended listening sessions with various stakeholders while the public comment period was open. Those sessions provided important opportunities to receive through an additional avenue the information that members of the public wanted to share about the proposed rule. The three listening sessions that the Department attended were hosted by the U.S. Small Business Administration (''SBA'') Office of Advocacy, the Association on Higher Education and Disability (''AHEAD''), and the Great Lakes ADA Center at the University of Illinois at Chicago, in conjunction with the ADA National Network. The sessions convened by the SBA Office of Advocacy and the Great Lakes ADA Center were open to members of the public. There were approximately 200 attendees at the SBA session and 380 attendees at the Great Lakes ADA Center session.[46] The session with AHEAD included two representatives from AHEAD along with five representatives from public universities. The Department welcomed the opportunity to hear from public stakeholders. However, the Department informed attendees that these listening sessions did not serve as a substitute for submitting written comments during the notice and comment period.

D. Need for Department Action

1. Use of Web Content by Title II Entities

As public comments have reinforced, public entities regularly use the web to offer services, programs, or activities to the public.[47] The web can often help public entities streamline their services, programs, or activities and disseminate important information quickly and effectively. For example, members of the public routinely make online service requests—from requesting streetlight repairs and bulk trash pickups to reporting broken parking meters—and can often check the status of those service requests online. Public entities' websites also offer the opportunity for people to, for example, renew their vehicle registrations, submit complaints, purchase event permits, reserve public facilities, sign up for recreational activities, and pay traffic fines and property taxes, making some of these

[33] *Id.*

[34] 75 FR 43465–43467.

[35] *Id.*

[36] *See* U.S. Dep't of Just., *Statement of Regulatory Priorities* (Fall 2015), *https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201510/Statement_1100.html* [*https://perma.cc/YF2L-FTSK*].

[37] *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities,* 81 FR 28658 (May 9, 2016).

[38] 81 FR 28662–28686.

[39] *Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions,* 82 FR 60932 (Dec. 26, 2017).

[40] *See* Letter for Charles E. Grassley, U.S. Senator, from Stephen E. Boyd, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice (Oct. 11, 2018), *https://www.grassley.senate.gov/imo/media/doc/2018-10-11%20DOJ%20to%20Grassley%20-%20ADA%20website%20Accessibility.pdf* [*https://perma.cc/8JHS-FK2Q*].

[41] E.O. 13992 sec. 2, 86 FR 7049, 7049 (Jan. 20, 2021).

[42] *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities,* 88 FR 51948 (Aug. 4, 2023).

[43] 88 FR 51958–51986.

[44] *See* 88 FR 51948.

[45] U.S. Dep't of Just., *Fact Sheet: Notice of Proposed Rulemaking on Accessibility of Web Information and Services of State and Local Government Entities, ADA.gov* (July 20, 2023), *https://www.ada.gov/resources/2023-07-20-web-nprm/#* [*https://perma.cc/B7JL-9CVS*].

[46] U.S. Dep't of Just., *Ex Parte Communication Record on Proposed Rule on Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations* (Sept. 29, 2023), *https://www.regulations.gov/document/DOJ-CRT-2023-0007-0158* [*https://perma.cc/43JX-AAMG*]; U.S. Dep't of Just., *Ex Parte Communication Record on Proposed Rule on Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations* (Nov. 17, 2023), *https://www.regulations.gov/document/DOJ-CRT-2023-0007-0355* [*https://perma.cc/W45S-XDQH*].

[47] *See, e.g.,* John B. Horrigan & Lee Rainie, Pew Research Ctr., *Connecting with Government or Government Data* (Apr. 21, 2015), *https://www.pewresearch.org/internet/2015/04/21/connecting-with-government-or-government-data/* [*https://perma.cc/BFA6-QRQU*]; Samantha Becker et al., *Opportunity for All: How the American Public Benefits from internet Access at U.S. Libraries,* at 7–8, 120–27 (2010), *https://www.imls.gov/sites/default/files/publications/documents/opportunityforall_0.pdf* [*https://perma.cc/3FDG-553G*].

otherwise time-consuming tasks relatively easy and expanding their availability beyond regular business hours. Access to these services via the web can be particularly important for those who live in rural communities and might otherwise need to travel long distances to reach government buildings.[48]

Many public entities use online resources to promote access to public benefits. People can use websites of public entities to file for unemployment or other benefits and find and apply for job openings. Applications for many Federal benefits, such as unemployment benefits and food stamps, are also available through State websites. Through the websites of State and local government entities, business owners can register their businesses, apply for occupational and professional licenses, bid on contracts to provide products and services to public entities, and obtain information about laws and regulations with which they must comply. The websites of many State and local government entities also allow members of the public to research and verify business licenses online and report unsavory business practices.

People also rely on public entities' websites to engage in civic participation. People can frequently watch local public hearings, find schedules for community meetings, or take part in live chats with government officials on the websites of State and local government entities. Many public entities allow voters to begin the voter registration process and obtain candidate information on their websites. Individuals interested in running for local public offices can often find pertinent information concerning candidate qualifications and filing requirements on these websites as well. The websites of public entities also include information about a range of issues of concern to the community and about how people can get involved in community efforts to improve the administration of government services.

Public entities are also using websites as an integral part of public education.[49] Public schools at all levels, including public colleges and universities, offer programs, reading material, and classroom instruction through websites. Most public colleges and universities rely heavily on websites and other online technologies in the application process for prospective students; for housing eligibility and on-campus living assignments; for course registration and assignments; and for a wide variety of administrative and logistical functions in which students must participate. Similarly, in many public elementary and secondary school settings, teachers and administrators communicate via the web to parents and students about grades, assignments, and administrative matters.

As public comments on the NPRM have reinforced, access to the web has become increasingly important as a result of the COVID–19 pandemic, which shut down workplaces, schools, and in-person services, and forced millions of Americans to stay home for extended periods.[50] In response, the American public increasingly turned to the web for work, activities, and learning.[51] A study conducted in April 2021 found that 90 percent of adults reported the web was essential or important to them.[52] Several commenters on the NPRM specifically highlighted challenges underscored by the COVID–19 pandemic such as the denial of access to safety information and pandemic-related services, including vaccination appointments.

While important for everyone during the pandemic, access to web-based services took on heightened importance for people with disabilities, many of whom face a greater risk of COVID–19 exposure, serious illness, and death.[53] A report by the National Council on Disability indicated that COVID–19 has had a disproportionately negative impact on the ability of people with disabilities to access healthcare, education, and employment, among other areas, making remote access to these opportunities via the web even more important.[54] The Department believes that although many public health measures addressing the COVID–19 pandemic are no longer in place, there have been durable changes to State and local government entities' operations and public preferences that necessitate greater access to online services, programs, and activities.

As discussed at greater length below, many public entities' web content is not fully accessible, which often means that individuals with disabilities are denied equal access to important services, programs, or activities.

2. Use of Mobile Applications by Title II Entities

This rule also covers mobile apps because public entities often use mobile apps to offer their services, programs, or activities to the public. Mobile apps are software applications that are downloaded and designed to run on mobile devices, such as smartphones and tablets.[55] Many public entities use

[48] *See, e.g.,* NORC Walsh Ctr. for Rural Health Analysis & Rural Health Info. Hub, *Access to Care for Rural People with Disabilities Toolkit* (Dec. 2016), *https://www.ruralhealthinfo.org/toolkits/disabilities.pdf* [*https://perma.cc/YX4E-QWEE*].

[49] *See, e.g.,* Consent Decree, *United States* v. *The Regents of the Univ. of Cal.* (Nov. 20, 2022), *https://www.justice.gov/opa/press-release/file/1553291/download* [*https://perma.cc/9AMQ-GPP3*]; Natasha Singer, *Online Schools Are Here To Stay, Even After the Pandemic,* N.Y. Times, Apr. 11, 2021, *https://www.nytimes.com/2021/04/11/technology/remote-learning-online-school.html* [*https://perma.cc/ZYF6-79EE*] (June 23, 2023); Institute of Education Sciences, National Ctr. for Education Statistics, *Distance Learning,* National Center for Education Statistics, *https://nces.ed.gov/fastfacts/display.asp?id=80* [*https://perma.cc/XZT2-UKAD*].

[50] *See* Volker Stocker et al., *Chapter 2: COVID–19 and the Internet: Lessons Learned, in* Beyond the Pandemic? Exploring the Impact of COVID–19 on Telecommunications and the Internet 17, 21–29 (2023), *https://www.emerald.com/insight/content/doi/10.1108/978-1-80262-049-820231002/full/pdf* [*https://perma.cc/82P5-GVRV*]; Colleen McClain et al., Pew Research Ctr., *The Internet and the Pandemic* 3 (Sep. 1, 2021), *https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/* [*https://perma.cc/4WVA-FQ9P*].

[51] *See* Jina Suh et al., *Disparate Impacts on Online Information Access During the COVID–19 Pandemic,* 13 Nature Comms. 1, 2–6 (Nov. 19, 2022), *https://www.nature.com/articles/s41467-022-34592-z#Sec6* [*https://perma.cc/CP2X-3ES6*]; Sara Fischer & Margaret Harding McGill, *Broadband Usage Will Keep Growing Post-Pandemic,* Axios (May 4, 2021), *https://www.axios.com/2021/05/04/broadband-usage-post-pandemic-increase.* A Perma archive link was unavailable for this citation; Kerry Dobransky & Eszter Hargittai, *Piercing the Pandemic Social Bubble: Disability and Social Media Use About COVID–19,* American Behavioral Scientist (Mar. 29, 2021), *https://doi.org/10.1177/00027642211003146.* A Perma archive link was unavailable for this citation.

[52] Colleen McClain et al., Pew Research Ctr., *The Internet and the Pandemic,* at 3 (Sept. 1, 2021), *https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/* [*https://perma.cc/4WVA-FQ9P*].

[53] According to the CDC, some people with disabilities ''might be more likely to get infected or have severe illness because of underlying medical conditions, congregate living settings, or systemic health and social inequities. All people with serious underlying chronic medical conditions like chronic lung disease, a serious heart condition, or a weakened immune system seem to be more likely to get severely ill from COVID–19.'' *See* Ctrs. for Disease Control and Prevention, *People with Disabilities, https://www.cdc.gov/ncbddd/humandevelopment/covid-19/people-with-disabilities.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fpeople-with-disabilities.html* [*https://perma.cc/WZ7U-2EQE*].

[54] *See* Nat'l Council on Disability, *2021 Progress Report: The Impact of COVID–19 on People with Disabilities,* (Oct. 29, 2021), *https://www.ncd.gov/report/an-extra/* [*https://perma.cc/2AUU-6R73*].

[55] Mobile apps are distinct from a website that can be accessed by a mobile device because, in part, mobile apps are not directly accessible on the web; they are often downloaded on a mobile device. Mona Bushnell, *What Is the Difference Between an App and a Mobile website?,* Bus. News Daily, *https://www.businessnewsdaily.com/6783-mobile-website-vs-mobile-app.html* [*https://perma.cc/9LKC-GUEM*] (Aug. 3, 2022). A mobile website, by contrast, is a website that is designed so that it can be accessed by a mobile device similarly to how it

mobile apps to provide services and reach the public in various ways, including the purposes for which public entities use websites, in addition to others. For example, as with websites, residents can often use mobile apps provided or made available by public entities to submit service requests, such as requests to clean graffiti or repair a street-light outage, and track the status of these requests. Public entities' apps often take advantage of common features of mobile devices, such as camera and Global Positioning System (''GPS'') functions,[56] so individuals can provide public entities with a precise description and location of issues. These may include issues such as potholes,[57] physical barriers created by illegal dumping or parking, or curb ramps that need to be fixed to ensure accessibility for some people with disabilities. Some public transit authorities have transit apps that use a mobile device's GPS function to provide bus riders with the location of nearby bus stops and real-time arrival and departure times.[58] In addition, public entities are also using mobile apps to assist with emergency planning for natural disasters like wildfires; provide information about local schools; and promote tourism, civic culture, and community initiatives.[59] During the COVID–19 pandemic, when many State and local government entities' offices were closed, public entities used mobile apps to inform people about benefits and resources, to provide updates about the pandemic, and as a means to show proof of vaccination status, among other things.[60]

3. Barriers to Web and Mobile App Accessibility

Millions of individuals in the United States have disabilities that can affect their use of the web and mobile apps.[61] Many of these individuals use assistive technology to enable them to navigate websites or mobile apps or access information contained on those sites or apps. For example, individuals who are unable to use their hands may use speech recognition software to navigate a website or a mobile app, while individuals who are blind may rely on a screen reader to convert the visual information on a website or mobile app into speech. Many websites and mobile apps are coded or presented such that some individuals with disabilities do not have access to all the information or features provided on or available on the website or mobile app.[62] For instance, individuals who are deaf may be unable to access information in web videos and other multimedia presentations that do not have captions. Individuals with low vision may be unable to read websites or mobile apps that do not allow text to be resized or do not provide enough contrast. Individuals with limited manual dexterity or vision disabilities who use assistive technology that enables them to interact with websites may be unable to access sites that do not support keyboard alternatives for mouse commands. These same individuals, along with individuals with cognitive and vision disabilities, often encounter difficulty using portions of websites and mobile apps that require timed responses from users but do not give users the opportunity to indicate that they need more time to respond.

Individuals who are blind or have low vision often confront significant barriers to accessing websites and mobile apps. For example, a study from the University of Washington analyzed approximately 10,000 mobile apps and found that many are highly inaccessible to individuals with disabilities.[63] The study found that 23 percent of the mobile apps reviewed did not provide content descriptions of images for most of their image-based buttons.[64] As a result, the functionality of those buttons is not accessible for people who use screen readers.[65] Additionally, other mobile apps may be inaccessible if they do not allow text resizing, which can provide larger text for people with vision disabilities.[66]

Furthermore, many websites and mobile apps provide information visually, without features that allow screen readers or other assistive technology to retrieve the information so it can be presented in an accessible manner. A common barrier to accessibility is an image or photograph without corresponding text (''alternative text'' or ''alt text'') describing the image. Generally, a screen reader or similar assistive technology cannot ''read'' an image, leaving individuals who are blind with no way of independently knowing what information the image conveys (*e.g.,* a simple icon or a detailed graph). Similarly, if websites lack headings that facilitate navigation using assistive technology, they may be difficult or impossible for someone using assistive technology to navigate.[67] Additionally, websites or mobile apps may fail to present tables in a way that allows the information in the table to be interpreted by someone who is using assistive technology.[68] Web-based forms, which are an essential part of accessing government services, are often inaccessible to individuals with disabilities who use assistive technology. For example, field elements on forms, which are the empty boxes on forms that receive input for specific pieces of information, such as a last name or telephone number, may lack clear labels that can be read by assistive technology. Inaccessible form fields make it difficult for people using assistive technology to fill out online forms, pay fees and fines, or otherwise participate in government services, programs, or activities using a website. Some governmental entities use inaccessible third-party websites and mobile apps to accept online payments, while others request public input through their own inaccessible websites and mobile apps. As commenters have emphasized, these barriers greatly impede the ability of individuals with

can be accessed on a desktop computer. *Id.* Both mobile apps and mobile websites are covered by this rule.

[56] *See* IBM Ctr. for the Bus. of Gov't, *Using Mobile Apps in Government,* at 11 (2015), *https://www.businessofgovernment.org/sites/default/files/Using%20Mobile%20Apps%20in%20Government.pdf* [*https://perma.cc/248X-8A6C*].

[57] *Id.* at 32.

[58] *See id.* at 28, 30–31.

[59] *See id.* at 7–8.

[60] *See* Rob Pegoraro, *COVID–19 Tracking Apps, Supported by Apple and Google, Begin Showing Up in App Stores,* USA Today, Aug. 25, 2020, *https://www.usatoday.com/story/tech/columnist/2020/08/25/google-and-apple-supported-coronavirus-tracking-apps-land-states/3435214001/* [*https://perma.cc/YH8C-K2F9*] (Aug. 26, 2020) (describing how various states' apps allow contact tracing through anonymized data and can provide information about testing and other COVID–19 safety practices); Chandra Steele, *Does My State Have a COVID–19 Vaccine App,* PCMag, *https://www.pcmag.com/how-to/does-my-state-have-a-covid-19-vaccine-app* [*https://perma.cc/H338-MCWC*] (Feb. 27, 2023).

[61] See Section 2.2, ''Number of Individuals with Disabilities,'' in the accompanying FRIA for more information on the estimated prevalence of individuals with certain disabilities.

[62] *See* W3C, *Diverse Abilities and Barriers, https://www.w3.org/WAI/people-use-web/abilities-barriers/* [*https://perma.cc/DXJ3-BTFW*] (May 15, 2017).

[63] *See Large-Scale Analysis Finds Many Mobile Apps Are Inaccessible,* Univ. of Washington CREATE (Mar. 1, 2021), *https://create.uw.edu/initiatives/large-scale-analysis-finds-many-mobile-apps-are-inaccessible/* [*https://perma.cc/442K-SBCG*].

[64] *Id.*

[65] *Id.*

[66] *See* Lucia Cerchie, *Text Resizing in iOS and Android,* The A11y Project (Jan. 28, 2021), *https://www.a11yproject.com/posts/text-resizing-in-ios-and-android/* [*https://perma.cc/C29M-N2J6*].

[67] *See, e.g.,* W3C, *WCAG 2.1 Understanding Docs: Understanding SC 1.3.1: Info and Relationships (Level A), https://www.w3.org/WAI/WCAG21/Understanding/info-and-relationships* [*https://perma.cc/9XRQ-HWWW*] (June 20, 2023).

[68] *See, e.g.,* W3C, *Tables Tutorial, https://www.w3.org/WAI/tutorials/tables/* [*https://perma.cc/FMG2-33C4*] (Feb. 16, 2023).

disabilities to access the services, programs, or activities offered by public entities via the web and mobile apps.

In many instances, removing certain web content and mobile app accessibility barriers is neither difficult nor especially costly. For example, the addition of invisible attributes known as alt text or alt tags to an image helps orient an individual using a screen reader and allows them to gain access to the information on the website.[69] Alt text can be added to the coding of a website without any specialized equipment.[70] Similarly, adding headings, which facilitate page navigation for those using screen readers, can often be done easily as well.[71]

Public comments on the NPRM described the lack of independence, and the resulting lack of privacy, that can stem from accessibility barriers. These commenters noted that without full and equal access to digital spaces, individuals with disabilities must constantly rely on support from others to perform tasks they could complete themselves if the online infrastructure enabled accessibility. Commenters noted that when using public entities' inaccessible web content or mobile apps for interactions that involve confidential information, individuals with disabilities must forfeit privacy and independence to seek assistance. Commenters pointed out that constantly needing assistance from others not only impacts self-confidence and perceptions of self-worth, but also imposes a costly and burdensome ''time tax'' because it means that individuals with disabilities must spend more time and effort to gain access than individuals without disabilities.

Commenters also pointed out that accessible digital spaces benefit everyone. Just as the existence of curb cuts benefits people in many different scenarios—such as those using wheelchairs, pushing strollers, and using a trolley to deliver goods—accessible web content and mobile apps are generally more user friendly. For example, captioning is often used by individuals viewing videos in quiet public spaces and sufficient color contrast makes it generally easier to read text.

[69] W3C, *Images Tutorial, https://www.w3.org/WAI/tutorials/images/* [*https://perma.cc/G6TL-W7ZC*] (Feb. 08, 2022).

[70] *Id.*

[71] W3C, *Technique G130: Providing Descriptive Headings, https://www.w3.org/WAI/WCAG21/Techniques/general/G130.html* [*https://perma.cc/XWM5-LL6S*] (June 20, 2023).

4. Inadequacy of Voluntary Compliance With Technical Standards

The web has changed significantly, and its use has become far more prevalent, since Congress enacted the ADA in 1990 and since the Department subsequently promulgated its first ADA regulations. Neither the ADA nor the Department's regulations specifically addressed public entities' use of web content and mobile apps to provide their services, programs, or activities. Congress contemplated, however, that the Department would apply title II, part A of the statute in a manner that would adjust over time with changing circumstances and Congress delegated authority to the Attorney General to promulgate regulations to carry out the ADA's mandate under title II, part A.[72] Consistent with this approach, the Department stated in the preamble to the original 1991 ADA regulations that the regulations should be interpreted to keep pace with developing technologies.[73]

Since 1996, the Department has consistently taken the position that the ADA applies to the web content of State and local government entities. This interpretation comes from title II's application to ''all services, programs, and activities provided or made available by public entities.'' [74] The Department has affirmed the application of the statute to websites in multiple technical assistance documents over the past two decades.[75] Further, the Department has repeatedly enforced this obligation and worked with State and local government entities to make their websites accessible, such as through Project Civic Access, an initiative to promote local governments' compliance with the ADA by eliminating physical and communication barriers impeding full participation by people with disabilities in community life.[76] As State and local government entities have increasingly turned to mobile apps to offer services, programs, or activities, the Department has enforced those entities' title II obligations in that context as well.[77] A variety of voluntary standards and structures have been developed for the web through nonprofit organizations using multinational collaborative efforts. For example, domain names are issued and administered through the Internet Corporation for Assigned Names and Numbers, the Internet Society publishes computer security policies and procedures for websites, and the World Wide Web Consortium (''W3C'') develops a variety of technical standards and guidelines ranging from issues related to mobile devices and privacy to internationalization of technology. In the area of accessibility, the Web Accessibility Initiative (''WAI'') of W3C created the WCAG.

Many organizations, however, have indicated that voluntary compliance with these accessibility guidelines has not resulted in equal access for individuals with disabilities; accordingly, they have urged the Department to take regulatory action to ensure web content and mobile app accessibility.[78] The National Council on Disability, an independent Federal agency that advises the President, Congress, and other agencies about programs, policies, practices, and procedures affecting people with disabilities, has similarly emphasized the need for regulatory action on this issue.[79] The Department has also heard

[72] *See* H.R. Rep. No. 101–485, pt. 2, at 108 (1990); 42 U.S.C. 12134(a).

[73] *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 56 FR 35544, 35566 (July 26, 1991); *see* 28 CFR part 36, appendix B.

[74] *See* 28 CFR 35.102.

[75] U.S. Dep't of Just., *Accessibility of State and Local Government websites to People with Disabilities, ADA.gov* (June 2003), *https://www.ada.gov/websites2.htm* [*https://perma.cc/Z7JT-USAN*]; U.S. Dep't of Just., *ADA Best Practices Tool Kit for State and Local Governments: Chapter 5: website Accessibility Under Title II of the ADA, ADA.gov* (May 7, 2007), *https://www.ada.gov/pcatoolkit/chap5toolkit.htm* [*https://perma.cc/VM3M-AHDJ*]; U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA, ADA.gov* (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/874V-JK5Z*]; *see also supra* Section III.B of this preamble.

[76] U.S. Dep't of Just., *Project Civic Access, ADA.gov*, *https://www.ada.gov/civicac.htm* [*https://perma.cc/B6WV-4HLQ*].

[77] *See, e.g.,* Settlement Agreement Between the United States of America and Service Oklahoma (Jan. 22, 2024), *https://www.justice.gov/d9/2024-01/service_oklahoma_fully_executed_agreement.01.22.24.pdf* [*https://perma.cc/MB2A-BKHY*]; Settlement Agreement Between the United States of America and the Champaign-Urbana Mass Transit District (Dec. 14, 2021), *https://www.justice.gov/d9/case-documents/attachments/2021/12/14/champaign-urbana_sa.pdf* [*https://perma.cc/Y3CX-EHCC*].

[78] *See, e.g.,* Letter for U.S. Dep't of Just. from American Council of the Blind et al. (Feb. 28, 2022), *https://acb.org/accessibility-standards-joint-letter-2-28-22* [*https://perma.cc/R77M-VPH9*] (citing research showing persistent barriers in digital accessibility); Letter for U.S. Dep't of Just. from Consortium for Citizens with Disabilities Technology & Telecommunications and Rights Task Force, re: Adopting Regulatory and Subregulatory Initiatives To Advance Accessibility and Usability of websites, Online Systems, Mobile Applications, and Other Forms of Information and Communication Technology Under Titles II and III of the ADA (Mar. 23, 2022), *https://www.c-c-d.org/fichiers/CCD-Web-Accessibility-Letter-to-DOJ-03232022.pdf* [*https://perma.cc/Q7YB-UNKV*].

[79] *See* Nat'l Council on Disability, *The Need for Federal Legislation and Regulation Prohibiting Telecommunications and Information Services Discrimination* (Dec. 19, 2006), *https://www.ncd.gov/assets/uploads/reports/2006/ncd-need-for-regulation-prohibiting-it-discrimination-*

from State and local government entities and businesses asking for clarity on the ADA's requirements for websites through regulatory efforts.[80] Public commenters responding to the NPRM have also emphasized the need for regulatory action on this issue to ensure that public entities' services, programs, and activities offered via the web and mobile apps are accessible, and have expressed that this rule is long overdue.

In light of the long regulatory history and the ADA's current general requirement to make all services, programs, and activities accessible, the Department expects that public entities have made strides to make their web content and mobile apps accessible since the 2010 ANPRM was published. Such strides have been supported by the availability of voluntary web content and mobile app accessibility standards, as well as by the Department's clearly stated position—supported by judicial decisions [81]—that all services, programs, and activities of public entities, including those available on websites, must be accessible. Still, as discussed above, individuals with disabilities continue to struggle to obtain access to the web content and mobile apps of public entities. Many public comments on the NPRM shared anecdotes of instances where individuals were unable to access government services, programs, or activities offered via the web and mobile apps, or had to overcome significant barriers to be able to do so, in spite of public entities' existing obligations under title II.

The Department has brought enforcement actions to address web content and mobile app access, resulting in a significant number of settlement agreements with State and local government entities.[82] Other Federal agencies have also taken enforcement action against public entities regarding the lack of website access for individuals with disabilities. In December 2017, for example, the U.S. Department of Education entered into a resolution agreement with the Alaska Department of Education and Early Development after it found that the public entity had violated Federal statutes, including title II of the ADA, by denying individuals with disabilities an equal opportunity to participate in the public entity's services, programs, or activities due to website inaccessibility.[83] As another example, the U.S. Department of Housing and Urban Development took action against the City of Los Angeles, and its subrecipient housing providers, to ensure that it maintained an accessible website concerning housing opportunities.[84]

The Department believes, and public comments on the NPRM have reinforced, that adopting technical standards for web content and mobile app accessibility provides clarity to public entities regarding how to make accessible the services, programs, and activities that they offer via the web and mobile apps. Commenters have specifically indicated that unambiguous, consistent, and comprehensive standards will help resolve existing confusion around the technical requirements for accessibility on public entities' web content and mobile apps. Adopting specific technical standards for web content and mobile app accessibility also helps to provide individuals with disabilities with consistent and predictable access to the web content and mobile apps of public entities.

IV. Regulatory Process Matters

The Department has examined the likely economic and other effects of this final rule addressing the accessibility of web content and mobile apps, as required under applicable Executive Orders,[85] Federal administrative statutes (*e.g.,* the Regulatory Flexibility Act,[86] Paperwork Reduction Act,[87] and Unfunded Mandates Reform Act [88]), and other regulatory guidance.[89]

As discussed previously, the purpose of this rule is to revise the regulation implementing title II of the ADA in order to ensure that the services, programs, and activities offered by State and local government entities to the public via web content and mobile apps are accessible to individuals with disabilities. The Department is adopting specific technical standards related to the accessibility of the web content and mobile apps of State and local government entities and is specifying

2006.pdf [*https://perma.cc/7HW5-NF7P*] (discussing how competitive market forces have not proven sufficient to provide individuals with disabilities access to telecommunications and information services); *see also, e.g.,* Nat'l Council on Disability, *National Disability Policy: A Progress Report: Executive Summary* (Oct. 7, 2016), *https://files.eric.ed.gov/fulltext/ED571832.pdf* [*https://perma.cc/ZH3P-8LCZ*] (urging the Department to adopt a web accessibility regulation).

[80] *See, e.g.,* Letter for U.S. Dep't of Just. from Nat'l Ass'n of Realtors (Dec. 13, 2017), *https://www.narfocus.com/billdatabase/clientfiles/172/3/3058.pdf* [*https://perma.cc/Z93F-K88P*].

[81] *See, e.g., Meyer* v. *Walthall,* 528 F. Supp. 3d 928, 959 (S.D. Ind. 2021) (''[T]he Court finds that Defendants' websites constitute services or activities within the purview of Title II and section 504, requiring Defendants to provide effective access to qualified individuals with a disability.''); *Price* v. *City of Ocala, Fla.,* 375 F. Supp. 3d 1264, 1271 (M.D. Fla. 2019) (''Title II undoubtedly applies to websites.''); *Payan* v. *Los Angeles Cmty. Coll. Dist.,* No. 2:17–CV–01697–SVW–SK, 2019 WL 9047062, at *12 (C.D. Cal. Apr. 23, 2019) (''[T]he ability to sign up for classes on the website and to view important enrollment information is itself a 'service' warranting protection under Title II and Section 504.''); *Eason* v. *New York State Bd. of Elections,* No. 16–CV–4292 (KBF), 2017 WL 6514837, at *1 (S.D.N.Y. Dec. 20, 2017) (stating, in a case involving a State's website, that ''Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act . . . long ago provided that the disabled are entitled to meaningful access to a public entity's programs and services. Just as buildings have architecture that can prevent meaningful access, so too can software.''); *Hindel* v. *Husted,* No. 2:15–CV–3061, 2017 WL 432839, at *5 (S.D. Ohio Feb. 1, 2017) (''The Court finds that Plaintiffs have sufficiently established that Secretary Husted's website violates Title II of the ADA because it is not formatted in a way that is accessible to all individuals, especially blind individuals like the Individual Plaintiffs whose screen access software cannot be used on the website.'').

[82] *See, e.g.,* Settlement Agreement Between the United States of America and the Champaign-Urbana Mass Transit District (Dec. 14, 2021), *https://www.ada.gov/champaign-urbana_sa.pdf* [*https://perma.cc/VZU2-E6FZ*]; Consent Decree, *United States* v. *The Regents of the Univ. of Cal.* (Nov. 21, 2022), *https://www.justice.gov/opa/press-release/file/1553291/download* [*https://perma.cc/9AMQ-GPP3*]; Consent Decree, *Dudley* v. *Miami Univ.* (Oct. 13, 2016), *https://www.ada.gov/miami_university_cd.html* [*https://perma.cc/T3FX-G7RZ*]; Settlement Agreement Between the United States of America and the City and County of Denver, Colorado Under the Americans with Disabilities Act (Jan. 8, 2018), *https://www.ada.gov/denver_pca/denver_sa.html* [*https://perma.cc/U7VE-MBSG*]; Settlement Agreement Between the United States of America and Nueces County, Texas Under the Americans with Disabilities Act (Jan. 30, 2015), *https://www.ada.gov/nueces_co_tx_pca/nueces_co_tx_sa.html* [*https://perma.cc/TX66-WQY7*]; Settlement Agreement Between the United States of America, Louisiana Tech University, and the Board of Supervisors for the University of Louisiana System Under the Americans with Disabilities Act (July 22, 2013), *https://www.ada.gov/louisiana-tech.htm* [*https://perma.cc/78ES-4FQR*].

[83] U.S. Dep't of Educ., *In re Alaska Dep't of Educ. & Early Dev.,* OCR Reference No. 10161093 (Dec. 11, 2017) (resolution agreement), *https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10161093-b.pdf* [*https://perma.cc/DUS4-HVZJ*], *superseded by* U.S. Dep't of Educ., *In re Alaska Dep't of Educ. & Early Dev.,* OCR Reference No.10161093 (Mar. 28, 2018) (revised resol. agreement), *https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10161093-b1.pdf* [*https://perma.cc/BVL6-Y59M*] (U.S. Dep't of Educ. Mar. 28, 2018) (revised resol. agreement).

[84] *See* Voluntary Compliance Agreement Between the U.S. Dep't of Housing & Urban Dev. and the City of Los Angeles, Cal. (Aug. 2, 2019), *https://www.hud.gov/sites/dfiles/Main/documents/HUD-City-of-Los-Angeles-VCA.pdf* [*https://perma.cc/X5RN-AJ5K*].

[85] *See* E.O. 14094, 88 FR 21879 (Apr. 6, 2023); E.O. 13563, 76 FR 3821 (Jan. 18, 2011); E.O. 13272, 67 FR 53461 (Aug. 13, 2002); E.O. 13132, 64 FR 43255 (Aug. 4, 1999); E.O. 12866, 58 FR 51735 (Sept. 30, 1993).

[86] Regulatory Flexibility Act of 1980 (''RFA''), as amended by the Small Bus. Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*

[87] Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.*

[88] Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

[89] *See* Office of Mgmt. and Budget, *Circular A–4* (Sept. 17, 2003) (superseded by Office of Mgmt. and Budget, *Circular A–4* (of Nov. 9, 2023)).

dates by which such web content and mobile apps must meet those standards. This rule is necessary to help public entities understand how to ensure that individuals with disabilities will have equal access to the services, programs, and activities that public entities provide or make available through their web content and mobile apps.

The Department has carefully crafted this final rule to better ensure the protections of title II of the ADA, while at the same time doing so in an economically efficient manner. After reviewing the Department's assessment of the likely costs of this regulation, the Office of Management and Budget (''OMB'') has determined that it is a significant regulatory action within the meaning of Executive Order 12866, as amended. As such, the Department has undertaken a FRIA pursuant to Executive Order 12866. The Department has also undertaken a FRFA as specified in section 604(a) of the Regulatory Flexibility Act. The results of both of these analyses are summarized below. Lastly, the Department does not believe that this regulation will have any significant impact relevant to the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or the federalism principles outlined in Executive Order 13132.

A. Final Regulatory Impact Analysis Summary

The Department has prepared a FRIA for this rulemaking. This rulemaking also contains a FRFA. The Department contracted with Eastern Research Group Inc. (''ERG'') to prepare this economic assessment. This summary provides an overview of the Department's economic analysis and key findings in the FRIA. The full FRIA will be made available at *https://www.justice.gov/crt/disability-rights-section.*

Requiring State and local government entity web content and mobile apps to conform to WCAG 2.1 Level AA will result in costs for State and local government entities to remediate and maintain their web content and mobile apps to meet this standard. The Department estimates that 109,893 State and local government entity websites and 8,805 State and local government mobile apps will be affected by the rule. These websites and mobile apps provide services on behalf of and are managed by 91,489 State and local government entities that will incur these costs. These costs include one-time costs for familiarization with the requirements of the rule; testing, remediation, and operating and maintenance (''O&M'') costs for websites; testing, remediation, and O&M costs for mobile apps; and school course remediation costs. The remediation costs include both time and software components.

Initial familiarization, testing, and remediation costs of the rule are expected to occur over the first two or three years until compliance is required and are presented in Table 3 (two years for large governments and three years for small governments). Annualized recurring costs after implementation are shown in Table 4. These initial and recurring costs are then combined to show total costs over the 10-year time horizon (Table 5 and Table 6) and annualized costs over the 10-year time horizon (Table 7 and Table 8). Annualized costs over this 10-year period are estimated at $3.3 billion assuming a 3 percent discount rate and $3.5 billion assuming a 7 percent discount rate. This includes $16.9 billion in implementation costs accruing during the first three years (the implementation period), undiscounted, and $2.0 billion in annual O&M costs during the next seven years. All values are presented in 2022 dollars as 2023 data were not yet available.

Benefits will generally accrue to all individuals who access State and local government entity websites and mobile apps, and additional benefits will accrue to individuals with certain types of disabilities. The WCAG 2.1 Level AA standards for web content and mobile app accessibility primarily benefit individuals with vision, hearing, cognitive, and manual dexterity disabilities because accessibility standards are intended to address barriers that often impede access for people with these disability types. Using the U.S. Census Bureau's Survey of Income and Program Participation (''SIPP'') 2022 data, the Department estimates that 5.5 percent of adults in the United States have a vision disability, 7.6 percent have a hearing disability, 11.3 percent have a cognitive disability, and 5.8 percent have a manual dexterity disability.[90] Due to the incidence of multiple disabilities, the total share of people with one or more of these disabilities is 21.3 percent.

The Department monetized benefits for both people with these disabilities and people without disabilities.[91] There are many additional benefits that have not been monetized due to lack of data availability. Benefits that cannot be monetized are discussed qualitatively. These non-quantified benefits are central to this rule's potential impact as they include concepts inherent to any civil rights law—such as equality and dignity. Other impacts to individuals include increased independence, increased flexibility, increased privacy, reduced frustration, decreased reliance on companions, and increased program participation. This rule will also benefit State and local government entities through increased certainty about what constitutes an accessible website, a potential reduction in litigation, and a larger labor market pool (due to increased educational attainment and access to job training).

Annual and annualized monetized benefits of this rule are presented in Table 9, Table 10, and Table 11. Annual benefits, beginning once the rule is fully implemented, total $5.3 billion. Because individuals generally prefer benefits received sooner, future benefits need to be discounted to reflect the lower value due to the wait to receive them. OMB guidance states that annualized benefits and costs should be presented using real discount rates of 3 percent and 7 percent.[92] Benefits annualized over a 10-year period that includes both three years of implementation and seven years post-implementation total $5.2 billion per year, assuming a 3 percent discount rate, and $5.0 billion per year, assuming a 7 percent discount rate.

Comparing annualized costs and benefits, monetized benefits to society outweigh the costs. Net annualized benefits over the first 10 years post publication of this rule total $1.9 billion per year using a 3 percent discount rate and $1.5 billion per year using a 7 percent discount rate (Table 12). Additionally, beyond this 10-year period, benefits are likely to continue to accrue at a greater rate than costs because many of the costs are upfront costs and the benefits tend to have a delay before beginning to accrue.

To consider the relative magnitude of the estimated costs of this regulation, the Department compares the costs to revenues for public entities. Because

[90] *See* U.S. Census Bureau, *2022 SIPP Data, https://www.census.gov/programs-surveys/sipp/data/datasets/2022-data/2022.html* [*https://perma.cc/7HW3-7GHR*] (last visited Mar. 13, 2024). Analysis of this dataset is discussed further in the Department's accompanying FRIA, at section 2.2, Number of Individuals with Disabilities.

[91] Throughout the Department's FRIA, the Department uses the phrases ''individuals without a relevant disability'' or ''individuals without disabilities'' to refer to individuals without vision, hearing, cognitive, or manual dexterity disabilities. These individuals may have other types of disabilities, or they may be individuals without any disabilities at all.

[92] Office of Mgmt. and Budget, *Circular A–4* (Sep 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* [*https://perma.cc/VSR2-UFT8*]. Office of Mgmt. and Budget, *Circular A–4* (Sep 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* [*https://perma.cc/VSR2-UFT8https://perma.cc/VSR2-UFT8*].

calculating this ratio for every public entity would be impractical, the Department used the estimated average annualized cost compared to the average annual revenue by each government entity type. The costs for each government entity type and size are generally estimated to be below 1 percent of revenues (the one exception is small independent community colleges, for which the cost-to-revenue ratio is 1.05 percent and 1.10 percent using a 3 percent discount rate and a 7 percent discount rate, respectively),[93] so the Department does not believe the rule will be unduly burdensome or costly for public entities.[94]

The Department received some comments on the proposed rule's estimated costs and benefits. These comments are discussed throughout the FRIA. One methodological change was made from the analysis performed for the NPRM on the timing of compliance for making password-protected course content accessible by public educational entities, which is discussed further in the FRIA. However, the numbers in the FRIA also differ from the proposed rule because data have been updated to reflect the most recently available data and because monetary values are now reported in 2022 dollars (whereas the analysis performed for the NPRM presented values in 2021 dollars).

TABLE 3—INITIAL FAMILIARIZATION, TESTING, AND REMEDIATION COSTS
[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Regulatory familiarization	$0.02	$1.00	$6.42	$5.35	$12.7	$4.03	$0.00	$0.62	$30.1
Websites	253.0	819.9	2,606.6	1,480.7	408.5	2,014.0	7.1	1,417.4	9,007.3
Mobile apps	14.7	56.8	100.0	1.4	0.0	406.3	1.3	68.9	649.2
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	5,508.5	5,508.5
Primary and secondary course remediation	N/A	50.8	19.8	42.8	N/A	1,134.1	N/A	N/A	1,247.5
Third-party website remediation	7.2	39.4	147.2	85.5	19.6	113.8	0.0	93.6	506.4
Total	275.0	967.8	2,880.1	1,615.8	440.8	3,672.2	8.4	7,089.1	16,949.1

TABLE 4—AVERAGE ANNUAL COST AFTER IMPLEMENTATION
[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Websites	$22.0	$71.9	$237.3	$136.9	$43.8	$181.7	$0.6	$123.4	$817.8
Mobile apps	0.01	0.04	0.03	0.00	0.00	0.23	0.00	0.05	0.35
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1,001.6	1,001.6
Primary and secondary course remediation	N/A	5.1	2.0	4.3	N/A	113.4	N/A	N/A	124.7
Third-party website remediation	0.6	3.5	13.4	7.9	2.1	10.2	0.0	8.2	45.9
Total	22.6	80.6	252.7	149.1	45.9	305.6	0.6	1,133.2	1,990.3

TABLE 5—PRESENT VALUE OF 10-YEAR TOTAL COST, 3 PERCENT DISCOUNT RATE
[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Regulatory familiarization	$0.02	$0.97	$6.23	$5.20	$12.33	$3.91	$0.00	$0.60	$29.26
Websites	366.5	1,190.3	3,812.6	2,174.4	634.1	2,939.6	10.3	2,053.9	13,181.7
Mobile apps	14.1	54.2	95.8	1.3	0.0	385.4	1.2	66.2	618.1
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	11,890.1	11,890.1
Primary and secondary course remediation	N/A	79.6	31.1	67.1	N/A	1,778.9	N/A	N/A	1,956.8
Third-party website remediation	10.5	57.4	215.3	125.6	30.4	165.8	0.0	135.6	740.7
Total	391.1	1,382.4	4,161.0	2,373.7	676.8	5,273.6	11.5	14,146.5	28,416.7

[93] However, the Department notes that revenue for small independent community colleges was estimated using the 2012 Census of Governments, so revenue for small independent community colleges would likely be underestimated if small independent community colleges had a greater share of total local government revenue in 2022 than in 2012. If this were true, the Department expects that the cost-to-revenue ratio for small independent community colleges would be lower.

[94] As a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a regulation may be ''significant'' is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. *See* U.S. Small Bus. Admin., *A Guide for Government Agencies: How To Comply with the Regulatory Flexibility Act,* at 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/PWL9-ZTW6*]; *see also* U.S. Env't Prot. Agency, *EPA's Action Dev. Process: Final Guidance for EPA Rulewriters: Regulatory Flexibility Act,* at 9, 24 (Nov. 2006), *https://www.epa.gov/sites/default/files/2015-06/documents/guidance-regflexact.pdf* [*https://perma.cc/9XFZ-3EVA*] (providing an illustrative example of a hypothetical analysis under the RFA in which, for certain small entities, economic impact of ''[l]ess than 1% for all affected small entities'' may be ''[p]resumed'' to have ''no significant economic impact on a substantial number of small entities'').

TABLE 6—PRESENT VALUE OF 10-YEAR TOTAL COST, 7 PERCENT DISCOUNT RATE

[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Regulatory familiarization	$0.02	$0.93	$6.00	$5.00	$11.87	$3.76	$0.00	$0.58	$28.16
Websites	323.3	1,048.5	3,327.8	1,892.9	548.3	2,570.7	9.1	1,811.7	11,532.2
Mobile apps	13.3	50.7	90.5	1.3	0.0	358.5	1.2	62.5	577.9
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	10,188.1	10,188.1
Primary and secondary course remediation	N/A	69.7	27.2	58.7	N/A	1,557.3	N/A	N/A	1,713.0
Third-party website remediation	9.3	50.5	187.9	109.3	26.3	145.3	0.0	119.6	648.2
Total	345.9	1,220.4	3,639.4	2,067.2	586.5	4,635.5	10.2	12,182.5	24,687.6

TABLE 7—10-YEAR AVERAGE ANNUALIZED COST, 3 PERCENT DISCOUNT RATE

[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Regulatory familiarization	$0.00	$0.11	$0.73	$0.61	$1.44	$0.46	$0.00	$0.07	$3.43
Websites	43.0	139.5	446.9	254.9	74.3	344.6	1.2	240.8	1,545.3
Mobile apps	1.7	6.3	11.2	0.2	0.0	45.2	0.1	7.8	72.5
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1,393.9	1,393.9
Primary and secondary course remediation	N/A	9.3	3.6	7.9	N/A	208.5	N/A	N/A	229.4
Third-party website remediation	1.2	6.7	25.2	14.7	3.6	19.4	0.0	15.9	86.8
Total	45.8	162.1	487.8	278.3	79.3	618.2	1.4	1,658.4	3,331.3

TABLE 8—10-YEAR AVERAGE ANNUALIZED COST, 7 PERCENT DISCOUNT RATE

[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Regulatory familiarization	$0.00	$0.13	$0.85	$0.71	$1.69	$0.54	$0.00	$0.08	$4.01
Websites	46.0	149.3	473.8	269.5	78.1	366.0	1.3	257.9	1,641.9
Mobile apps	1.9	7.2	12.9	0.2	0.0	51.0	0.2	8.9	82.3
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1,450.6	1,450.6
Primary and secondary course remediation	N/A	9.9	3.9	8.4	N/A	221.7	N/A	N/A	243.9
Third-party website remediation	1.3	7.2	26.8	15.6	3.7	20.7	0.0	17.0	92.3
Total	49.2	173.8	518.2	294.3	83.5	660.0	1.5	1,734.5	3,515.0

TABLE 9—ANNUAL BENEFIT AFTER FULL IMPLEMENTATION

[Millions]

Benefit type	Visual disability	Other relevant disability [a]	Without relevant disabilities	State and local gov'ts	Total
Time savings—current users	$813.5	$1,022.1	$2,713.9	N/A	$4,549.5
Time savings—mobile apps	76.3	95.9	254.5	N/A	426.7
Educational attainment	10.2	295.8	N/A	N/A	306.0
Total benefits	900.0	1,413.7	2,968.5	0.0	5,282.2

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as ''other relevant disabilities.''

TABLE 10—10-YEAR AVERAGE ANNUALIZED BENEFITS, 3 PERCENT DISCOUNT RATE

[Millions]

Benefit type	Visual disability	Other relevant disability [a]	Without relevant disabilities	State and local gov'ts	Total
Time savings—current users	$686.3	$862.3	$2,289.6	N/A	$3,838.3
Time savings—mobile apps	64.4	80.9	214.7	N/A	360.0

TABLE 10—10-YEAR AVERAGE ANNUALIZED BENEFITS, 3 PERCENT DISCOUNT RATE—Continued

[Millions]

Benefit type	Visual disability	Other relevant disability [a]	Without relevant disabilities	State and local gov'ts	Total
Educational attainment	34.4	996.9	N/A	N/A	1,031.3
Total benefits	785.1	1,940.0	2,504.4	0.0	5,229.5

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as ''other relevant disabilities.''

TABLE 11—10-YEAR AVERAGE ANNUALIZED BENEFITS, 7 PERCENT DISCOUNT RATE

[Millions]

Benefit type	Visual disability	Other relevant disability [a]	Without relevant disabilities	State and local gov'ts	Total
Time savings—current users	$668.1	$839.4	$2,229.0	N/A	$3,736.6
Time savings—mobile apps	62.7	78.7	209.0	N/A	350.4
Educational attainment	31.4	910.8	N/A	N/A	942.2
Total benefits	762.2	1,828.9	2,438.0	0.0	5,029.2

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as ''other relevant disabilities.''

TABLE 12—10-YEAR AVERAGE ANNUALIZED COMPARISON OF COSTS AND BENEFITS

Figure	3% Discount rate	7% Discount rate
Average annualized costs (millions)	$3,331.3	$3,515.0
Average annualized benefits (millions)	$5,229.5	$5,029.2
Net benefits (millions)	$1,898.2	$1,514.2
Cost-to-benefit ratio	0.6	0.7

B. Final Regulatory Flexibility Analysis Summary

The Department has prepared a FRFA to comply with its obligations under the Regulatory Flexibility Act and related laws and Executive Orders requiring executive branch agencies to consider the effects of regulations on small entities.[95] The Department's FRFA includes an explanation of steps that the Department has taken to minimize the impact of this rule on small entities, responses to a comment by the Chief Counsel for Advocacy of the Small Business Administration, a description of impacts of this rule on small entities, alternatives the Department considered related to small entities, and other information required by the RFA. The Department includes a short summary of some monetized cost and benefit findings made in the FRFA below, but the full FRFA will be published along with the Department's FRIA, and it will be made available to the public at *https://www.justice.gov/crt/disability-rights-section.*

The Department calculated both costs and benefits to small government entities as part of its FRFA. The Department also compared costs to revenues for small government entities to evaluate the economic impact to these small government entities. The costs for each small government entity type and size are generally estimated to be below 1 percent of revenues (the one exception is small independent community colleges, for which the cost-to-revenue ratio is 1.05 percent and 1.10 percent using a 3 percent and 7 percent discount rate, respectively),[96] so the Department does not believe the rule will be unduly burdensome or costly for public entities.[97] These costs include one-time costs for familiarization with the requirements of the rule, the purchase of software to assist with remediation of web content or mobile apps, the time spent testing and remediating web content and mobile apps to comply with WCAG 2.1 Level AA, and elementary, secondary, and postsecondary education course content remediation. Annual costs include recurring costs for software licenses and remediation of future content.

Costs to small entities are displayed in Table 13 and Table 14; Table 15 contains the costs and revenues per government type and cost-to-revenue

[95] *See* U.S. Small Bus. Admin., *A Guide for Government Agencies: How To Comply with the Regulatory Flexibility Act,* at 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/PWL9-ZTW6*].

[96] However, the Department notes that revenue for small independent community colleges was estimated using the 2012 Census of Governments, so revenue for small independent community colleges would likely be underestimated if small independent community colleges had a greater share of total local government revenue in 2022 than in 2012. If this were true, the Department expects that the cost-to-revenue ratio for small independent community colleges would be lower.

[97] As a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a regulation may be ''significant'' is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. *See* U.S. Small Bus. Admin., *A Guide for Government Agencies: How To Comply with the Regulatory Flexibility Act,* at 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/PWL9-ZTW6*]; *see also* U.S. Env't Prot. Agency, EPA's Action Dev. Process: *Final Guidance for EPA Rulewriters: Regulatory Flexibility Act,* at 24 (Nov. 2006), *https://www.epa.gov/sites/default/files/2015-06/documents/guidance-regflexact.pdf* [*https://perma.cc/9XFZ-3EVA*] (providing an illustrative example of a hypothetical analysis under the RFA in which, for certain small entities, economic impact of ''[l]ess than 1% for all affected small entities'' may be ''[p]resumed'' to have ''no significant economic impact on a substantial number of small entities'').

ratios using a 3 percent and 7 percent discount rate. Because the Department's cost estimates take into account different small entity types and sizes, the Department believes the estimates in this analysis are generally representative of what smaller entities of each type should expect to pay. This is because the Department's methodology generally estimated costs based on the sampled baseline accessibility to full accessibility in accordance with this rule, which provides a precise estimate of the costs within each government type and size. While the Department recognizes that there may be variation in costs for differently sized small entity types, the Department's estimates are generally representative given the precision in our methodology within each stratified group. The Department received several comments on its estimates for small government entity costs. A summary of those comments and the Department's responses are included in the accompanying FRFA.

TABLE 13—PRESENT VALUE OF TOTAL 10-YEAR COSTS PER ENTITY, 3% DISCOUNT RATE

Type of government entity	Number of entities	Regulatory familiarization	Website testing and remediation	Mobile app testing and remediation	Postsecondary course remediation	Primary and secondary course remediation	Third-Party website remediation	Total
Special district	38,542	$320	$16,452	$0	N/A	N/A	$790	$17,561
County (small)	2,105	320	52,893	12,022	N/A	$19,949	5,743	90,927
Municipality (small)	18,729	320	161,722	0	N/A	876	8,957	171,875
Township (small)	16,097	320	132,260	0	N/A	2,198	7,695	142,472
School district (small)	11,443	320	168,261	27,634	N/A	81,971	7,648	285,834
U.S. Territory (small)	2	320	1,026,731	68,209	N/A	N/A	6,160	1,101,420
Community College	1,146	320	1,020,862	15,916	$3,617,001	N/A	67,409	4,721,508

TABLE 14—PRESENT VALUE OF TOTAL 10-YEAR COSTS PER ENTITY, 7% DISCOUNT RATE

Type of government entity	Number of entities	Regulatory familiarization	Website testing and remediation	Mobile app testing and remediation	Postsecondary course remediation	Primary and secondary course remediation	Third-Party website remediation	Total
Special district	38,542	$308	$14,226	$0	N/A	N/A	$683	$15,217
County (small)	2,105	308	45,992	11,147	N/A	$17,463	4,993	79,904
Municipality (small)	18,729	308	140,772	0	N/A	767	7,797	149,643
Township (small)	16,097	308	115,101	0	N/A	1,924	6,697	124,029
School district (small)	11,443	308	146,475	25,624	N/A	71,758	6,658	250,822
U.S. Territory (small)	2	308	894,141	63,264	N/A	N/A	5,365	963,078
Community College	1,146	308	900,471	15,031	$3,099,245	N/A	59,460	4,074,515

TABLE 15—NUMBER OF SMALL ENTITIES AND RATIO OF COSTS TO GOVERNMENT REVENUES

Government type	Number of small entities	Average annual cost per entity (3%) [a] [c]	Average annual cost per entity (7%) [a] [c]	Total 10-year average annual costs (3%) (millions)	Total 10-year average annual costs (7%) (millions)	Annual revenue (millions)	Ratio of costs to revenue (3%)	Ratio of costs to revenue (7%)
County	2,105	$10,659.4	$11,376.5	$22.4	$23.9	$69,686.3	0.03	0.03
Municipality	18,729	20,149.0	21,305.8	377.4	399.0	197,708.7	0.19	0.20
Township	16,097	16,666.1	17,616.8	268.3	283.6	59,802.5	0.45	0.47
Special district	38,542	2,058.7	2,166.5	79.3	83.5	298,338.3	0.03	0.03
School district [a]	11,443	36,023.7	38,347.6	412.2	438.8	354,350.5	0.12	0.12
U.S. territory	2	129,120.0	137,120.7	0.3	0.3	992.6	0.03	0.03
CCs [b]	960	553,504.8	580,119.2	531.4	556.9	N/A	N/A	N/A
CCs—independent	231	553,504.8	580,119.2	127.9	134.0	12,149.5	1.05	1.10
Total (includes all CCs)	87,878	19,245.7	20,324.4	1,691.3	1,786.1	N/A	N/A	N/A
Total (only independent CCs)	87,149	14,776.6	15,641.7	1,287.8	1,363.2	993,028.5	0.13	0.14

[a] Excludes community colleges, which are costed separately.
[b] Includes all dependent community college districts and small independent community college districts. Revenue data are not available for the dependent community college districts.
[c] This cost consists of regulatory familiarization costs, government website testing and remediation costs, mobile app testing and remediation costs, postsecondary education course remediation costs, elementary and secondary education course remediation costs, and costs for third-party websites averaged over ten years.

Though not included in the Department's primary benefits analysis due to methodological limitations, the Department estimated time savings for State and local government entities from reduced contacts (*i.e.,* fewer interactions assisting residents). Improved web accessibility will lead some individuals who accessed government services via the phone, mail, or in person to begin using the public entity's website to complete the task. This will generate time savings for government employees. In the Department's FRFA, the Department estimates that this will result in time savings to small governments of $192.6 million per year once full implementation is complete. Assuming lower benefits during the implementation period results in average annualized benefits of $162.5 million and $158.1 million to small governments using a 3 percent and 7 percent discount rate, respectively. The Department notes that these benefits rely on assumptions for which the Department could not find reliable data, and stresses the uncertainty of these estimates given the strong assumptions made.

The Department explains in greater detail its efforts to minimize the economic impact on small entities, as well as estimates of regulatory alternatives that the Department considered to reduce those impacts in

the full FRFA accompanying this rule. The FRFA also includes other information such as the Department's responses to the comment from the Chief Counsel for Advocacy of the Small Business Administration and responses to other comments related to the rule's impact on small entities. Finally, the Department will issue a small entity compliance guide,[98] which should help public entities better understand their obligations under this rule.

C. Executive Order 13132: Federalism

Executive Order 13132 requires executive branch agencies to consider whether a proposed rule will have federalism implications.[99] That is, the rulemaking agency must determine whether the rule is likely to have substantial direct effects on State and local governments, on the relationship between the Federal Government and the States and localities, or on the distribution of power and responsibilities among the different levels of government. If an agency believes that a proposed rule is likely to have federalism implications, it must consult with State and local government entity officials about how to minimize or eliminate the effects.

Title II of the ADA covers State and local government entity services, programs, and activities, and, therefore, has federalism implications. State and local government entities have been subject to the ADA since 1991, and the many State and local government entities that receive Federal financial assistance have also been required to comply with the requirements of section 504 of the Rehabilitation Act. Hence, the ADA and the title II regulation are not novel for State and local government entities.

In crafting this regulation, the Department has been mindful of its obligation to meet the objectives of the ADA while also minimizing conflicts between State law and Federal interests. Since the Department began efforts to issue a web accessibility regulation more than 13 years ago, the Department has received substantial feedback from State and local government entities about the potential impacts of rulemaking on this topic. In the NPRM, the Department solicited comments from State and local officials and their representative national organizations on the rule's effects on State and local government entities, and on whether the rule may have direct effects on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. The Department also attended three listening sessions on the NPRM hosted by the SBA's Office of Advocacy, the Association on Higher Education and Disability, and the Great Lakes ADA Center at the University of Illinois at Chicago, in conjunction with the ADA National Network. These sessions were cumulatively attended by more than 500 members of the public, including representatives from public entities, and the Department received feedback during these sessions about the potential impacts of the rule on public entities.

In response to the NPRM, the Department received written comments from members of the public about the relationship between this rule and State and local laws addressing public entities' web content and mobile apps. Some commenters asked questions and made comments about how this rule would interact with State laws providing greater or less protection for the rights of individuals with disabilities. The Department wishes to clarify that, consistent with 42 U.S.C. 12201, this final rule will preempt State laws affecting entities subject to the ADA only to the extent that those laws provide less protection for the rights of individuals with disabilities. This rule does not invalidate or limit the remedies, rights, and procedures of any State laws that provide greater or equal protection for the rights of individuals with disabilities. Moreover, the Department's provision on equivalent facilitation at § 35.203 provides that nothing prevents a public entity from using designs, methods, or techniques as alternatives to those prescribed in this rule, provided that such alternatives result in substantially equivalent or greater accessibility and usability. Accordingly, for example, if a State law requires public entities in that State to conform to WCAG 2.2, nothing in this rule would prevent a public entity from complying with that standard.

The Department also received comments asking how this rule will interact with State or local laws requiring public entities to post certain content online. The Department notes that this rule does not change public entities' obligations under State and local laws governing the types of content that public entities must provide or make available online. Instead, this rule simply requires that when public entities provide or make available web content or mobile apps, they must ensure that that content and those apps comply with the requirements set forth in this rule. This is consistent with the remainder of the title II regulatory framework, under which public entities have been required to ensure that their services, programs, and activities comply with specific accessibility requirements since 1991, even for services, programs, or activities that are otherwise governed by State and local laws.

D. National Technology Transfer and Advancement Act of 1995

The National Technology Transfer and Advancement Act of 1995 (''NTTAA'') directs that, as a general matter, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, which are private—generally nonprofit—organizations that develop technical standards or specifications using well-defined procedures that require openness, balanced participation among affected interests and groups, fairness and due process, and an opportunity for appeal, as a means to carry out policy objectives or activities.[100] In addition, the NTTAA directs agencies to consult with voluntary, private sector, consensus standards bodies and requires that agencies participate with such bodies in the development of technical standards when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources.[101]

The Department is adopting WCAG 2.1 Level AA as the accessibility standard to apply to web content and mobile apps of title II entities. WCAG 2.1 Level AA was developed by W3C, which has been the principal international organization involved in developing protocols and guidelines for the web. W3C develops a variety of technical standards and guidelines, including ones relating to privacy, internationalization of technology, and accessibility. Thus, the Department is complying with the NTTAA in selecting WCAG 2.1 Level AA as the applicable accessibility standard.

E. Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and

[98] *See* Public Law 104–121, sec. 212, 110 Stat. 847, 858 (1996) (5 U.S.C. 601 note).

[99] 64 FR 43255 (Aug. 4, 1999).

[100] Public Law 104–113, sec. 12(d)(1) (15 U.S.C. 272 note); *see also* Office of Mgmt. and Budget, Circular A–119 (Jan 27, 2016), *https://www.whitehouse.gov/wp-content/uploads/2020/07/revised_circular_a-119_as_of_1_22.pdf* [*https://perma.cc/A5LP-X3DB*].

[101] Public Law 104–113, sec. 12(d)(2).

drafting language that gives full effect to issues of legal interpretation. The Department operates a toll-free ADA Information Line at (800) 514–0301 (voice); 1–833–610–1264 (TTY) that the public is welcome to call for assistance understanding anything in this rule. In addition, the ADA.gov website strives to provide information in plain language about the law, including this rule. The Department will also issue a small entity compliance guide,[102] which should help public entities better understand their obligations under this rule.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (''PRA''), no person is required to respond to a ''collection of information'' unless the agency has obtained a control number from OMB.[103] This final rule does not contain any collections of information as defined by the PRA.

G. Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995 [104] excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

H. Incorporation by Reference

As discussed above, through this rule, the Department is adopting the internationally recognized accessibility standard for web access, WCAG 2.1 Level AA, published in June 2018, as the technical standard for web and mobile app accessibility under title II of the ADA. WCAG 2.1 Level AA, published by W3C WAI, specifies success criteria and requirements that make web content more accessible to all users, including individuals with disabilities. The Department incorporates WCAG 2.1 Level AA by reference into this rule, instead of restating all of its requirements verbatim. To the extent there are distinctions between WCAG 2.1 Level AA and the standards articulated in this rule, the standards articulated in this rule prevail.

The Department notes that when W3C publishes new versions of WCAG, those versions will not be automatically incorporated into this rule. Federal agencies do not incorporate by reference into published regulations future versions of standards developed by bodies like W3C. Federal agencies are required to identify the particular version of a standard incorporated by reference in a regulation.[105] When an updated version of a standard is published, an agency must revise its regulation if it seeks to incorporate any of the new material.

WCAG 2.1 Level AA is reasonably available to interested parties. Free copies of WCAG 2.1 Level AA are available online on W3C's website at *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F.* In addition, a copy of WCAG 2.1 Level AA is also available for inspection by appointment at the Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002.

I. Congressional Review Act

In accordance with the Congressional Review Act, the Department has determined that this rule is a major rule as defined by 5 U.S.C. 804(2). The Department will submit this final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects for 28 CFR Part 35

Administrative practice and procedure, Civil rights, Communications, Incorporation by reference, Individuals with disabilities, State and local requirements.

By the authority vested in me as Attorney General by law, including 5 U.S.C. 301; 28 U.S.C. 509, 510; sections 201 and 204 of the of the Americans with Disabilities Act, Public Law 101–336, as amended, and section 506 of the ADA Amendments Act of 2008, Public Law 110–325, and for the reasons set forth in appendix D to 28 CFR part 35, chapter I of title 28 of the Code of Federal Regulations is amended as follows—

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

Subpart A—General

■ 2. Amend § 35.104 by adding definitions for ''Archived web content,'' ''Conventional electronic documents,'' ''Mobile applications (apps),'' ''Special district government,'' ''Total population,'' ''User agent,'' ''WCAG 2.1,'' and ''Web content'' in alphabetical order to read as follows:

§ 35.104 Definitions.

* * * * *

Archived web content means web content that—

(1) Was created before the date the public entity is required to comply with subpart H of this part, reproduces paper documents created before the date the public entity is required to comply with subpart H, or reproduces the contents of other physical media created before the date the public entity is required to comply with subpart H;

(2) Is retained exclusively for reference, research, or recordkeeping;

(3) Is not altered or updated after the date of archiving; and

(4) Is organized and stored in a dedicated area or areas clearly identified as being archived.

* * * * *

Conventional electronic documents means web content or content in mobile apps that is in the following electronic file formats: portable document formats (''PDF''), word processor file formats, presentation file formats, and spreadsheet file formats.

* * * * *

Mobile applications (''apps'') means software applications that are downloaded and designed to run on mobile devices, such as smartphones and tablets.

* * * * *

Special district government means a public entity—other than a county, municipality, township, or independent school district—authorized by State law to provide one function or a limited number of designated functions with sufficient administrative and fiscal autonomy to qualify as a separate government and whose population is not calculated by the United States Census Bureau in the most recent decennial Census or Small Area Income and Poverty Estimates.

* * * * *

Total population means—

(1) If a public entity has a population calculated by the United States Census Bureau in the most recent decennial Census, the population estimate for that public entity as calculated by the United States Census Bureau in the most recent decennial Census; or

[102] *See* Public Law 104–121, sec. 212, 110 Stat. 847, 858 (1996) (5 U.S.C. 601 note).

[103] 44 U.S.C. 3501 *et seq.*

[104] 2 U.S.C. 1503(2).

[105] *See, e.g.,* 1 CFR 51.1(f) (''Incorporation by reference of a publication is limited to the edition of the publication that is approved [by the Office of the Federal Register]. Future amendments or revisions of the publication are not included.'').

(2) If a public entity is an independent school district, or an instrumentality of an independent school district, the population estimate for the independent school district as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates; or

(3) If a public entity, other than a special district government or an independent school district, does not have a population estimate calculated by the United States Census Bureau in the most recent decennial Census, but is an instrumentality or a commuter authority of one or more State or local governments that do have such a population estimate, the combined decennial Census population estimates for any State or local governments of which the public entity is an instrumentality or commuter authority; or

(4) For the National Railroad Passenger Corporation, the population estimate for the United States as calculated by the United States Census Bureau in the most recent decennial Census.

User agent means any software that retrieves and presents web content for users.

* * * * *

WCAG 2.1 means the Web Content Accessibility Guidelines (''WCAG'') 2.1, W3C Recommendation 05 June 2018, *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A–GG2F.* WCAG 2.1 is incorporated by reference elsewhere in this part (see §§ 35.200 and 35.202).

Web content means the information and sensory experience to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions. Examples of web content include text, images, sounds, videos, controls, animations, and conventional electronic documents.

■ 3. Add subpart H to read as follows:

Subpart H—Web and Mobile Accessibility

Sec.

35.200 Requirements for web and mobile accessibility.
35.201 Exceptions.
35.202 Conforming alternate versions.
35.203 Equivalent facilitation.
35.204 Duties.
35.205 Effect of noncompliance that has a minimal impact on access.
35.206–35.209 [Reserved]

§ 35.200 Requirements for web and mobile accessibility.

(a) *General.* A public entity shall ensure that the following are readily accessible to and usable by individuals with disabilities:

(1) Web content that a public entity provides or makes available, directly or through contractual, licensing, or other arrangements; and

(2) Mobile apps that a public entity provides or makes available, directly or through contractual, licensing, or other arrangements.

(b) *Requirements.* (1) Beginning April 24, 2026, a public entity, other than a special district government, with a total population of 50,000 or more shall ensure that the web content and mobile apps that the public entity provides or makes available, directly or through contractual, licensing, or other arrangements, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

(2) Beginning April 26, 2027, a public entity with a total population of less than 50,000 or any public entity that is a special district government shall ensure that the web content and mobile apps that the public entity provides or makes available, directly or through contractual, licensing, or other arrangements, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

(3) WCAG 2.1 is incorporated by reference into this section with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. All material approved for incorporation by reference is available for inspection at the U.S. Department of Justice and at the National Archives and Records Administration (''NARA''). Contact the U.S. Department of Justice at: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002; ADA Information Line: (800) 514–0301 (voice) or 1–833–610–1264 (TTY); website: *www.ada.gov* [*https://perma.cc/U2V5-78KW*]. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* [*https://perma.cc/9SJ7-D7XZ*] or email *fr.inspection@nara.gov.* The material may be obtained from the World Wide Web Consortium (''W3C'') Web Accessibility Initiative (''WAI''), 401 Edgewater Place, Suite 600, Wakefield, MA 01880; phone: (339) 273–2711; email: *contact@w3.org;* website: *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F.*

§ 35.201 Exceptions.

The requirements of § 35.200 do not apply to the following:

(a) *Archived web content.* Archived web content as defined in § 35.104.

(b) *Preexisting conventional electronic documents.* Conventional electronic documents that are available as part of a public entity's web content or mobile apps before the date the public entity is required to comply with this subpart, unless such documents are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities.

(c) *Content posted by a third party.* Content posted by a third party, unless the third party is posting due to contractual, licensing, or other arrangements with the public entity.

(d) *Individualized, password-protected or otherwise secured conventional electronic documents.* Conventional electronic documents that are:

(1) About a specific individual, their property, or their account; and

(2) Password-protected or otherwise secured.

(e) *Preexisting social media posts.* A public entity's social media posts that were posted before the date the public entity is required to comply with this subpart.

§ 35.202 Conforming alternate versions.

(a) A public entity may use conforming alternate versions of web content, as defined by WCAG 2.1, to comply with § 35.200 only where it is not possible to make web content directly accessible due to technical or legal limitations.

(b) WCAG 2.1 is incorporated by reference into this section with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. All material approved for incorporation by reference is available for inspection at the U.S. Department of Justice and at NARA. Contact the U.S. Department of Justice at: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002; ADA Information Line: (800) 514–0301 (voice) or 1–833–610–1264 (TTY); website: *www.ada.gov* [*https://*

perma.cc/U2V5-78KW]. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* [*https://perma.cc/9SJ7-D7XZ*] or email *fr.inspection@nara.gov.* The material may be obtained from W3C WAI, 401 Edgewater Place, Suite 600, Wakefield, MA 01880; phone: (339) 273–2711; email: *contact@w3.org;* website: *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F.*

§ 35.203 Equivalent facilitation.

Nothing in this subpart prevents the use of designs, methods, or techniques as alternatives to those prescribed, provided that the alternative designs, methods, or techniques result in substantially equivalent or greater accessibility and usability of the web content or mobile app.

§ 35.204 Duties.

Where a public entity can demonstrate that compliance with the requirements of § 35.200 would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, compliance with § 35.200 is required to the extent that it does not result in a fundamental alteration or undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.200 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.

§ 35.205 Effect of noncompliance that has a minimal impact on access.

A public entity that is not in full compliance with the requirements of § 35.200(b) will be deemed to have met the requirements of § 35.200 in the limited circumstance in which the public entity can demonstrate that the noncompliance has such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app to do any of the following in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use:

(a) Access the same information as individuals without disabilities;

(b) Engage in the same interactions as individuals without disabilities;

(c) Conduct the same transactions as individuals without disabilities; and

(d) Otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities.

§§ 35.206–35.209 [Reserved]

■ 4. Add appendix D to part 35 to read as follows:

Appendix D to Part 35—Guidance to Revisions to ADA Title II Regulation on Accessibility of Web Information and Services of State and Local Government Entities

Note: This appendix contains guidance providing a section-by-section analysis of the revisions to this part published on April 24, 2024.

Section-by-Section Analysis and Response to Public Comments

This appendix provides a detailed description of the Department's changes to this part (the title II regulation), the reasoning behind those changes, and responses to public comments received in connection with the rulemaking. The Department made changes to subpart A of this part and added subpart H to this part. The section-by-section analysis addresses the changes in the order they appear in the title II regulation.

Subpart A—General

Section 35.104 Definitions

''**Archived Web Content**''

The Department is including in § 35.104 a definition for ''archived web content.'' ''Archived web content'' is defined as web content that was created before the date the public entity is required to comply with subpart H of this part, reproduces paper documents created before the date the public entity is required to comply with subpart H, or reproduces the contents of other physical media created before the date the public entity is required to comply with subpart H. Second, the web content is retained exclusively for reference, research, or recordkeeping. Third, the web content is not altered or updated after the date of archiving. Fourth, the web content is organized and stored in a dedicated area or areas clearly identified as being archived. The definition is meant to capture historic web content that, while outdated or superfluous, is maintained unaltered in a dedicated archived area for reference, research, or recordkeeping. The term is used in the exception set forth in § 35.201(a). The Department provides a more detailed explanation of the application of the exception in the section-by-section analysis of § 35.201(a).

The Department made several revisions to the definition of ''archived web content'' from the notice of proposed rulemaking (''NPRM''). The Department added a new part to the definition to help clarify the scope of content covered by the definition and associated exception. The new part of the definition, the first part, specifies that archived web content is limited to three types of historic content: web content that was created before the date the public entity is required to comply with subpart H of this part; web content that reproduces paper documents created before the date the public entity is required to comply with subpart H; and web content that reproduces the contents of other physical media created before the date the public entity is required to comply with subpart H.

Web content that was created before the date a public entity is required to comply with subpart H of this part satisfies the first part of the definition. In determining the date web content was created, the Department does not intend to prohibit public entities from making minor adjustments to web content that was initially created before the relevant compliance dates specified in § 35.200(b), such as by redacting personally identifying information from web content as necessary before it is posted to an archive, even if the adjustments are made after the compliance date. In contrast, if a public entity makes substantial changes to web content after the date the public entity is required to comply with subpart H, such as by adding, updating, or rearranging content before it is posted to an archive, the content would likely no longer meet the first part of the definition. If the public entity later alters or updates the content after it is posted in an archive, the content would not meet the third part of the definition of ''archived web content'' and it would generally need to conform to WCAG 2.1 Level AA.

Web content that reproduces paper documents or that reproduces the contents of other physical media would also satisfy the first part of the definition if the paper documents or the contents of the other physical media were created before the date the public entity is required to comply with subpart H of this part. Paper documents include various records that may have been printed, typed, handwritten, drawn, painted, or otherwise marked on paper. Videotapes, audiotapes, film negatives, CD–ROMs, and DVDs are examples of physical media. The Department anticipates that public entities may identify or discover historic paper documents or historic content contained on physical media that they wish to post in an online archive following the time they are required to comply with subpart H. For example, a State agricultural agency might move to a new building after the date it is required to comply with subpart H and discover a box in storage that contains

hundreds of paper files and photo negatives from 1975 related to farms in the state at that time. If the agency reproduced the documents and photos from the film negatives as web content, such as by scanning the documents and film negatives and saving the scans as PDF documents that are made available online, the resulting PDF documents would meet the first part of the definition of ''archived web content'' because the underlying paper documents and photos were created in 1975. The Department reiterates that it does not intend to prohibit public entities from making minor adjustments to web content before posting it to an archive, such as by redacting personally identifying information from paper documents. Therefore, the State agricultural agency could likely redact personally identifying information about farmers from the scanned PDFs as necessary before posting them to its online archive. But, if the agency were to make substantial edits to PDFs, such as by adding, updating, or rearranging content before posting the PDFs to its archive, the PDFs would likely not meet the first part of the definition of ''archived web content'' because, depending on the circumstances, they may no longer be a reproduction of the historic content. In addition, if the agency later altered or updated the PDFs after they were posted in an archive, the content would not meet the third part of the definition of ''archived web content'' and it would generally need to conform to WCAG 2.1 Level AA.

The Department added the first part to the definition of ''archived web content'' after considering all the comments it received. In the NPRM, the Department sought feedback about the archived web content exception, including whether there are alternatives to the exception that the Department should consider or additional limitations that should be placed on the exception.[1] Commenters suggested various ways to add a time-based limitation to the definition or exception. For example, some commenters suggested that archived content should be limited to content created or posted before a certain date, such as the date a public entity is required to comply with subpart H of this part; there should be a certain time period before web content can be archived, such as two years after the content is created or another time frame based on applicable laws related to public records; the exception should expire after a certain period of time; or public entities should have to remediate archived web content over time, prioritizing content that is most important for members of the public. In contrast, another commenter suggested that the exception should apply to archived web content posted after the date the public entity is required to comply with subpart H if the content is of historical value and only minimally altered before posting.

After reviewing the comments, the Department believes the first part of the definition sets an appropriate time-based limitation on the scope of content covered by the definition and exception that is consistent with the Department's stated intent in the NPRM. In the NPRM, the Department explained that the definition of ''archived web content'' and the associated exception were intended to cover historic content that is outdated or superfluous.[2] The definition in § 35.104, which is based on whether the relevant content was created before the date a public entity is required to comply with subpart H of this part, is now more aligned with, and better situated to implement, the Department's intent to cover historic content. The Department believes it is appropriate to include a time-based limitation in the definition, rather than to add new criteria stating that content must be historic, outdated, or superfluous, because it is more straightforward to differentiate content based on the date the content was created. Therefore, there will be greater predictability for individuals with disabilities and public entities as to which content is covered by the exception.

The Department declines to establish time-based limitations for when content may be posted to an archive or to otherwise set an expiration date for the exception. As discussed elsewhere in this appendix, the Department recognizes that many public entities will need to carefully consider the design and structure of their web content before dedicating a certain area or areas for archived content, and that, thereafter, it will take time for public entities to identify all content that meets the definition of ''archived web content'' and post it in the newly created archived area or areas. The archived web content exception thus provides public entities flexibility as to when they will archive web content, so long as the web content was created before the date the public entity was required to comply with subpart H of this part or the web content reproduces paper documents or the contents of other physical media created before the date the public entity was required to comply with subpart H. In addition, the Department does not believe it is necessary to establish a waiting period before newly created web created content can be posted in an archive. New content created after the date a public entity is required to comply with subpart H will generally not meet the first part of the definition of ''archived web content.'' In the limited circumstances in which newly created web content could meet the first part of the definition because it reproduces paper documents or the contents of other physical media created before the date the public entity is required to comply with subpart H, the Department believes the scope of content covered by the exception is sufficiently limited by the second part of the definition: whether the content is retained exclusively for reference, research, or recordkeeping.

In addition to adding a new first part to the definition of ''archived web content,'' the Department made one further change to the definition from the NPRM. In the NPRM, what is now the second part of the definition pertained to web content that is ''maintained'' exclusively for reference, research, or recordkeeping. The word ''maintained'' is now replaced with ''retained.'' The revised language is not intended to change or limit the coverage of the definition. Rather, the Department recognizes that the word ''maintain'' can have multiple relevant meanings. In some circumstances, ''maintain'' may mean ''to continue in possession'' of property, whereas in other circumstances it might mean ''to engage in general repair and upkeep'' of property.[3] The Department uses the word ''maintain'' elsewhere in the title II regulation, at § 35.133(a), consistent with the latter definition. In contrast, the third part of the definition for ''archived web content'' specifies that content must not be altered or updated after the date of archiving. Such alterations or updates could be construed as repair or upkeep, but that is not what the Department intended to convey with its use of the word ''maintained'' in this provision. To avoid confusion about whether a public entity can alter or update web content after it is archived, the Department instead uses the word ''retained,'' which has a definition synonymous with the Department's intended use of ''maintain'' in the NPRM.[4]

Commenters raised concerns about several aspects of the definition of ''archived web content.'' With respect to the second part of the definition, commenters stated that the definition does not clearly articulate when content is retained exclusively for reference, research, or recordkeeping. Commenters stated that the definition could be interpreted inconsistently, and it could be understood to cover important information that should be accessible. For example, commenters were concerned that web content containing public entities' past meeting minutes where key decisions were made would qualify as archived content, as well as web content containing laws, regulations, court decisions, or prior legal interpretations that are still relevant. Therefore, commenters suggested that the definition should not cover recordkeeping documents, agendas, meeting minutes, and other related documents at all. One commenter recommended adding to the definition to clarify that it does not apply to content a public entity uses to offer a current service, program, or activity, and another commenter suggested that content should be archived depending on how frequently members of the public seek to access the content. One commenter also stated that the Department is left with the responsibility to determine whether web content is appropriately designated as archived when enforcing subpart H of this part in the future, and the commenter believed that this enforcement may be insufficient to avoid public entities evading their responsibilities under subpart H. Another commenter recommended that the Department should conduct random audits to determine if public entities are properly designating archived web content.

The Department's revised definition of ''archived web content,'' and specifically the new first part of the definition, make clear that the definition only pertains to content created before the date the public entity is

[1] 88 FR 51967.

[2] 88 FR 51966.

[3] *Maintain,* Black's Law Dictionary (11th ed. 2019).

[4] *See Retain,* Black's Law Dictionary (11th ed. 2019) (''To hold in possession or under control; to keep and not lose, part with, or dismiss.'').

required to comply with subpart H of this part. Therefore, new content such as agendas, meeting minutes, and other documents related to meetings that take place after the public entity is required to comply with subpart H would likely not meet all parts of the definition of ''archived web content.'' This revision to the regulatory text is responsive to comments raising the concern that current and newly created content might be erroneously labeled as archived based on perceived ambiguity surrounding when content is being retained solely for ''reference, research, or recordkeeping.'' Given the wide variety of web content that public entities provide or make available, the Department does not believe it is advisable to add additional, more specific language in the definition about what types of content are covered. The Department also believes it would be difficult to create a more specific and workable definition for ''archived web content'' based on how frequently members of the public seek to view certain content given the wide variation in the types and sizes of public entities and the volume of their web traffic. Whether web content is retained exclusively for reference, research, or recordkeeping will depend on the facts of the particular situation. Based on some of the examples of web content that commenters discussed in connection with the definition, the Department notes that if a public entity posts web content that identifies the current policies or procedures of the public entity, or posts web content containing or interpreting applicable laws or regulations related to the public entity, that web content is unlikely to be covered by the exception. This is because the content is notifying members of the public about their ongoing rights and responsibilities. It therefore is not, as the definition requires, being used exclusively for reference, research, or recordkeeping.

Commenters also raised concerns about the fourth part of the definition of ''archived web content,'' which requires archived web content to be stored in a dedicated area or areas clearly identified as being archived. Some commenters did not believe public entities should be required to place archived web content in a dedicated area or areas clearly identified as being archived in order to be covered by the exception at § 35.201(a). Commenters stated that public entities should retain flexibility in organizing and storing files according to how their web content is designed and structured, and it might not be clear to members of the public to look for content in an archive depending on the overall makeup of the web content. Commenters also stated that it would be burdensome to create an archive area, identify web content for the archive, and move the content into the archive. One commenter stated that public entities might remove content rather than move it to a dedicated archive. Commenters instead suggested that the web content itself could be individually marked as archived regardless of where it is posted. One commenter also requested the Department clarify that the term ''area'' includes ''websites'' and ''repositories'' where archived web content is stored.

After carefully weighing these comments, the Department has decided not to change the fourth part of the definition for ''archived web content.'' The Department believes storing archived web content in a dedicated area or areas clearly identified as being archived will result in the greatest predictability for individuals with disabilities about which web content they can expect to conform to WCAG 2.1 Level AA. However, the Department notes that it did not identify specific requirements about the structure of an archived area, or how to clearly identify an area as being archived, in order to provide public entities greater flexibility when complying with subpart H of this part. For example, in some circumstances a public entity may wish to create separate web pages or websites to store archived web content. In other circumstances, a public entity may wish to clearly identify that a specific section on a specific web page contains archived web content, even if the web page also contains non-archived content in other separate sections. However public entities ultimately decide to store archived web content, the Department reiterates that predictability for individuals with disabilities is paramount. To this end, the label or other identification for a dedicated archived area or areas must be clear so that individuals with disabilities are able to detect when there is content they may not be able to access. Whether a particular dedicated area is clearly identified as being archived will, of course, depend on the facts of the particular situation. The Department also emphasizes that the existence of a dedicated area or areas for archived content must not interfere with the accessibility of other web content that is not archived.

Some commenters also recommended an alternative definition of ''archived web content'' that does not include the second or fourth parts of the definition. Commenters proposed that archived web content should be defined as web content that (1) was provided or made available prior to the effective date of the final rule and (2) is not altered or updated after the effective date of the final rule. While the Department agrees that a time-based distinction is appropriate and has therefore added the first part to the definition, the Department does not believe the commenters' approach suggested here is advisable because it has the potential to cause a significant accessibility gap for individuals with disabilities if public entities rely on web content that is not regularly updated or changed. Under the commenters' proposed definition, the exception for archived web content might cover important web content used for reasons other than reference, research, or recordkeeping if the content has not been updated or altered. As discussed in more detail in the section-by-section analysis of § 35.201(a), the purpose of the exception for archived web content is to help public entities focus their resources on making accessible the most important materials that people use most widely and consistently, rather than historic or outdated web content that is only used for reference, research, or recordkeeping. Furthermore, as discussed in the preceding paragraph, the Department believes the fourth part of the definition is necessary to ensure the greatest predictability for individuals with disabilities about which web content they can expect to conform to WCAG 2.1 Level AA.

Commenters made other suggestions related to the definition of and exception for ''archived web content.'' The Department has addressed these comments in the discussion of the § 35.201(a) archived web content exception in the section-by-section analysis.

''**Conventional Electronic Documents**''

The Department is including in § 35.104 a definition for ''conventional electronic documents.'' ''Conventional electronic documents'' are defined as web content or content in mobile apps that is in the following electronic file formats: portable document formats, word processor file formats, presentation file formats, and spreadsheet file formats. The definition thus provides an exhaustive list of electronic file formats that constitute conventional electronic documents. Examples of conventional electronic documents include: Adobe PDF files (*i.e.,* portable document formats), Microsoft Word files (*i.e.,* word processor files), Apple Keynote or Microsoft PowerPoint files (*i.e.,* presentation files), and Microsoft Excel files (*i.e.,* spreadsheet files). The term ''conventional electronic documents'' is used in § 35.201(b) to provide an exception for certain such documents that are available as part of a public entity's web content or mobile apps before the compliance date of subpart H of this part, unless such documents are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities. The term is also used in § 35.201(d) to provide an exception for certain individualized, password-protected or otherwise secured conventional electronic documents, and is addressed in more detail in the discussion in the section-by-section analysis of § 35.201(b) and (d). The definition of ''conventional electronic documents'' covers documents created or saved as electronic files that are commonly available in an electronic form on public entities' web content and mobile apps and that would have been traditionally available as physical printed output.

In the NPRM, the Department asked whether it should craft a more flexible definition of ''conventional electronic documents'' instead of a definition based on an exhaustive list of file formats.[5] In response, the Department heard a range of views from commenters. Some commenters favored a broader and more generalized definition instead of an exhaustive list of file formats. For example, commenters suggested that the Department could describe the properties of conventional electronic documents and provide a non-exhaustive list of examples of such documents, or the definition could focus on the importance of the content contained in a document rather than the file format. Some commenters favoring a broader definition reasoned that technology evolves rapidly, and the exhaustive list of file formats the Department

[5] 88 FR 51958, 51968.

identified might not keep pace with technological advancements.

Other commenters preferred the Department's approach of identifying an exhaustive list of file formats. Some commenters noted that an exhaustive list provides greater clarity and predictability, which assists public entities in identifying their obligations under subpart H of this part. Some commenters suggested that the Department could provide greater clarity by identifying specific file types in the regulatory text rather than listing file formats (*e.g.,* the Department might specify the Microsoft Word ''.docx'' file type rather than ''word processor file formats'').

After considering all the comments, the Department declines to change its approach to defining conventional electronic documents. The Department expects that a more flexible definition would result in less predictability for both public entities and individuals with disabilities, especially because the Department does not currently have sufficient information about how technology will develop in the future. The Department seeks to avoid such uncertainty because the definition of ''conventional electronic documents'' sets the scope of two exceptions, § 35.201(b) and (d). The Department carefully balanced benefits for individuals with disabilities with the challenges public entities face in making their web content and mobile apps accessible in compliance with subpart H of this part when crafting these exceptions, and the Department does not want to inadvertently expand or narrow the exceptions with a less predictable definition of ''conventional electronic documents.''

Unlike in the NPRM, the definition of ''conventional electronic documents'' does not include database file formats. In the NPRM, the Department solicited comments about whether it should add any file formats to, or remove any file formats from, the definition of ''conventional electronic documents.'' While some commenters supported keeping the list of file formats in the proposed definition as is, the Department also heard a range of views from other commenters. Some commenters, including public entities and trade groups representing public accommodations, urged the Department to add additional file formats to the definition of ''conventional electronic documents.'' For example, commenters recommended adding image files, video files, audio files, and electronic books such as EPUB (electronic publications) or DAISY (Digital Accessible Information System) files. Commenters noted that files in such other formats are commonly made available by public entities and they can be burdensome to remediate. Commenters questioned whether there is a basis for distinguishing between the file formats included in the definition and other file formats not included in the definition.

Other commenters believed the list of file formats included in the proposed definition of ''conventional electronic documents'' was too broad. A number of disability advocacy groups stated that certain document formats included in the definition are generally easily made accessible. Therefore, commenters did not believe such documents should generally fall within the associated exceptions under § 35.201(b) and (d). Some commenters also stated that there could be confusion about accessibility requirements for database files because database files and some spreadsheet files may include data that are not primarily intended to be human-readable. The commenters stated that in many cases such content is instead intended to be opened and analyzed with other special software tools. The commenters pointed out that data that is not primarily intended to be human-readable is equally accessible for individuals with disabilities and individuals without disabilities, and they recommended clarifying that the accessibility requirements do not apply to such data.

Some commenters suggested that certain file formats not included in the definition of ''conventional electronic documents,'' such as images or videos, may warrant different treatment altogether. For example, one public entity stated that it would be better to place images and multimedia in a separate and distinct category with a separate definition and relevant technical standards where needed to improve clarity. In addition, a disability advocacy organization stated that images do not need to be included in the definition and covered by the associated exceptions because public entities can already uniquely exempt this content in some circumstances by marking it as decorative, and it is straightforward for public entities to add meaningful alternative text to important images and photos that are not decorative.

After considering all the comments, the Department agrees that database file formats should not be included in the definition of ''conventional electronic documents.'' The Department now understands that database files may be less commonly available through public entities' web content and mobile apps than other types of documents. To the extent such files are provided or made available by public entities, the Department understands that they would not be readable by either individuals with disabilities or individuals without disabilities if they only contain data that are not primarily intended to be human-readable. Therefore, there would be limited accessibility concerns, if any, that fall within the scope of subpart H of this part associated with documents that contain data that are not primarily intended to be human-readable. Accordingly, the Department believes it could be confusing to include database file formats in the definition. However, the Department notes that while there may be limited accessibility concerns, if any, related to database files containing data that are not primarily intended to be human-readable, public entities may utilize these data to create outputs for web content or mobile apps, such as tables, charts, or graphs posted on a web page, and those outputs would be covered by subpart H unless they fall into another exception.

The Department declines to make additional changes to the list of file formats included in the definition of ''conventional electronic documents.'' After reviewing the range of different views expressed by commenters, the Department believes the current list strikes the appropriate balance between ensuring access for individuals with disabilities and feasibility for public entities so that they can comply with subpart H of this part. The list included in the definition is also aligned with the Department's intention to cover documents that public entities commonly make available in either an electronic form or that would have been traditionally available as physical printed output. If public entities provide and make available files in formats not included in the definition, the Department notes that those other files may qualify for the exception in § 35.201(a) if they meet the definition for ''archived web content,'' or the exception in § 35.201(e) for certain preexisting social media posts if they are covered by that exception's description. To the extent those other files are not covered by one of the exceptions in § 35.201, the Department also notes that public entities would not be required to make changes to those files that would result in a fundamental alteration in the nature of a service, program, or activity, or impose undue financial and administrative burdens, as discussed in the section-by-section analysis of § 35.204.

With respect to the comment suggesting that it would be better to place images and multimedia in a separate and distinct category with a separate definition and relevant technical standards where needed to improve clarity, the Department notes that the WCAG standards were designed to be ''technology neutral.'' [6] This means that they are designed to be broadly applicable to current and future web technologies.[7] Accordingly, the Department believes WCAG 2.1 Level AA is the appropriate standard for other file formats not included in the definition of ''conventional electronic documents'' because WCAG 2.1 was crafted to address those other file formats as well.

The Department also recognizes that, as some commenters pointed out, this part treats conventional electronic documents differently than WCAG 2.1, in that conventional electronic documents are included in the definition of ''web content'' in § 35.104, while WCAG 2.1 does not include those documents in its definition of ''web content.'' The Department addresses these comments in its analysis of the definition of ''web content.''

As discussed in the preceding paragraphs, the scope of the associated exception for preexisting conventional electronic documents, at § 35.201(b), is based on the definition of ''conventional electronic documents.'' The definition applies to conventional electronic documents that are part of a public entity's web content or mobile apps. The exception also applies to ''conventional electronic documents'' that are part of a public entity's web content or mobile apps, but only if the documents were provided or made available before the date

[6] W3C, *Introduction to Understanding WCAG, https://www.w3.org/WAI/WCAG21/Understanding/intro* [*https://perma.cc/XB3Y-QKVU*] (June 20, 2023).

[7] See W3C, *Understanding Techniques for WCAG Success Criteria, https://www.w3.org/WAI/WCAG21/Understanding/understanding-techniques* [*https://perma.cc/AMT4-XAAL*] (June 20, 2023).

the public entity is required to comply with subpart H of this part. The Department received a comment indicating there may not be a logical connection between conventional electronic documents and mobile apps; therefore, according to the comment, the exception should not apply to conventional electronic documents that appear in mobile apps. However, the Department also received comments from disability advocacy organizations and public entities confirming the connection between the two technologies and stating that some mobile apps allow users to access conventional electronic documents. The Department will retain its approach of including ''content in mobile apps'' in the definition of ''conventional electronic documents'' given that the Department agrees that some mobile apps already use conventional electronic documents.

''**Mobile Applications ('apps')**''

Section 35.104 defines ''mobile apps'' as software applications that are downloaded and designed to run on mobile devices, such as smartphones and tablets. For purposes of this part, mobile apps include, for example, native apps built for a particular platform (*e.g.,* Apple iOS, Google Android) or device and hybrid apps using web components inside native apps. This part will retain the definition of ''mobile apps'' from the NPRM without revision.

The Department received very few comments on this definition. One commenter noted that the Department does not appear to consider other technologies that may use mobile apps such as wearable technology. The Department notes that the definition's examples of devices that use mobile apps (*i.e.,* smartphones and tablets) is a non-exhaustive list. Subpart H of this part applies to all mobile apps that a public entity provides or makes available, regardless of the devices on which the apps are used. The definition therefore may include mobile apps used on wearable technology. Accordingly, the proposed rule's definition of ''mobile apps'' will remain unchanged in this part.

''**Special District Government**''

The Department has added a definition for ''special district government.'' The term ''special district government'' is used in § 35.200(b) and is defined in § 35.104 to mean a public entity—other than a county, municipality, township, or independent school district—authorized by State law to provide one function or a limited number of designated functions with sufficient administrative and fiscal autonomy to qualify as a separate government and whose population is not calculated by the United States Census Bureau in the most recent decennial Census or Small Area Income and Poverty Estimates. Because special district governments do not have populations calculated by the United States Census Bureau and are not necessarily affiliated with public entities that do have such populations, their population sizes are unknown. A special district government may include, for example, a mosquito abatement district, utility district, transit authority, water and sewer board, zoning district, or other similar governmental entity that may operate with administrative and fiscal independence. This definition is drawn in part from the U.S. Census Bureau definition [8] for purposes of setting a compliance time frame for a subset of public entities. It is not meant to alter the existing definition of ''public entity'' in § 35.104 in any way. The Department made one grammatical correction in this part to remove an extra ''or'' from the definition as proposed in the NPRM.[9] However, the substance of the definition is unchanged from the Department's proposal in the NPRM.

''**Total Population**''

Section 35.200 provides the dates by which public entities must begin complying with the technical standard. The compliance dates are generally based on a public entity's total population, as defined in this part. The Department has added a definition for ''total population'' in § 35.104. If a public entity has a population calculated by the United States Census Bureau in the most recent decennial Census, the public entity's total population as defined in this part is the population estimate for that public entity as calculated by the United States Census Bureau in the most recent decennial Census. If a public entity is an independent school district, or an instrumentality of an independent school district, the entity's total population as defined in this part is the population estimate for the independent school district as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates. If a public entity, other than a special district government or an independent school district, does not have a population estimate calculated by the United States Census Bureau in the most recent decennial Census, but is an instrumentality or a commuter authority of one or more State or local governments that do have such a population estimate, the entity's total population as defined in this part is the combined decennial Census population estimates for any State or local governments of which the public entity is an instrumentality or commuter authority. The total population for the National Railroad Passenger Corporation as defined in this part is the population estimate for the United States as calculated by the United States Census Bureau in the most recent decennial Census. The terminology used in the definition of ''total population'' draws from the terminology used in the definition of ''public entity'' in title II of the ADA [10] and the existing title II regulation,[11] and all public entities covered under title II of the ADA are covered by subpart H of this part. This part does not provide a method for calculating the total population of special district governments, because § 35.200 provides that all special district governments have three years following the publication of the final rule to begin complying with the technical standard, without reference to their population.

The regulatory text of this definition has been revised from the NPRM for clarity. The regulatory text of this definition previously provided that ''total population'' generally meant the population estimate for a public entity as calculated by the United States Census Bureau in the most recent decennial Census. Because the decennial Census does not include population estimates for public entities that are independent school districts, the regulatory text in the NPRM made clear that for independent school districts, ''total population'' would be calculated by reference to the population estimates as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates. In recognition of the fact that some public entities do not have population estimates calculated by the United States Census Bureau, the preamble to the NPRM stated that if a public entity does not have a specific Census-defined population, but belongs to another jurisdiction that does, the population of the entity is determined by the population of the jurisdiction to which the entity belongs.[12] Although the preamble included this clarification, the Department received feedback that the regulatory text of this definition did not make clear how to calculate total population for public entities that do not have populations calculated by the United States Census Bureau. Accordingly, the Department has revised the regulatory text of the definition for clarity.

The revised regulatory text of this definition retains the language from the definition in the NPRM with respect to public entities that have populations calculated in the decennial Census and independent school districts that have populations calculated in the Small Area Income and Poverty Estimates. However, the revised regulatory text of this definition incorporates the approach described in the preamble of the NPRM with respect to how public entities that do not have populations calculated by the United States Census Bureau in the most recent decennial Census can determine their total populations as defined in this part. As the revised definition states, if a public entity, other than a special district government or independent school district, does not have a population estimate calculated by the United States Census Bureau in the most recent decennial Census, but is an instrumentality or a commuter authority of one or more State or local governments that do have such a population estimate, the total population for the public entity is determined by reference to the combined decennial Census population estimates for any State or local governments of which the public entity is an instrumentality or commuter authority. For example, the total population of a county library is the population of the county of which the library is an instrumentality. The revised definition also makes clear that if a public entity is an instrumentality of an independent school district, the instrumentality's population is determined

[8] *See* U.S. Census Bureau, *Special District Governments, https://www.census.gov/glossary/?term=Special+district+governments* [*https://perma.cc/8V43-KKL9*] (last visited Feb. 26, 2024).

[9] 88 FR 52018.

[10] 42 U.S.C. 12131(1).

[11] Section 35.104.

[12] 88 FR 51948, 51949, 51958 (Aug. 4, 2023).

by reference to the population estimate for the independent school district as calculated in the most recent Small Area Income and Poverty Estimates. The revised definition also states that the total population of the National Railroad Passenger Corporation is determined by reference to the population estimate for the United States as calculated by the United States Census Bureau in the most recent decennial Census. The revisions to the definition do not change the scope of this part or the time frames that public entities have to comply with subpart H of this part; they simply provide additional clarity for public entities on how to determine which compliance time frame applies. The Department expects that these changes will help public entities better understand the time frame in which they must begin complying with the technical standard. Further discussion of this topic, including discussion of comments, can be found in the section-by-section analysis of § 35.200, under the heading ''Requirements by Entity Size.''

''**User Agent**''

The Department has added a definition for ''user agent.'' The definition exactly matches the definition of ''user agent'' in WCAG 2.1.[13] WCAG 2.1 includes an accompanying illustration, which clarifies that the definition of ''user agent'' means web browsers, media players, plug-ins, and other programs—including assistive technologies—that help in retrieving, rendering, and interacting with web content.[14]

The Department added this definition to this part to ensure clarity of the term ''user agent,'' now that the term appears in the definition of ''web content.'' As the Department explains further in discussing the definition of ''web content'' in this section-by-section analysis, the Department has more closely aligned the definition of ''web content'' in this part with the definition in WCAG 2.1. Because this change introduced the term ''user agent'' into the title II regulation, and the Department does not believe this is a commonly understood term, the Department has added the definition of ''user agent'' provided in WCAG 2.1 to this part. One commenter suggested that the Department add this definition in this part, and the Department also believes that adding this definition in this part is consistent with the suggestions of many commenters who proposed aligning the definition of ''web content'' with the definition in WCAG 2.1, as explained further in the following section.

''**WCAG 2.1**''

The Department is including a definition of ''WCAG 2.1.'' The term ''WCAG 2.1'' refers to the 2018 version of the voluntary guidelines for web accessibility, known as the Web Content Accessibility Guidelines 2.1 (''WCAG 2.1''). W3C, the principal international organization involved in developing standards for the web, published WCAG 2.1 in June 2018, and it is available at *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F.* WCAG 2.1 is discussed in more detail in the section-by-section analysis of § 35.200.

''**Web Content**''

Section 35.104 defines ''web content'' as the information and sensory experience to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions. Examples of web content include text, images, sounds, videos, controls, animations, and conventional electronic documents. The first sentence of the Department's definition of ''web content'' is aligned with the definition of ''web content'' in WCAG 2.1.[15] The second sentence of the definition gives examples of some of the different types of information and experiences available on the web. However, these examples are intended to illustrate the definition and not be exhaustive. The Department also notes that subpart H of this part covers the accessibility of public entities' web content regardless of whether the web content is viewed on desktop computers, laptops, smartphones, or elsewhere.

The Department slightly revised its definition from the proposed definition in the NPRM, which was based on the WCAG 2.1 definition but was slightly less technical and intended to be more easily understood by the public generally. The Department's proposed rule defined ''web content'' as information or sensory experience—including the encoding that defines the content's structure, presentation, and interactions—that is communicated to the user by a web browser or other software. Examples of web content include text, images, sounds, videos, controls, animations, and conventional electronic documents.[16] In this part, the first sentence of this definition is revised to provide that web content is the information and sensory experience to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions. The sentence is now aligned with the WCAG 2.1 definition of web content (sometimes referred to as ''content'' by WCAG).[17] The Department has also added a definition of ''user agent'' in this part, as explained in the section-by-section analysis.

The Department decided to more closely align the definition of ''web content'' in this part with the definition in WCAG 2.1 to avoid confusion, to ensure consistency in the application of WCAG 2.1, and to assist technical experts in implementing subpart H of this part. Consistent with the suggestion of several commenters, the Department believes this approach minimizes possible inadvertent conflicts between the type of content covered by the Department's regulatory text and the content covered by WCAG 2.1. Further, the Department believes it is prudent to more closely align these definitions because the task of identifying relevant content to be made accessible will often fall on technical experts. The Department believes technical experts will be familiar with the definition of ''web content'' in WCAG 2.1, and creating a modified definition will unnecessarily increase effort by requiring technical experts to familiarize themselves with a modified definition. The Department also understands that there are likely publicly available accessibility guidance documents and toolkits on the WCAG 2.1 definition that could be useful to public entities, and using a different definition of ''web content'' could call into question public entities' ability to rely on those tools, which would create unnecessary work for public entities. To incorporate this change, the Department removed language from the proposed rule addressing the encoding that defines the web content's structure, presentation, and interactions, because the Department believed the more prudent approach was to more closely align this definition with the definition in WCAG 2.1. However, the Department maintained in its final definition an additional sentence providing examples of web content to aid in the public's understanding of this definition. This may be particularly useful for members of the public without a technical background.

The Department received many comments supporting the Department's proposed definition of ''web content'' from public entities, disability advocates, individuals, and technical and other organizations. Many of these commenters indicated that the Department's definition was sufficiently generic and familiar to the public. The Department believes that the definition in this part aligns with these comments, since it is intended to mirror the definition in WCAG 2.1 and cover the same types of content.

Some commenters raised concerns that the scope of the definition should be broader, arguing that the definition should be extended to include ''closed'' systems such as kiosks, printers, and point-of-sale devices. Another organization mistakenly believed that the examples listed in the definition of ''web content'' were meant to be exhaustive. The Department wishes to clarify that this list is not intended to be exhaustive. The Department declines to broaden the definition of ''web content'' beyond the definition in this part because the Department seeks in its rulemaking to be responsive to calls from the public for the Department to provide certainty by adopting a technical standard State and local government entities must adhere to for their web content and mobile apps. The Department thus is limiting its rulemaking

[13] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F.*

[14] *Id.*

[15] *See* W3C, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/and https://perma.cc/UB8A-GG2F* (see definition of ''content (Web content)''). WCAG 2.1 defines ''user agent'' as ''any software that retrieves and presents Web content for users,'' such as web browsers, media players, plug-ins, and assistive technologies. *See* W3C, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F* (see definition of ''user agent'').

[16] 88 FR 52018.

[17] *See* W3C, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F.*

effort to web content and mobile apps. However, the Department notes that State and local government entities have existing accessibility obligations with respect to services, programs, or activities offered through other types of technology under title II of the Americans with Disabilities Act (''ADA'') or other laws.[18] For example, ''closed'' systems [19] may need to be made accessible in accordance with the existing title II regulation, as public entities have ongoing responsibilities to ensure effective communication, among other requirements.

Some commenters also suggested that the Department narrow the definition of ''web content.'' A few of these comments came from trade groups representing public accommodations, and they argued that the scope of the proposed definition would extend to content the public entity cannot control or is unable to make accessible due to other challenges. These commenters also argued that the costs of making content accessible would be extremely high for the range of content covered by the definition of ''web content.'' The Department believes the framework in this part appropriately balances the considerations implicated by this definition. Public entities can avail themselves of several exceptions that are intended to reduce the costs of making content accessible in some cases (such as the preexisting social media posts exception in § 35.201(e)), and to address instances where public entities truly do not have control over content (such as the third-party-posted content exception in § 35.201(c)). Further, public entities will be able to rely on the fundamental alteration and undue burdens limitations set out in § 35.204 where they can satisfy the requirements of those limitations, and public entities may also be able to use conforming alternate versions under § 35.202 where it is not possible to make web content directly accessible due to technical or legal limitations. The Department believes this approach appropriately balances the costs of compliance with the significant benefits to individuals with disabilities of being able to access the services, programs, and activities of their State and local government entities.

Some disability advocacy groups suggested that the Department modify the definition slightly, such as by providing for ''information, sensory or otherwise'' in lieu of ''information and sensory experience.'' The Department believes the prudent approach is to closely mirror the definition of ''web content'' in WCAG 2.1 to avoid confusion that could ensue from other differences between the two definitions. While the Department appreciates that there may be questions about the application of the definition to specific factual contexts, the Department believes the definition in WCAG 2.1 is sufficiently clear. The Department can provide further guidance on the application of this definition as needed.

Some commenters argued that the non-exhaustive list of examples of web content in this part would include web content that would not be considered web content under WCAG 2.1. In particular, some commenters noted that conventional electronic documents are not web content under WCAG 2.1 because they are not opened or presented through a user agent. Those commenters said that the Department's definition of ''web content'' should not include files such as word processor documents, presentation documents, and spreadsheets, even if they are downloaded from the web. The commenters further suggested that this part should split consideration of electronic document files from web content, similar to the approach they stated is used in the section 508 standards.[20] The Department also reviewed suggestions from commenters that the Department rely on WCAG guidance explaining how to apply WCAG to non-web information and communications technologies [21] and the ISO 14289–1 (''PDF/UA–1'') [22] standard related to PDF files. However, other commenters argued that when electronic documents are viewed in the browser window, they generally are considered web content and should thus be held to the same standard as other types of web content. Those commenters agreed with the Department's decision to include conventional electronic documents within the definition of ''web content,'' particularly when the version posted is not open for editing by the public.

The Department has considered commenters' views and determined that conventional electronic documents should still be considered web content for purposes of this part. The Department has found that public entities frequently provide their services, programs, or activities using conventional electronic documents, and the Department believes this approach will enhance those documents' accessibility, improving access for individuals with disabilities. The Department understands commenters' concerns to mean that, in applying WCAG 2.1 to conventional electronic documents, not all success criteria may be applicable directly as written. Although the Department understands that some WCAG 2.1 Level AA success criteria may not apply as written to conventional electronic documents,[23] when public entities provide or make available web content and content in mobile apps, public entities generally must ensure conformance to the WCAG 2.1 Level AA success criteria to the extent those criteria can be applied. In determining how to make conventional electronic documents conform to WCAG 2.1 Level AA, public entities may find it helpful to consult W3C's guidance on non-web information and communications technology, which explains how the WCAG success criteria can be applied to conventional electronic documents. The Department believes the compliance dates discussed in § 35.200(b) will provide public entities sufficient time to understand how WCAG 2.1 Level AA applies to their conventional electronic documents. The Department will continue to monitor developments in the accessibility of conventional electronic documents and issue further guidance as appropriate.

Finally, several commenters asked whether this definition would cover internal, non-public applications, such as web content used solely by employees. The Department reiterates that subpart H of this part includes requirements for the web content and mobile apps provided or made available by public entities within the scope of title II. While subpart H is not promulgated under title I of the ADA, it is important to note that compliance with subpart H will not relieve title II entities of their distinct employment-related obligations under title I of the ADA, which could include, for example, accommodations for a web developer with a disability working for a public entity.

Subpart H—Web and Mobile Accessibility

The Department is creating a new subpart in its title II regulation. Subpart H of this part addresses the accessibility of public entities' web content and mobile apps.

Section 35.200 Requirements for Web and Mobile Accessibility

General

Section 35.200 sets forth specific requirements for the accessibility of web content and mobile apps of public entities. Section 35.200(a) requires a public entity to ensure that the following are readily accessible to and usable by individuals with disabilities: (1) web content that a public entity provides or makes available, directly

[18] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

[19] A closed system, or ''closed functionality,'' means that users cannot attach assistive technology to the system to make the content accessible, such as with a travel kiosk. *See* W3C, *WCAG2ICT Overview, https://www.w3.org/WAI/standards-guidelines/wcag/non-web-ict/* [*https://perma.cc/XRL6-6Q9Y*] (Feb. 2, 2024).

[20] *See* 29 U.S.C. 794d. A discussion of the section 508 standards is included later in the section-by-section analysis, in ''WCAG 2.0 and Section 508 of the Rehabilitation Act.''

[21] W3C, *WCAG2ICT Overview, https://www.w3.org/WAI/standards-guidelines/wcag/non-web-ict/* [*https://perma.cc/XRL6-6Q9Y*] (Feb. 2, 2024).

[22] International Organization for Standardization, *ISO 14289–1:2014; Document management applications; Electronic document file format enhancement for accessibility; Part 1: Use of ISO 32000–1 (PDF/UA–1)* (Dec. 2014), *https://www.iso.org/standard/64599.html* [*https://perma.cc/S53A-Q3Y2*]. One commenter also referred to PDF/UA–2; however, the Department's understanding is that PDF/UA–2 is still under development. International Organization for Standardization, *ISO 14289–2; Document management applications; Electronic document file format enhancement for accessibility; Part 2: Use of ISO 32000–2 (PDF/UA–2), https://www.iso.org/standard/82278.html* [*https://perma.cc/3W5L-UJ7J*].

[23] W3C explains in its guidance on non-web information and communications technology that ''[w]hile WCAG 2.2 was designed to be technology-neutral, it assumes the presence of a 'user agent' such as a browser, media player, or assistive technology as a means to access web content. Therefore, the application of WCAG 2.2 to documents and software in non-web contexts require[s] some interpretation in order to determine how the intent of each WCAG 2.2 success criterion could be met in these different contexts of use.'' W3C, *Guidance on Applying WCAG 2.2 to Non-Web Information and Communications Technologies (WCAG2ICT): Group Draft Note* (Aug. 15, 2023), *https://www.w3.org/TR/wcag2ict-22/* [*https://perma.cc/2PYA-4RFH*]. While this quotation addresses WCAG 2.2, the beginning of the guidance notes that ''the current draft includes guidance for WCAG 2.1 success criteria.'' *Id.*

or through contractual, licensing, or other arrangements; and (2) mobile apps that a public entity provides or makes available, directly or through contractual, licensing, or other arrangements. As detailed in this section, the remainder of § 35.200 sets forth the specific standards that public entities are required to meet to make their web content and mobile apps accessible and the timelines for compliance.

Web Content and Mobile Apps That Public Entities Provide or Make Available

Section 35.200(a) identifies the scope of content covered by subpart H of this part. Section 35.200(a)(1) and (2) applies to web content and mobile apps that a public entity provides or makes available. The Department intends the scope of § 35.200 to be consistent with the ''Application'' section of the existing title II regulation at § 35.102, which states that this part applies to all services, programs, and activities provided or made available by public entities. The Department therefore made minor changes to the language of § 35.200(a)(1) and (2) to make the section more consistent with § 35.102. In the NPRM, § 35.200(a)(1) and (2) applied to web content and mobile apps that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public.[24] The Department revised § 35.200(a)(1) and (2) to apply to web content and mobile apps that a public entity provides or makes available. The Department also made corresponding revisions to the language of § 35.200(b)(1) and (2). The Department expects that public entities will be familiar with the revised language used in § 35.200(a) because it is similar to the language used in § 35.102, and that such familiarity and consistency will result in less confusion and more predictable access for individuals with disabilities to the web content and mobile apps of public entities. The Department notes that the revised language does not change or limit the coverage of subpart H as compared to the NPRM. Both the revised language and the NPRM are consistent with the broad coverage of § 35.102.

Contractual, Licensing, and Other Arrangements

The general requirements in subpart H of this part apply to web content or mobile apps that a public entity provides or makes available directly, as well as those the public entity provides or makes available ''through contractual, licensing, or other arrangements.'' The Department expects that the phrase ''directly or through contractual, licensing, or other arrangements'' will be familiar to public entities because it comes from existing regulatory language in title II of the ADA. The section on general prohibitions against discrimination in the existing title II regulation says that a public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability engage in various forms of discrimination.[25] The Department intentionally used the same phrasing in subpart H because here too, where public entities act through third parties using contractual, licensing, or other arrangements, they are not relieved of their obligations under subpart H. For example, when public educational institutions arrange for third parties to post educational content on their behalf, public entities will still be responsible for the accessibility of that content under the ADA.

Further, the Department emphasizes that the phrase ''provides or makes available'' in § 35.200 is not intended to mean that § 35.200 only applies when the public entity creates or owns the web content or mobile app. The plain meaning of ''make available'' includes situations where a public entity relies on a third party to operate or furnish content. Section 35.200 means that public entities provide or make available web content and mobile apps even where public entities do not design or own the web content or mobile app, if there is a contractual, licensing, or other arrangement through which the public entity uses the web content or mobile app to provide a service, program, or activity. For example, even when a city does not design, create, or own a mobile app allowing the public to pay for public parking, when a contractual, licensing, or other arrangement exists between the city and the mobile app enabling the public to use the mobile app to pay for parking in the city, the mobile app is covered under § 35.200. This is because the public entity has contracted with the mobile app to provide access to the public entity's service, program, or activity (*i.e.,* public parking) using a mobile app. The Department believes this approach will be familiar to public entities, as it is consistent with the existing framework in title II of the ADA.[26]

The Department received many public comments in response to the NPRM expressing confusion about the extent to which content created by third parties on behalf of public entities must be made accessible. Many commenters pointed out that public entities frequently enter into contracts with vendors or other third parties to produce web content and mobile apps, such as for websites and apps used to pay fines and parking fees. Commenters were particularly concerned because the NPRM contained exceptions for third-party content, which they thought could indicate that the Department did not intend to cover any content created by third parties even when it was created on behalf of public entities. Commenters urged the Department to make clear in regulatory text that content created or provided by third-party entities is still covered by this part where those third parties are acting on behalf of a public entity.

The Department agrees with these commenters' concerns, so the Department has modified the language in subpart H of this part to make clear that the general requirements for web content and mobile app accessibility apply when the public entity provides or makes available web content or mobile apps directly or through contractual, licensing, or other arrangements. The Department inserted this language in § 35.200(a)(1) and (2) and (b)(1) and (2). The Department notes that this modification does not change the coverage of § 35.200 from the NPRM. The Department clarified in the NPRM that throughout the proposal, a public entity's ''website'' is intended to include not only the websites hosted by the public entity, but also websites operated on behalf of a public entity by a third party. For example, public entities sometimes use vendors to create and host their web content. The Department clarified that such content would also be covered by the proposed rule.[27] The language the Department added to the general requirements provisions in § 35.200(a)(1) and (2) and (b)(1) and (2) does not change the meaning of the provisions, but rather ensures clarity about public entities' obligations when they are acting through a third party, such as when they contract with a vendor.

Many commenters stated their concern that public entities lack control over third-party content, even where they contract with third parties to provide that content. These commenters, generally from public entities and trade groups representing public accommodations, argued that seeking to obtain accessible third-party content provided on behalf of public entities would be challenging. Some of these commenters said that in theory this type of content could be controlled by procurement, but that this has not been realized in practice. While the Department is sympathetic to these concerns, the Department also received many comments from disability advocates and individuals with disabilities pointing out the crucial nature of services provided by third parties on behalf of public entities. For example, some disability advocates argued that State and local government entities increasingly rely on third parties to provide services such as the mapping of zoning areas and city council districts, fine payment systems, applications for reserving and paying for public parking, websites to search for available public housing, and many other examples. The Department believes individuals with disabilities should not be excluded from these government services because the services are inaccessible and are being provided by third parties on behalf of a public entity, rather than being provided directly by the public entity. Indeed, public entities have a responsibility to comply with their ADA obligations even when their services, programs, or activities are being offered through contractors. Further, while the Department understands the concerns raised by commenters that current market options make it challenging for public entities to procure accessible services, the Department expects that options for accessible third-party services will grow in response to subpart H of this part. The Department believes that more accessible options will be readily available by the time public entities are required to comply with subpart H, which will make it less difficult for public entities to procure accessible

[24] 88 FR 52018.

[25] Section 35.130(b)(1) and (3). *See also* § 35.152(a) (describing requirements for jails, detention and correctional facilities, and community correctional facilities).

[26] *See* § 35.130(b)(1) and (3).

[27] 88 FR 51957.

services from contractors. The Department also notes that public entities will be able to rely on the fundamental alteration and undue burdens limitations in this part in § 35.204 where they can satisfy the requirements of that provision.

Further, the Department believes that when public entities engage in contractual, licensing, or other arrangements with third parties to provide or make available web content and mobile apps, public entities can choose to work with providers who can ensure accessibility, and public entities can also include contract stipulations that ensure accessibility in third-party services. This is consistent with the existing obligations public entities face in other title II contexts where they choose to contract, license, or otherwise arrange with third parties to provide services, programs, or activities. The Department acknowledges that some commenters argued that they face limited existing options in procurement for accessible third-party services. However, where such circumstances warrant, public entities can rely on the undue burdens provision when they can satisfy its requirements. In addition, the Department expects that options for procuring accessible third-party services will grow in response to its rulemaking.

Background on WCAG

Since 1994, W3C has been the principal international organization involved in developing protocols and guidelines for the web.[28] W3C develops a variety of voluntary technical standards and guidelines, including ones relating to privacy, internationalization of technology, and—relevant here—accessibility. W3C's Web Accessibility Initiative (''WAI'') has developed voluntary guidelines for web accessibility, known as WCAG, to help web developers create web content that is accessible to individuals with disabilities.[29]

The first version of WCAG, WCAG 1.0, was published in 1999. WCAG 2.0 was published in December 2008, and is available at *http://www.w3.org/TR/2008/REC-WCAG20-20081211/* [*https://perma.cc/L2NH-VLCR*]. WCAG 2.0 was approved as an international standard by the International Organization for Standardization (''ISO'') and the International Electrotechnical Commission (''IEC'') in October 2012.[30] WCAG 2.1 was published in June 2018, and is available at *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F*.[31] WCAG 2.1 is built on and is backwards compatible with WCAG 2.0.[32] In fact, 38 of the 50 Level A and AA success criteria in WCAG 2.1 are also included in WCAG 2.0.[33]

WCAG 2.1 contains four principles that provide the foundation for web accessibility: the web content must be perceivable, operable, understandable, and robust.[34] Testable success criteria (*i.e.,* requirements for web accessibility that are measurable) are provided ''to be used where requirements and conformance testing are necessary such as in design specification, purchasing, *regulation* and contractual agreements.'' [35] Thus, WCAG 2.1 contemplates establishing testable success criteria that could be used in regulatory efforts such as this one.

Technical Standard—WCAG 2.1 Level AA

Section 35.200 requires that public entities' web content and mobile apps conform to WCAG 2.1 Level AA unless compliance would result in a fundamental alteration or undue financial and administrative burdens. As previously mentioned, WCAG 2.1 was published in June 2018 and is available at *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F.* To the extent there are differences between WCAG 2.1 Level AA and the standards articulated in this part, the standards articulated in this part prevail. WCAG 2.1 Level AA is not restated in full in this part but is instead incorporated by reference.

In the NPRM, the Department solicited feedback on the appropriate technical standard for accessibility for public entities' web content and mobile apps. The Department received many public comments from a variety of interested parties in response. After consideration of the public comments and after its independent assessment, the Department determined that WCAG 2.1 Level AA is the appropriate technical standard for accessibility to adopt in subpart H of this part. WCAG 2.1 Level AA includes success criteria that are especially helpful for people with disabilities using mobile devices, people with low vision, and people with cognitive or learning disabilities.[36] Support for WCAG 2.1 Level AA as the appropriate technical standard came from a variety of commenters. Commenters supporting the adoption of WCAG 2.1 Level AA noted that is a widely used and accepted industry standard. At least one such commenter noted that requiring conformance to WCAG 2.1 Level AA would result in a significant step forward in ensuring access for individuals with disabilities to State and local government entities' web content and mobile apps. Commenters noted that WCAG 2.1 Level AA has been implemented, tested, and shown to be a sound and comprehensive threshold for public agencies. In addition, because WCAG 2.1 Level AA was published in 2018, web developers and public entities have had time to familiarize themselves with it. The WCAG standards were designed to be ''technology neutral.'' [37] This means that they are designed to be broadly applicable to current and future web technologies.[38] Thus, WCAG 2.1 also allows web and mobile app developers flexibility and potential for innovation.

The Department expects that adopting WCAG 2.1 Level AA as the technical standard will have benefits that are important to ensuring access for individuals with disabilities to public entities' services, programs, and activities. For example, WCAG 2.1 Level AA requires that text be formatted so that it is easier to read when magnified.[39] This is important, for example, for people with low vision who use magnifying tools. Without the formatting that WCAG 2.1 Level AA requires, a person magnifying the text might find reading the text disorienting because they might have to scroll horizontally on every line.[40]

WCAG 2.1 Level AA also includes success criteria addressing the accessibility of mobile apps or web content viewed on a mobile device. For example, WCAG 2.1 Level AA Success Criterion 1.3.4 requires that page orientation (*i.e.,* portrait or landscape) not be restricted to just one orientation, unless a specific display orientation is essential.[41]

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[28] W3C, *About Us, https://www.w3.org/about/* [*https://perma.cc/TQ2W-T377*].

[29] The Department received one comment arguing that the process by which WCAG is developed is not equitable or inclusive of members of the disability community. The Department received another comment commending the Department for adopting WCAG as the technical standard and noting that WCAG is developed through an open, transparent, multi-stakeholder consensus process. The Department carefully considered these comments and concluded that it is appropriate to adopt a consensus standard promulgated by W3C with input from various stakeholders, which is also consistent with the NTTAA. Information from W3C about its process for developing standards is available at W3C, Web Accessibility Initiative, *How WAI Develops Accessibility Standards Through the W3C Process: Milestones and Opportunities To Contribute* (Sept. 2006), *https://www.w3.org/WAI/standards-guidelines/w3c-process/* [*https://perma.cc/3BED-RCJP*] (Nov. 2, 2020).

[30] W3C, *Web Content Accessibility Guidelines 2.0 Approved as ISO/IEC International Standard* (Oct. 15, 2012), *https://www.w3.org/press-releases/2012/wcag2pas/* [*https://perma.cc/JQ39-HGKQ*].

[31] The WAI also published some revisions to WCAG 2.1 on September 21, 2023. W3C, *Web Content Accessibility Guidelines (WCAG) 2.1* (Sept. 21, 2023), *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/4VF7-NF5F*]; *see infra* note 47. The WAI also published a working draft of WCAG 3.0 in December 2021. W3C, *W3C Accessibility Guidelines (WCAG) 3.0, https://www.w3.org/TR/wcag-3.0/* (July 24, 2023) [*https://perma.cc/7FPQ-EEJ7*].

[32] W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, 0.5 Comparison with WCAG 2.0* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#comparison-with-wcag-2-0* [*https://perma.cc/H76F-6L27*].

[33] *See id.*

[34] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, WCAG 2 Layers of Guidance* (Sept. 21, 2023), *https://www.w3.org/TR/WCAG21/#wcag-2-layers-of-guidance* [*https://perma.cc/5PDG-ZTJE*].

[35] *Id.* (emphasis added).

[36] W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, 0.5 Comparison with WCAG 2.0* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#comparison-with-wcag-2-0* [*https://perma.cc/H76F-6L27*].

[37] W3C, *Introduction to Understanding WCAG, https://www.w3.org/WAI/WCAG21/Understanding/intro* [*https://perma.cc/XB3Y-QKVU*] (June 20, 2023).

[38] *See* W3C, *Understanding Techniques for WCAG Success Criteria, https://www.w3.org/WAI/WCAG21/Understanding/understanding-techniques* [*https://perma.cc/AMT4-XAAL*] (June 20, 2023).

[39] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 1.4.10 Reflow* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#reflow* [*https://perma.cc/TU9U-C8K2*].

[40] *See id.*

[41] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 1.3.4 Orientation* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#orientation* [*https://perma.cc/M2YG-LB9V*].

This feature is important, for example, for someone who uses a wheelchair with a tablet attached to it such that the tablet cannot be rotated.[42] If web content or mobile apps only work in one orientation, they will not always work for this individual depending on how the tablet is oriented, which could render that content or app unusable for the person.[43] Another WCAG 2.1 success criterion requires, in part, that if a function in an app can be operated by motion—for example, shaking the device to undo typing—that there be an option to turn off that motion sensitivity.[44] This could be important, for example, for someone who has tremors, so that they do not accidentally undo their typing.[45]

Such accessibility features are critical for individuals with disabilities to have equal access to their State or local government entity's services, programs, and activities. This is particularly true given that using mobile devices to access government services is commonplace. For example, one source notes that mobile traffic generally accounts for 58.21 percent of all internet usage.[46] In addition, WCAG 2.1 Level AA's incorporation of mobile-related criteria is important because of public entities' increasing use of mobile apps in offering their services, programs, or activities. Public entities are using mobile apps to offer a range of critical government services—from providing traffic information, to scheduling trash pickup, to making vaccination appointments.

The Department also understands that public entities are likely already familiar with WCAG 2.1 Level AA or will be able to become familiar quickly. This is because WCAG 2.1 Level AA has been available since 2018,[47] and it builds upon WCAG 2.0, which has been in existence since 2008 and has been established for years as a benchmark for accessibility. According to the Department's research, WCAG 2.1 is already being increasingly used by members of the public and State and local government entities. At least ten States now use, or aim to use, WCAG 2.1 as a standard for their websites, indicating increased familiarity with and use of the standard. In fact, as commenters also noted, the Department recently included WCAG 2.1 in several settlement agreements with covered entities addressing inaccessible websites.[48]

The Department expects, and heard in public comments, that web developers and professionals who work for or with public entities are likely to be familiar with WCAG 2.1 Level AA. And the Department believes that if public entities and associated web developers are not already familiar with WCAG 2.1 Level AA, they are at least likely to be familiar with WCAG 2.0 and will be able to become acquainted quickly with WCAG 2.1's 12 additional Level A and AA success criteria. The Department also believes that resources, like trainings and checklists, exist to help public entities implement or understand how to implement not only WCAG 2.0 Level AA, but also WCAG 2.1 Level AA.[49] Additionally, public entities will have two or three years, depending on population size, to come into compliance with subpart H of this part. Therefore, public entities and web professionals who are not already familiar with WCAG 2.1 will have time to familiarize themselves and plan to ensure that they will be in compliance with the rule when required.

Alternative Approaches Considered

WCAG 2.2

Commenters suggested that the Department adopt WCAG 2.2 as the technical standard. WCAG 2.2 was published as a candidate recommendation—a prefinalization stage—in May 2023, and was published in final form on October 5, 2023, which was after the NPRM associated with the final rule was published and after the comment period closed.[50] Commenters who supported the adoption of WCAG 2.2 noted that it was likely to be finalized before the final rule would be published. All of the WCAG 2.0 and WCAG 2.1 success criteria except for one are included in WCAG 2.2.[51] WCAG 2.2 also includes six additional Level A and AA success criteria beyond those included in WCAG 2.1.[52] Commenters supporting the adoption of WCAG 2.2 noted that WCAG 2.2's additional success criteria are important for ensuring accessibility; for example, WCAG 2.2 includes additional criteria that are important for people with cognitive disabilities or for those accessing content via mobile apps. Like WCAG 2.1, WCAG 2.2's additional success criteria offer particular benefits for individuals with low vision, limited manual dexterity, and cognitive disabilities. For example, Success Criterion 3.3.8, which is a new criterion under WCAG 2.2, improves access for people with cognitive disabilities by limiting the use of cognitive function tests, like solving puzzles, in authentication processes.[53] Some commenters also suggested that the few additional criteria in WCAG 2.2 would not pose a substantial burden for web developers, who are likely already familiar with WCAG 2.1.

[42] W3C, *What's New in WCAG 2.1, https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/S7VS-J6E4*] (Oct. 5, 2023).

[43] *See id.*

[44] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 2.5.4 Motion Actuation* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#motion-actuation* [*https://perma.cc/D3PS-32NV*].

[45] *See* W3C, *What's New in WCAG 2.1, https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*] (Oct. 5, 2023).

[46] Andrew Buck, MobiLoud, *What Percentage of internet Traffic is Mobile?, https://www.mobiloud.com/blog/what-percentage-of-internet-traffic-is-mobile#what-percentage-of-internet-traffic-comes-on-mobile-devices* [*https://perma.cc/2FK6-UDD5*] (Feb. 7, 2024).

[47] The WAI published some revisions to WCAG 2.1 on September 21, 2023. *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1* (Sept. 21, 2023), *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/4VF7-NF5F*]. However, for the reasons discussed in this section, subpart H of this part requires conformance to the version of WCAG 2.1 that was published in 2018. W3C, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F*. The Department believes that public entities have not had sufficient time to become familiar with the 2023 version. Public entities and others also may not have had an adequate opportunity to comment on whether the Department should adopt the 2023 version, which was published shortly before the comment period on the NPRM closed on October 3, 2023. One recent revision to WCAG 2.1 relates to Success Criterion 4.1.1, which addresses parsing. W3C has described Success Criterion 4.1.1 as ''obsolete'' and stated that it ''is no longer needed for accessibility.'' W3C, *WCAG 2 FAQ, https://www.w3.org/WAI/standards-guidelines/wcag/faq/#parsing411* [*https://perma.cc/24FK-V8LS*] (Oct. 5, 2023). According to the 2023 version of WCAG, Success Criterion 4.1.1 ''should be considered as always satisfied for any content using HTML or XML.'' W3C, *Web Content Accessibility Guidelines (WCAG) 2.1* (Sept. 21, 2023), *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/4VF7-NF5F*]. The Department believes that either adopting this note from the 2023 version of WCAG or not requiring conformance to Success Criterion 4.1.1 is likely to create significant confusion. And although Success Criterion 4.1.1 has been removed from WCAG 2.2, the Department has decided not to adopt WCAG 2.2 for the reasons described herein. W3C, *WCAG 2 FAQ, https://www.w3.org/WAI/standards-guidelines/wcag/faq/#parsing411* [*https://perma.cc/45DS-RRYS*] (Oct. 5, 2023). Therefore, conformance to Success Criterion 4.1.1 is still required by subpart H of this part. Public entities that do not conform to Success Criterion 4.1.1 would nonetheless be able to rely on § 35.205 to satisfy their obligations under § 35.200 if the failure to conform to Success Criterion 4.1.1 would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app in the manner described in that section. The Department expects that this provision will help public entities avoid any unnecessary burden that might be imposed by Success Criterion 4.1.1.

[48] *See, e.g.,* Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and CVS Pharmacy, Inc. (Apr. 11, 2022), *https://www.ada.gov/cvs_sa.pdf* [*https://perma.cc/H5KZ-4VVF*]; Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and Meijer, Inc. (Feb. 2, 2022), *https://www.ada.gov/meijer_sa.pdf* [*https://perma.cc/5FGD-FK42*]; Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and the Kroger Co. (Jan. 28, 2022), *https://www.ada.gov/kroger_co_sa.pdf* [*https://perma.cc/6ASX-U7FQ*]; Settlement Agreement Between the United States of America and the Champaign-Urbana Mass Transit District (Dec. 14, 2021), *https://www.justice.gov/d9/case-documents/attachments/2021/12/14/champaign-urbana_sa.pdf* [*https://perma.cc/66XY-QGA8*]; Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and Hy-Vee, Inc. (Dec. 1, 2021), *https://www.ada.gov/hy-vee_sa.pdf* [*https://perma.cc/GFY6-BJNE*]; Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and Rite Aid Corp. (Nov. 1, 2021), *https://www.ada.gov/rite_aid_sa.pdf* [*https://perma.cc/4HBF-RBK2*].

[49] *See, e.g.,* W3C, *Tutorials, https://www.w3.org/WAI/tutorials/* [*https://perma.cc/SW5E-WWXV*] (Feb. 16, 2023).

[50] W3C, *WCAG 2 Overview, https://www.w3.org/WAI/standards-guidelines/wcag/* [*https://perma.cc/RQS2-P7JC*] (Oct. 5, 2023).

[51] W3C, *What's New in WCAG 2.2, https://www.w3.org/WAI/standards-guidelines/wcag/new-in-22/* [*https://perma.cc/GDM3-A6SE*] (Oct. 5, 2023).

[52] *Id.*

[53] *Id.*

Some commenters suggested that WCAG 2.1 would become outdated once WCAG 2.2 was finalized. And because WCAG 2.2 was adopted more recently than WCAG 2.1, some commenters noted that the adoption of WCAG 2.2 would be more likely to help subpart H of this part keep pace with changes in technology. The Department understands and appreciates the concerns commenters raised.

The Department believes that adopting WCAG 2.1 as the technical standard rather than WCAG 2.2 is the most prudent approach at this time. W3C, while recommending the use of the most recent recommended standard, has made clear that WCAG 2.2 does not ''deprecate or supersede'' WCAG 2.1 and has stated that WCAG 2.1 is still an existing standard.[54] The Department recognizes that WCAG 2.2 is a newer standard, but in crafting subpart H of this part the Department sought to balance benefits for individuals with disabilities with feasibility for public entities making their content accessible in compliance with subpart H. Because WCAG 2.2 has been adopted so recently, web professionals have had less time to become familiar with the additional success criteria that have been incorporated in WCAG 2.2. The Department believes there will be fewer resources and less guidance available to web professionals and public entities on the new success criteria in WCAG 2.2. Additionally, the Department appreciates the concerns expressed by at least one commenter with adopting any standard that was not finalized before the NPRM's comment period—as was the case with WCAG 2.2—because interested parties would not have had an opportunity to understand and comment on the finalized standard.

Given the benefits of WCAG 2.2 highlighted by commenters, some public entities might choose to implement WCAG 2.2 to provide an even more accessible experience for individuals with disabilities and to increase customer service satisfaction. The Department notes that subpart H of this part provides for equivalent facilitation in § 35.203, meaning public entities could choose to comply with subpart H by conforming their web content to WCAG 2.2 Level AA because WCAG 2.2 Level AA provides substantially equivalent or greater accessibility and usability as compared to WCAG 2.1 Level AA. This would be sufficient to meet the standard for equivalent facilitation in § 35.203, which is discussed in more detail later in the section-by-section analysis.

WCAG 2.0 and Section 508 of the Rehabilitation Act

Alternatively, the Department considered adopting WCAG 2.0. This change was suggested by the Small Business Administration, which argued that public entities should not have to comply with a more rigorous standard for online accessibility than the Federal Government, which is required to conform to WCAG 2.0 under section 508 of the Rehabilitation Act. In 2017, when the Architectural and Transportation Barriers Compliance Board (''Access Board'') adopted WCAG 2.0 as the technical standard for the Federal Government's web content under section 508, WCAG 2.1 had not been finalized.[55] And although WCAG 2.0 is the standard adopted by the Department of Transportation in its regulations implementing the Air Carrier Access Act, which covers airlines' websites and kiosks,[56] those regulations—like the section 508 rule—were promulgated before WCAG 2.1 was published.

The Department believes that adopting WCAG 2.1 as the technical standard for subpart H of this part is more appropriate than adopting WCAG 2.0. WCAG 2.1 provides for important accessibility features that are not included in WCAG 2.0, and an increasing number of governmental entities are using WCAG 2.1. A number of countries that have adopted WCAG 2.0 as their standard are now making efforts to move or have moved to WCAG 2.1.[57] In countries that are part of the European Union, public sector websites and mobile apps generally must meet a technical standard that requires conformance to the WCAG 2.1 success criteria.[58] And WCAG 2.0 is likely to become outdated or less relevant more quickly than WCAG 2.1. As discussed previously in this appendix, WCAG 2.2 was recently published and includes even more success criteria for accessibility.

The Department expects that the wide usage of WCAG 2.0 lays a solid foundation for public entities to become familiar with and implement WCAG 2.1's additional Level A and AA criteria. According to the Department's research, dozens of States either use or strive to use WCAG 2.0 or greater—either on their own or by way of implementing the section 508 technical standards—for at least some of their web content. It appears that at least ten States—Alaska, Delaware, Georgia, Louisiana, Massachusetts, Oregon, Pennsylvania, South Dakota, Utah, and Washington—already either use WCAG 2.1 or strive to use WCAG 2.1 for at least some of their web content. Given that WCAG 2.1 is a more recent standard than WCAG 2.0, adds some important criteria for accessibility, and has been in existence for long enough for web developers and public entities to get acquainted with it, the Department views it as more appropriate for adoption in subpart H of this part than WCAG 2.0. In addition, even to the extent public entities are not already acquainted with WCAG 2.1, those entities will have two or three years to come into compliance with subpart H, which should also provide sufficient time to become familiar with and implement WCAG 2.1. The Department also declines to adopt the Access Board's section 508 standards, which are harmonized with WCAG 2.0, for the same reasons it declines to adopt WCAG 2.0.

Effective Communication and Performance Standards

Some commenters suggested that the Department should require public entities to ensure that they are meeting title II's effective communication standard—which requires that public entities ensure that their communications with individuals with disabilities are as effective as their communications with others [59]—rather than requiring compliance with a specific technical standard for accessibility. One such commenter also suggested that the Department rely on conformance to WCAG only as a safe harbor—as a way to show that the entity complies with the effective communication standard. The Department believes that adopting into subpart H of this part the effective communication standard, which is already required under the existing title II regulation,[60] would not meaningfully help ensure access for individuals with disabilities or provide clarity for public entities in terms of what specifically public entities must do to ensure that their web content and mobile apps are accessible. As previously mentioned, WCAG 2.1 Level AA provides specific, testable success criteria. As noted in section III.D.4 of the preamble to the final rule, relying solely on the existing title II obligations and expecting entities to voluntarily comply has proven insufficient. In addition, using the technical standard only as a safe harbor would pose similar issues in terms of clarity and would not result in reliability and predictability for individuals with disabilities seeking to access, for example, critical government services that public entities have as part of their web content and mobile apps.

Commenters also suggested that manual testing by individuals with disabilities be required to ensure that content is accessible to them. Although subpart H of this part does not specifically require manual testing by individuals with disabilities because requiring such testing could pose logistical or other hurdles, the Department recommends that public entities seek and incorporate

[54] W3C, *WCAG 2 Overview, https://www.w3.org/WAI/standards-guidelines/wcag/#:~:text=WCAG%202.0%2C%20WCAG%202.1%2C%20and%20WCAG%202.2%20are%20all%20existing,most%20recent%20version%20of%20WCAG* [*https://perma.cc/V5ZC-BF8Z*] (Oct. 5, 2023).

[55] *See Information and Communication Technology (ICT) Standards and Guidelines,* 82 FR 5790, 5791 (Jan. 18, 2017); W3C, *Web Content Accessibility Guidelines (WCAG) 2.1* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/and https://perma.cc/UB8A-GG2F.*

[56] *See* 14 CFR 382.43(c) through (e) and 382.57.

[57] *See, e.g.,* Austl. Gov't Digital Transformation Agency, *Exploring WCAG 2.1 for Australian Government Services* (Aug. 22, 2018), *https://www.dta.gov.au/blogs/exploring-wcag-21-australian-government-services.* A Perma archive link was unavailable for this citation. *See also* W3C, *Denmark (Danmark), https://www.w3.org/WAI/policies/denmark/#bekendtg%C3%B8relse-om-afgivelse-af-tilg%C3%A6ngelighedserkl%C3%A6ring-for-offentlige-organers-websteder-og-mobilapplikationer* [*https://perma.cc/K8BM-4QN8*] (Mar. 15, 2023); *see also* W3C, *Web Accessibility Laws & Policies, https://www.w3.org/WAI/policies/* [*https://perma.cc/6SU3-3VR3*] (Dec. 2023).

[58] European Comm'n, *Web Accessibility, https://digital-strategy.ec.europa.eu/en/policies/web-accessibility* [*https://perma.cc/LSG9-XW7L*] (Oct. 10, 2023); European Telecomm. Standards Inst., *Accessibility Requirements for ICT Products and Services* 45–51, 64–78 (Mar. 2021), *https://www.etsi.org/deliver/etsi_en/301500_301599/301549/03.02.01_60/en_301549v030201p.pdf* [*https://perma.cc/5TEZ-9GC6*].

[59] Section 35.160.

[60] *Id.*

feedback from individuals with disabilities on their web content and mobile apps. Doing so will help ensure that everyone has access to critical government services.

The Department received some comments recommending that the Department adopt a performance standard instead of a specific technical standard for accessibility of web content and mobile apps. Performance standards establish general expectations or goals for web and mobile app accessibility and allow for compliance via a variety of unspecified methods. As commenters explained, performance standards could provide greater flexibility in ensuring accessibility as web and mobile app technologies change. However, as the Department noted in the NPRM,[61] the Department believes that performance standards are too vague and subjective and could be insufficient to provide consistent and testable requirements for web and mobile app accessibility. Additionally, the Department expects that performance standards would not result in predictability for either public entities or individuals with disabilities in the way that a more specific technical standard would. Further, similar to a performance standard, WCAG has been designed to allow for flexibility and innovation as technology evolves.[62] The Department recognizes the importance of adopting a standard for web and mobile app accessibility that provides not only specific and testable requirements, but also sufficient flexibility to develop accessibility solutions for new technologies. The Department believes that WCAG achieves this balance because it provides flexibility similar to a performance standard, but it also provides more clarity, consistency, predictability, and objectivity. Using WCAG also enables public entities to know precisely what is expected of them under title II, which may be of particular benefit to entities with less technological experience. This will assist public entities in identifying and addressing accessibility errors, which may reduce costs they would incur without clear expectations.

Evolving Standard

Other commenters suggested that the Department take an approach in the final rule whereby public entities would be required to comply with whatever is the most recent version of WCAG at the time. Under that approach, the required technical standard would automatically update as new versions of WCAG are published in the future. These commenters generally argued that such an approach would aid in ''future proofing'' subpart H of this part to help it keep up with changes in technology. Based on several legal considerations, the Department will not adopt such an approach. First, the Department is incorporating WCAG 2.1 Level AA by reference into subpart H and must abide by the Office of the Federal Register's regulation regarding incorporation by reference.[63] The regulation states that incorporation by reference of a publication is limited to the edition of the publication that is approved by the Office of the Federal Register. Future amendments or revisions of the publication are not included.[64] Accordingly, the Department only incorporates a particular version of the technical standard and does not state that future versions of WCAG would be automatically incorporated into subpart H. In addition, the Department has concerns about regulating to a future standard of WCAG that has yet to be created, of which the Department has no knowledge, and for which compatibility with the ADA and covered entities' content is uncertain.

Relatedly, the Department also received comments suggesting that it institute a process for reviewing and revising its regulation every several years to ensure that subpart H of this part is up to date and effective for current technology. Pursuant to Executive Order 13563, the Department is already required to do a periodic retrospective review of its regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.[65] Consideration of the effectiveness of subpart H of this part in the future would fall within Executive Order 13563's purview, such that building a mechanism into subpart H is not necessary at this time.

Alternative Approaches Considered for Mobile Apps and Conventional Electronic Documents

Section 35.200 adopts WCAG 2.1 Level AA as the technical standard for mobile apps. This approach will ensure the accessibility standards for mobile apps in subpart H of this part are consistent with the accessibility standards for web content in subpart H. The NPRM asked for feedback on the appropriate technical standard for mobile apps, including whether the Department should adopt WCAG 2.1 Level AA or other standards like the standards for section 508 of the Rehabilitation Act (''Section 508 Standards''), which apply to the Federal Government's web content and mobile apps.[66] The Department received several comments on the technical standard that should apply to mobile apps. Some commenters supported adopting WCAG 2.1 Level AA, some suggested adopting other technical standards or requirements, and others suggested that some WCAG success criteria may not apply to mobile apps.

Some commenters had concerns about the costs and burdens associated with applying any technical standard to content on mobile apps, including to content in mobile apps that public entities already provide on the web. One commenter requested that the Department apply WCAG 2.0 to the extent that a public entity's mobile app provides different content than is available online.

However, many commenters expressed strong support for applying the same technical standard for mobile apps and web content and shared that web content and mobile apps generally should not be treated differently. These commenters emphasized the importance of mobile app accessibility, explaining that many individuals rely on mobile apps to get information about State or local government services, programs, or activities, including transportation information, emergency alerts or special news bulletins, and government appointments. Some commenters further clarified that adopting different standards for mobile apps than web content could cause confusion. They also stated that adopting the same standard would ensure a uniform experience and expectations for users with disabilities.

Many commenters, including disability advocacy organizations, individuals, and public entities, supported the use of WCAG 2.1 Level AA as the technical standard for mobile apps, in part because WCAG is internationally recognized, often adopted in practice, and technology neutral (*i.e.,* it applies to both web content and mobile apps). Other commenters said that WCAG 2.1 Level AA is an appropriate standard for mobile apps because it includes specific success criteria aimed at addressing the unique challenges of mobile app accessibility.

Some commenters suggested that the Department should adopt WCAG 2.2 as the technical standard for mobile apps. These commenters explained that WCAG 2.2 is more recent and includes newer guidelines based on accessibility issues found in smartphones. Commenters further shared that WCAG 2.2 can better ensure adequate button size and spacing to accommodate users with varying degrees of motor skills in their fingers.

In addition, other commenters recommended that the Department adopt the Section 508 Standards, either independently or together with WCAG 2.1 or WCAG 2.2. Some of these commenters shared their belief that WCAG was developed more for web content than for mobile apps. These commenters stated that while many of WCAG's principles and guidelines can be applied to mobile apps, mobile apps have unique characteristics and interactions that may require additional considerations and depend on the specific requirements and goals of the mobile app in question. For example, commenters indicated that mobile apps may also need to adhere to platform-specific accessibility guidelines for iOS (Apple) and Android (Google). In addition, commenters noted that the Section 508 Standards include additional requirements applicable to mobile apps that are not included in WCAG 2.1 Level AA, such as interoperability requirements to ensure that a mobile app does not disrupt a mobile device's internal assistive technology for individuals with disabilities (*e.g.,* screen readers for people who are blind or have low

[61] 88 FR 51962.

[62] W3C, *Benefits of Web Content Accessibility Guidelines WCAG 2, https://www.w3.org/WAI/presentations/WCAG20_benefits/WCAG20_benefits.html* [*https://perma.cc/3RTN-FLKV*] (Aug. 12, 2010) (''WCAG 2 is adaptable and flexible, for different situations, and developing technologies and techniques. We described earlier how WCAG 2 is flexible to apply to Web technologies now and in the future.'').

[63] *See* 1 CFR 51.1(f).

[64] *Id.*

[65] E.O. 13563, sec. 6, 3 CFR, 2012 Comp., p. 215.

[66] 36 CFR 1194.1; 36 CFR part 1194, appendices A, C, and D.

vision). Some commenters suggested that the Department include these additional requirements from the Section 508 Standards in subpart H of this part.

The Department carefully considered all of these comments and agrees with commenters who stated that the same technical standard for accessibility should apply to both web content and mobile apps. The Department believes that applying the same technical standard to both web content and mobile apps will reduce confusion by ensuring consistent requirements and user experiences across web and mobile platforms.

The Department further agrees with the commenters who stated that WCAG 2.1 Level AA is an appropriate technical standard. As discussed previously in this appendix, many developers and organizations are already familiar with WCAG 2.1 Level AA, and they may be less familiar with WCAG 2.2. The Department thus believes that selecting WCAG 2.1 Level AA as the technical standard for mobile apps will reduce the difficulty of complying with subpart H of this part by adopting a well-recognized standard that is already familiar to developers and organizations, while still ensuring increased accessibility and usability for individuals with disabilities. The Department notes that subpart H allows for equivalent facilitation in § 35.203, meaning that public entities could still choose to apply additional standards or techniques related to mobile apps, to the extent that the standard or technique results in substantially equivalent or greater accessibility and usability.

As commenters noted, WCAG 2.1 is designed to be technology neutral, which will help ensure accessibility for mobile apps. Although the Section 508 Standards include some additional requirements like interoperability that are not required by WCAG,[67] WCAG 2.1 Level AA includes specific success criteria related to mobile app accessibility. These success criteria address challenges such as touch target size, orientation, and motion actuation, among others.[68] Therefore, the Department believes that WCAG 2.1 Level AA is a robust framework for mobile app accessibility.

The Department also received comments indicating that certain requirements under WCAG 2.1 Level AA may not be applicable to mobile apps or conventional electronic documents and subpart H of this part should therefore set forth exceptions for those success criteria. The Access Board faced similar concerns when it promulgated its Section 508 Standards.[69] Accordingly, the Section 508 Standards indicate that ''non-Web documents'' and ''non-Web software,'' which include conventional electronic documents and mobile apps, do not have to comply with the following WCAG 2.0 Success Criteria: 2.4.1 Bypass Blocks, 2.4.5 Multiple Ways, 3.2.3 Consistent Navigation, and 3.2.4 Consistent Identification.[70] W3C has provided guidance on how these and other WCAG success criteria can be applied to non-web information and communications technologies, including conventional electronic documents and mobile apps.[71]

The Department understands that some WCAG 2.1 Level AA success criteria may not apply to conventional electronic documents and mobile apps directly as written, but the Department declines to set forth exceptions to these success criteria in subpart H of this part. As discussed, the Department believes it is important to apply one consistent standard to web content and mobile apps to ensure clarity and reduce confusion. Public entities generally must ensure that the web content and content in mobile apps they provide or make available conform to the WCAG 2.1 Level AA success criteria, to the extent those criteria can be applied. In determining how to make conventional electronic documents and mobile apps conform to WCAG 2.1 Level AA, public entities may wish to consult W3C's guidance on non-web information and communications technology, which explains how the WCAG success criteria can be applied to conventional electronic documents and mobile apps.[72] The Department believes the compliance dates discussed in § 35.200 will provide public entities sufficient time to understand how WCAG 2.1 Level AA applies to their conventional electronic documents and mobile apps, especially because WCAG 2.1 has been in final form since 2018, which has provided time for familiarity and resources to develop. Further, the Department will continue to monitor developments in the accessibility of conventional electronic documents and mobile apps and may issue further guidance as appropriate.

Alternative Approaches Considered for PDF Files and Digital Textbooks

The Department also received a comment suggesting that subpart H of this part reference PDF/UA–1 for standards related to PDF files or W3C's EPUB Accessibility 1.1 standard [73] for digital textbooks. The Department declines to adopt additional technical standards for these specific types of content. As discussed, the WCAG standards were designed to be ''technology neutral'' [74] and are designed to be broadly applicable to current and future web technologies.[75] The Department is concerned that adopting multiple technical standards related to different types of web content and content in mobile apps could lead to confusion. However, the Department notes that subpart H allows for equivalent facilitation in § 35.203, meaning that public entities could still choose to comply with additional standards or guidance related to PDFs or digital textbooks to the extent that the standard or technique used provides substantially equivalent or greater accessibility and usability.

In summary, the Department believes that adopting WCAG 2.1 Level AA as the technical standard strikes the appropriate balance of ensuring access for individuals with disabilities and feasibility of implementation because there is a baseline of familiarity with the standard. In addition, for the reasons discussed previously in this appendix, the Department believes that WCAG 2.1 Level AA is an effective standard that sets forth clear, testable success criteria that will provide important benefits to individuals with disabilities.

WCAG Conformance Level

For web content and mobile apps to conform to WCAG 2.1, they must satisfy the success criteria under one of three levels of conformance: A, AA, or AAA. As previously mentioned, the Department is adopting Level AA as the conformance level under subpart H of this part. In the regulatory text at § 35.200(b)(1) and (2), the Department provides that public entities must comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1. As noted in the NPRM,[76] WCAG 2.1 provides that for Level AA conformance, the web page must satisfy all the Level A and Level AA Success Criteria.[77] However, individual success criteria in WCAG 2.1 are labeled only as Level A or Level AA. Therefore, a person reviewing individual requirements in WCAG 2.1 may not understand that both Level A and Level AA success criteria must be met to attain Level AA conformance. Accordingly, the Department has made explicit in subpart H that both Level A and Level AA success

[67] *See* 36 CFR 1194.1; 36 CFR part 1194, appendix C, ch. 5.

[68] W3C, *Web Content Accessibility Guidelines (WCAG) 2.1* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* and *https://perma.cc/UB8A-GG2F* (success criteria 2.5.5, 1.3.4, & 2.5.4).

[69] *See Information and Communication Technology (ICT) Standards and Guidelines,* 82 FR 5790, 5798–99 (Jan. 18, 2017).

[70] *Id.* at 5799.

[71] W3C, *WCAG2ICT Overview, https://www.w3.org/WAI/standards-guidelines/wcag/non-web-ict/* [*https://perma.cc/XRL6-6Q9Y*] (Feb. 2, 2024).

[72] *See* W3C, *Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT)* (Sep. 5, 2003), *https://www.w3.org/TR/wcag2ict/* [*https://perma.cc/6HKS-8YZP*]. This guidance may provide assistance in interpreting certain WCAG 2.0 success criteria (also included in WCAG 2.1 Level AA) that do not appear to be directly applicable to non-web information and communications like conventional electronic documents and mobile apps as written, but that can be made applicable with minor revisions. For example, for Success Criterion 1.4.2 (audio control), replacing the words ''on a web page'' with ''in a non-web document or software'' can make this Success Criterion clearly applicable to conventional electronic documents and mobile apps.

[73] W3C, *EPUB Accessibility 1.1* (May 25, 2023), *https://www.w3.org/TR/epub-a11y-11/* [*https://perma.cc/48A5-NC2B*].

[74] W3C, *Introduction to Understanding WCAG* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Understanding/intro* [*https://perma.cc/XB3Y-QKVU*].

[75] *See* W3C, *Understanding Techniques for WCAG Success Criteria* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Understanding/understanding-techniques* [*https://perma.cc/AMT4-XAAL*].

[76] 88 FR 51961.

[77] W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, § 5.2 Conformance Requirements* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#conformance-reqs* [*https://perma.cc/39WD-CHH9*]. WCAG 2.1 also allows a Level AA conforming alternate version to be provided instead. The Department has adopted a slightly different approach to conforming alternate versions, which is discussed in the section-by-section analysis of § 35.202.

criteria and conformance requirements must be met in order to comply with subpart H's requirements.

By way of background, the three levels of conformance indicate a measure of accessibility and feasibility. Level A, which is the minimum level of accessibility, contains criteria that provide basic web accessibility and are the least difficult to achieve for web developers.[78] Level AA, which is the intermediate level of accessibility, includes all of the Level A criteria and also contains other criteria that provide more comprehensive web accessibility, and yet are still achievable for most web developers.[79] Level AAA, which is the highest level of conformance, includes all of the Level A and Level AA criteria and also contains additional criteria that can provide a more enriched user experience, but are the most difficult to achieve for web developers.[80] W3C does not recommend that Level AAA conformance be required as a general policy for entire websites because it is not possible to satisfy all Level AAA criteria for some content.[81]

Based on public feedback and independent research, the Department believes that WCAG 2.1 Level AA is the appropriate conformance level because it includes criteria that provide web and mobile app accessibility to individuals with disabilities—including those with visual, auditory, physical, speech, cognitive, and neurological disabilities—and yet is feasible for public entities' web developers to implement. Commenters who spoke to this issue generally seemed supportive of this approach. As discussed in the NPRM,[82] Level AA conformance is widely used, making it more likely that web developers are already familiar with its requirements. Though many of the entities that conform to Level AA do so under WCAG 2.0, not WCAG 2.1, this still suggests a widespread familiarity with most of the Level AA success criteria, given that 38 of the 50 Level A and AA success criteria in WCAG 2.1 are also included in WCAG 2.0.[83] The Department believes that Level A conformance alone is not appropriate because it does not include criteria for providing web accessibility that the Department understands are critical, such as a minimum level of color contrast so that items like text boxes or icons are easier to see, which is important for individuals with vision disabilities.

Some commenters suggested that certain Level AAA criteria or other unique accessibility requirements be added to the technical standard in subpart H of this part. However, the Department believes it would be confusing and difficult to implement certain Level AAA or other unique criteria when such criteria are not required under WCAG 2.1 Level AA. Adopting WCAG 2.1 Level AA as a whole provides greater predictability and reliability. Also, while Level AAA conformance provides a richer user experience, it is the most difficult to achieve for many entities. Again, W3C does not recommend that Level AAA conformance be required as a general policy for entire websites because it is not possible to satisfy all Level AAA criteria for some content.[84] Adopting a Level AA conformance level makes the requirements of subpart H consistent with a standard that has been accepted internationally.[85] The web content of Federal agencies is also required to conform to WCAG 2.0 Level AA under the Section 508 Standards.[86]

Therefore, the Department believes that adopting the Level AA conformance level strikes the right balance between accessibility for individuals with disabilities and achievability for public entities.

Requirements by Entity Size

In addition to setting forth a technical standard with which public entities must comply, § 35.200(b) also establishes dates by which a public entity must comply. The compliance time frames set forth in § 35.200(b) are generally delineated by the total population of the public entity, as defined in § 35.104. Larger public entities—those with populations of 50,000 or more—will have two years before compliance is first required. For the reasons discussed in the section-by-section analysis of § 35.200(b)(2), small public entities—those with total populations under 50,000—and special district governments will have an additional year, totaling three years, before compliance is first required. The 50,000 population threshold was chosen because it corresponds with the definition of ''small governmental jurisdictions'' as defined in the Regulatory Flexibility Act.[87] After the compliance date, ongoing compliance with subpart H of this part is required.

Commenters expressed a wide range of views about how long public entities should be given to bring their web content and mobile apps into compliance with subpart H of this part. Some commenters expressed concern that public entities would need more time to comply, while others expressed concern that a delayed compliance date would prolong the exclusion of individuals with disabilities from public entities' online services, programs, or activities. Suggestions for the appropriate compliance time frame ranged from six months to six years. There were also some commenters who suggested a phased approach where a public entity would need to periodically meet certain compliance milestones over time by prioritizing certain types of content or implementing certain aspects of the technical standard. Refer to the section of the section-by-section analysis entitled ''Compliance Time Frame Alternatives'' for further discussion of these suggested approaches.

The Department appreciates the various considerations raised by public stakeholders in their comments. After carefully weighing the arguments that the compliance dates should be kept the same, shortened, lengthened, or designed to phase in certain success criteria or focus on certain content, the Department has decided that the compliance dates in subpart H of this part—two years for large public entities and three years for small public entities and special district governments—strike the appropriate balance between the various interests at stake. Shortening the compliance dates would likely result in increased costs and practical difficulties for public entities, especially small public entities. Lengthening the compliance dates would prolong the exclusion of many individuals with disabilities from public entities' web content and mobile apps. The Department believes that the balance struck in the compliance time frame proposed in the NPRM was appropriate, and that there are no overriding reasons to shorten or lengthen these dates given the important and competing considerations involved by stakeholders.

Some commenters said that the Department should not require compliance with technical standards for mobile apps until at least two years after the compliance deadline for web content. These commenters asserted that having different compliance dates for web content and mobile apps would allow entities to learn how to apply accessibility techniques to their web content and then apply that experience to mobile apps. Other commenters argued that the compliance dates for mobile apps should be shortened or kept as proposed.

The Department has considered these comments and subpart H of this part implements the same compliance dates for mobile apps and web content, as proposed in the NPRM. Because users can often access the same information from both web content and mobile apps, it is important that both platforms are subject to the standard at the same times to ensure consistency in accessibility and to reduce confusion. The Department believes these compliance dates strike the appropriate balance between reducing burdens for public entities and ensuring accessibility for individuals with disabilities.

Some commenters stated that it would be helpful to clarify whether subpart H of this part establishes a one-time compliance requirement or instead establishes an ongoing compliance obligation for public entities. The Department wishes to clarify that under subpart H, public entities have an ongoing obligation to ensure that their web content and mobile apps comply with subpart H's requirements, which would include content that is newly added or

[78] W3C, *Web Content Accessibility Guidelines (WCAG) 2 Level A Conformance* (July 13, 2020), *https://www.w3.org/WAI/WCAG2A-Conformance* [*https://perma.cc/KT74-JNHG*].

[79] *Id.*

[80] *Id.*

[81] *See* W3C, *Understanding Conformance, Understanding Requirement 1, https://www.w3.org/WAI/WCAG21/Understanding/conformance* [*https://perma.cc/K94N-Z3TF*].

[82] 88 FR 51961.

[83] W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, 0.5 Comparison with WCAG 2.0* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#comparison-with-wcag-2-0* [*https://perma.cc/H76F-6L27*].

[84] *See* W3C, *Understanding Conformance, Understanding Requirement 1, https://www.w3.org/WAI/WCAG21/Understanding/conformance* [*https://perma.cc/9ZG9-G5N8*].

[85] *See* W3C, *Web Accessibility Laws & Policies, https://www.w3.org/WAI/policies/* [*https://perma.cc/6SU3-3VR3*] (Dec. 4, 2023).

[86] *See Information and Communication Technology (ICT) Standards and Guidelines,* 82 FR 5790, 5791 (Jan. 18, 2017).

[87] 5 U.S.C. 601(5).

created after the compliance date. The compliance date is the first time that public entities need to be in compliance with subpart H's requirements; it is not the last. Accordingly, after the compliance date, public entities will continue to need to ensure that all web content and mobile apps they provide or make available comply with the technical standard, except to the extent another provision of subpart H permits otherwise. To make this point more clearly, the Department revised § 35.200(b)(1) and (2) to state that a public entity needs to comply with subpart H beginning two or three years after the publication of the final rule. Additionally, some commenters suggested that public entities be required to review their content for accessibility every few years. The Department does not view this as necessary given the ongoing nature of subpart H's requirements. However, public entities might find that conducting such reviews is helpful in ensuring compliance.

Of course, while public entities must begin complying with subpart H of this part on the applicable compliance date, the Department expects that public entities will need to prepare for compliance during the two or three years before the compliance date. In addition, commenters emphasized—and the Department agrees—that public entities still have an obligation to meet all of title II's existing requirements both before and after the date they must initially come into compliance with subpart H. These include the requirements to ensure equal access, ensure effective communication, and make reasonable modifications to avoid discrimination on the basis of disability.[88]

The requirements of § 35.200(b) are generally delineated by the size of the total population of the public entity. If a public entity has a population calculated by the United States Census Bureau in the most recent decennial Census, then the United States Census Bureau's population estimate for that entity in the most recent decennial Census is the entity's total population for purposes of this part. If a public entity is an independent school district, then the district's total population for purposes of this part is determined by reference to the district's population estimate as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates.

The Department recognizes that some public entities, like libraries or public colleges and universities, do not have population data associated with them in the most recent decennial Census conducted by the United States Census Bureau. As noted in the section-by-section analysis of § 35.104, the Department has inserted a clarification that was previously found in the preamble of the NPRM into the regulatory text of the definition of ''total population'' in this part to make it easier for public entities like these to determine their total population size for purposes of identifying the applicable compliance date. As the definition of ''total population'' makes clear, if a public entity, other than a special district government or an independent school district, does not have a population calculated by the United States Census Bureau in the most recent decennial Census, but is an instrumentality or a commuter authority of one or more State or local governments that do have such a population estimate, the population of the entity is determined by the combined population of any State or local governments of which the public entity is an instrumentality or commuter authority. For example, a county police department that is an instrumentality of a county with a population of 5,000 would be considered a small public entity (*i.e.,* an entity with a total population of less than 50,000) for purposes of this part, while a city police department that is an instrumentality of a city with a population of 200,000 would not be considered a small public entity. Similarly, if a public entity is an instrumentality of an independent school district, the instrumentality's population for purposes of this part is determined by reference to the total population of the independent school district as calculated in the most recent Small Area Income and Poverty Estimates. This part also states that the National Railroad Passenger Corporation's total population for purposes of this part is determined by reference to the population estimate for the United States as calculated by the United States Census Bureau in the most recent decennial Census.

For purposes of this part, the total population of a public entity is not defined by the population that is eligible for or that takes advantage of the specific services of the public entity. For example, an independent school district with a population of 60,000 adults and children, as calculated in the Small Area Income and Poverty Estimates, is not a small public entity regardless of the number of students enrolled or eligible for services. Similarly, individual county schools are also not considered small public entities if they are instrumentalities of a county that has a population over 50,000. Though a specific county school may create and maintain web content or a mobile app, the Department expects that the specific school may benefit from the resources made available or allocated by the county. This also allows the jurisdiction to assess compliance for its services, programs, and activities holistically. As another example, a public State university located in a town of 20,000 within a State with a population of 5 million would be considered a large public entity for the purposes of this part because it is an instrumentality of the State. However, a county community college in the same State where the county has a population of 35,000 would be considered a small public entity for the purposes of this part, because the community college is an instrumentality of the county.

Some commenters provided feedback on this method of calculating a public entity's size for purposes of determining the applicable compliance time frame. Some public educational entities seemed to mistakenly believe that their populations would be calculated based on the size of their student bodies and suggested that it would be difficult for them to calculate their population size under that approach because they have multiple campuses in different locations. As clarified previously in this appendix, population size for educational entities is determined not by the size of those entities' student bodies, but rather by reference to the Census-calculated total population of the jurisdiction of which the educational entity is an instrumentality.

Other commenters suggested that although public entities without a Census-defined population may be instrumentalities of public entities that do have such a population, those entities do not always reliably receive funding from the public entities of which they are instrumentalities. The Department understands that the financial relationships between these entities may vary, but the Department believes that the method of calculating population it has adopted will generally be the clearest and most effective way for public entities to determine the applicable compliance time frame.

Some commenters associated with educational entities suggested that the Department use the Carnegie classification system for purposes of determining when they must first comply with subpart H of this part. The Carnegie classification system takes into account factors that are not relevant to subpart H, such as the nature of the degrees offered (*e.g.,* baccalaureate versus associate's degrees).[89] Subpart H treats educational entities the same as other public entities for purposes of determining the applicable compliance time frame, which promotes consistency and reliability.

Other commenters suggested that factors such as number of employees, budget, number and type of services provided, and web presence be used to determine the appropriate compliance time frame. However, the Department believes that using population as determined by the Census Bureau is the clearest, most predictable, and most reliable factor for determining the compliance time frame. At least one commenter highlighted that population size often relates to the audience of people with disabilities that a public entity serves through its web content and mobile apps. In addition, the Regulatory Flexibility Act uses population size to define what types of governmental jurisdictions qualify as ''small.'' [90] This concept, therefore, should be familiar to public entities. Additionally, using population allows the Department to account for the unique challenges faced by small public entities, as discussed in the section-by-section analysis of § 35.200(b)(2).

The Department also received comments asserting that the threshold for being considered ''small'' should be changed and that the Department should create varying compliance dates based on additional gradations of public entity size. The Department believes it is most appropriate to rely on the 50,000 threshold—which is

[88] Sections 35.130(b)(1)(ii) and (b)(7) and 35.160.

[89] *See* Am. Council on Educ., *Carnegie Classification of Institutions of Higher Education, https://carnegieclassifications.acenet.edu/* [*https://perma.cc/Q9JZ-GQN3*]; Am. Council on Educ., *About the Carnegie Classification, https://carnegieclassifications.acenet.edu/carnegie-classification/* [*https://perma.cc/B6BH-68WM*].

[90] 5 U.S.C. 601(5).

drawn from and consistent with the Regulatory Flexibility Act—to promote consistency and predictability for public entities. Creating additional categories and compliance time frames would likely result in an unnecessary patchwork of obligations that would make it more difficult for public entities to understand their compliance obligations and for individuals with disabilities to understand their rights. The approach in subpart H of this part preserves the balance between public entities' needs to prepare for costs and individuals with disabilities' needs to access online services, programs, and activities. In addition, breaking down the size categories for compliance dates further could lead to an arbitrary selection of the appropriate size cutoff. The Department selected the size cutoff of 50,000 persons in part because the Regulatory Flexibility Act defines ''small governmental jurisdictions'' as those with a population of less than 50,000.[91] Selecting a different size cutoff would require estimating the appropriate size to use, and without further input from the public, it could lead to an arbitrary selection inconsistent with the needs of public entities. Because of this, the Department believes the most prudent approach is to retain the size categories that are consistent with those outlined in the Regulatory Flexibility Act. The Department also believes that retaining two categories of public entities—large and small—strikes the appropriate balance of acknowledging the compliance challenges that small public entities may face while not crafting a system that is unduly complex, unpredictable, or inconsistent across public entities.

Section 35.200(b)(1): Larger Public Entities

Section 35.200(b)(1) sets forth the web content and mobile app accessibility requirements for public entities with a total population of 50,000 or more. The requirements of § 35.200(b)(1) apply to larger public entities—specifically, to those public entities that do not qualify as ''small governmental jurisdictions'' as defined in the Regulatory Flexibility Act.[92] Section 35.200(b)(1) requires that beginning two years after the publication of the final rule, these public entities must ensure that the web content and mobile apps that they provide or make available[93] comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the entities can demonstrate that compliance would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.[94]

As discussed previously in this appendix, the Department received varied feedback from the public regarding an appropriate time frame for requiring public entities to begin complying with subpart H of this part. Individuals with disabilities and disability advocacy organizations tended to prefer a shorter time frame, often arguing that web accessibility has long been required by the ADA and that extending the deadline for compliance rewards entities that have not made efforts to make their websites accessible. Such commenters also emphasized that a longer compliance time frame would prolong the time that individuals with disabilities would not have access to critical services offered by public entities, which would undermine the purpose of the ADA. Commenters noted that delays in compliance may be particularly problematic in contexts such as voting and education, where delays could be particularly impactful given the time-sensitive nature of these programs. Another commenter who supported shorter time frames pointed out that the Department has entered into settlements with public entities requiring that their websites be made accessible in shorter amounts of time, such as a few months.[95] The Department notes that while such settlement agreements serve as important datapoints, those agreements are tailored to the specific situation and entity involved and are not broadly applicable like a regulation.

State and local government entities have been particularly concerned—now and in the past—about shorter compliance deadlines, often citing budgets and staffing as major limitations. For example, as noted in the NPRM, when WCAG 2.0 was relatively new, many public entities stated that they lacked qualified personnel to implement that standard. They told the Department that in addition to needing time to implement the changes to their websites, they also needed time to train staff or contract with professionals who are proficient in developing accessible websites. Considering all these factors, as well as the fact that over a decade has passed since the Department started receiving such feedback and there is now more available technology to make web content and mobile apps accessible, the Department believes a two-year compliance time frame for public entities with a total population of 50,000 or more is appropriate.

Public entities and the community of web developers have had more than a decade to familiarize themselves with WCAG 2.0, which was published in 2008 and serves as the foundation for WCAG 2.1, and more than five years to familiarize themselves with the additional 12 Level A and AA success criteria of WCAG 2.1.[96] The Department believes these 12 additional success criteria will not significantly increase the time or resources that it will take for a public entity to come into compliance with subpart H of this part beyond what would have already been required to conform to WCAG 2.0. The Department therefore believes that subpart H's approach balances the resource challenges reported by public entities with the interests of individuals with disabilities in accessing the multitude of services, programs, and activities that public entities now offer via the web and mobile apps.

Section 35.200(b)(2): Small Public Entities and Special District Governments

Section 35.200(b)(2) sets forth the web content and mobile app accessibility requirements for public entities with a total population of less than 50,000 and special district governments. As noted in the preceding section, the 50,000 population threshold was chosen because it corresponds with the definition of ''small governmental jurisdictions'' in the Regulatory Flexibility Act.[97] Section 35.200(b)(2) requires that beginning three years after the publication of the final rule, these public entities with a total population of less than 50,000 and special district governments must ensure that the web content and mobile apps that they provide or make available[98] comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the entities can demonstrate that compliance would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

Small Public Entities

The Department appreciates that small public entities may sometimes face unique challenges in making their web content and mobile apps accessible, given that small entities may have more limited or inflexible budgets than other entities. The Department is very sensitive to the need to craft a workable approach for small entities and has taken the needs of small public entities into account at every stage in the rulemaking process, consistent with the Regulatory Flexibility Act of 1980 and Executive Order 13272.[99] The NPRM asked a series of

[91] *See id.*

[92] *Id.*

[93] As the regulatory text for § 35.200(a)(1) and (2) and (b)(1) and (2) makes clear, subpart H of this part covers web content and mobile apps that a public entity provides or makes available, whether directly or through contractual, licensing, or other arrangements. This regulatory text is discussed in more detail in this section.

[94] The undue financial and administrative burdens limitation on a public entity's obligation to comply with the requirements of subpart H of this part is discussed in more detail in the section-by-section analysis of § 35.204.

[95] *See, e.g.,* Settlement Agreement Between the United States of America and the City of Cedar Rapids, Iowa Under the Americans with Disabilities Act (Sept. 1, 2015), *https://www.ada.gov/cedar_rapids_pca/cedar_rapids_sa.html* [*https://perma.cc/Z338-B2BU*]; Settlement Agreement Between the United States of America and the City of Fort Morgan, Colo. Under the Americans with Disabilities Act (Aug. 8, 2013), *https://www.ada.gov/fort-morgan-pca/fort-morgan-pca-sa.htm* [*https://perma.cc/JA3E-QYMS*]; Settlement Agreement Between the United States of America and the Town of Poestenkill, N.Y. Under the Americans with Disabilities Act (July 19, 2013), *https://www.ada.gov/poestenkill-pca/poestenkill-sa.html* [*https://perma.cc/DGD5-NNC6*].

[96] W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, 0.5 Comparison with WCAG 2.0* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#comparison-with-wcag-2-0* [*https://perma.cc/H76F-6L27*].

[97] 5 U.S.C. 601(5).

[98] As the regulatory text for § 35.200(a)(1) and (2) and (b)(1) and (2) makes clear, subpart H of this part covers web content and mobile apps that a public entity provides or makes available, whether directly or through contractual, licensing, or other arrangements. This regulatory text is discussed in more detail in this section.

[99] *See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations,* 75 FR 43460, 43467 (July 26, 2010); 88 FR 51949, 51961–51966.

questions about the impact of the rulemaking on small public entities, including about the compliance costs and challenges that small entities might face in conforming with the rulemaking, the current level of accessibility of small public entities' web content and mobile apps, and whether it would be appropriate to adopt different technical standards or compliance time frames for small public entities.[100]

The Department has reviewed public comments, including a comment from the Small Business Administration Office of Advocacy,[101] attended a virtual roundtable session hosted by the Small Business Administration at which approximately 200 members of the public were present, and carefully considered this topic. In light of its review and consideration, the Department believes that the most appropriate means of reducing burdens for small public entities is to give small public entities an extra year to comply with subpart H of this part. Accordingly, under § 35.200(b)(2), small public entities, like all other public entities, need to conform to WCAG 2.1 Level AA, but small public entities have three years, instead of the two years provided to larger public entities, to come into compliance. In addition, small public entities (like all public entities) can rely on the five exceptions set forth in § 35.201, in addition to the other mechanisms that are designed to make it feasible for all public entities to comply with subpart H of this part, as set forth in §§ 35.202, 35.203, 35.204 and 35.205.

Many commenters emphasized the challenges that small public entities may face in making their web content and mobile apps accessible. For example, some commenters reported that small public entities often have restricted, inflexible budgets, and might need to divert funds away from other government services in order to comply with subpart H of this part. Some commenters also asserted that the Department underestimated the costs that might be associated with bringing small public entities' web content and mobile apps into compliance. Some commenters noted that small public entities may lack technical expertise and dedicated personnel to work on accessibility issues. Commenters asserted that some small entities' web-based operations are decentralized, and that these entities would therefore need to train a large number of individuals on accessibility to ensure compliance. Commenters also contended that many small public entities may be dependent on third-party vendors to make their content accessible, and that there may be shortages in the number of web developers available to assist with remediation. Some commenters expressed concern that small entities would simply remove their web content rather than make it accessible. Commenters also expressed concern that public entities would need to devote scarce resources to defending against web accessibility lawsuits that might arise as a result of subpart H, which might further exacerbate these entities' budgetary challenges. The Department notes that public entities would not be required to undertake changes that would result in a fundamental alteration in the nature of a service, program, or activity, or impose undue financial and administrative burdens.

As a result of these concerns, some commenters suggested that the Department should create different or more flexible standards for small entities. For example, some commenters suggested that the Department should require small entities to conform to WCAG 2.0 instead of WCAG 2.1, to match the standards that are applicable to the Federal Government under section 508. One commenter suggested that the Department should require small public entities to comply only with WCAG 2.0 Level A, not Level AA. Other commenters advocating for small public entities suggested that those entities should have more time than larger public entities to comply with subpart H of this part, with suggested compliance time frames ranging from three to six years. Some commenters suggested the Department should adopt extended compliance dates for certain requirements of subpart H that may be more onerous. Commenters noted that having additional time to comply would help public entities allocate financial and personnel resources to bring their websites into compliance. A commenter stated that additional compliance time would also allow more web developers to become familiar with accessibility issues and more digital accessibility consultants to emerge, thereby lowering the cost of testing and consulting services. A commenter noted that some rural public entities may need extra time to bring their content into compliance but asserted that the Department should avoid adopting a compliance date so distant that it does not provide sufficient urgency to motivate those entities to address the issue.

Although many commenters expressed concerns about the impact of subpart H of this part on small public entities, many other commenters expressed opposition to creating different standards or compliance time frames for small entities. Commenters emphasized that people in rural areas might need to travel long distances to access in-person services and that such areas may lack public transportation or rideshare services. Given those considerations, commenters suggested that people with disabilities in small jurisdictions need access to web-based local government services just as much as, and sometimes more than, their counterparts in larger jurisdictions. Some commenters noted that people with disabilities may disproportionately reside in small towns or rural areas, and that it is therefore especially critical for those small and rural governments to have accessible web content and mobile apps. One commenter indicated that rural residents are 14.7 percent more likely than their urban counterparts to have a disability.[102] Commenters emphasized the problems that may be associated with imposing different technical standards based on the size of the entity, including a lack of predictability with respect to which government services people can expect to be accessible. Commenters also noted that people with disabilities have a right to equal access to their government's services, regardless of where they live, and stated that setting different standards for small public entities would undermine that right. One commenter stated that, although each small public entity may have only a small population, there are a large number of small public entities, meaning that any lowering of the standards for small public entities would cumulatively affect a large number of people. Some commenters argued that setting different substantive standards for small public entities could make it challenging to enforce subpart H. Some commenters argued that setting different technical standards for small public entities would be inconsistent with title II of the ADA, which does not set different standards based on the size of the entity. One commenter argued that requiring small public entities to comply only with Level A success criteria would be inadequate and inconsistent with international standards.

Commenters also noted that there are many factors that may make it easier for small public entities to comply. For example, some commenters suggested that small entities may have smaller or less complex websites than larger entities. Commenters noted that public entities may be able to make use of free, publicly available resources for checking accessibility and to save money by incorporating accessibility early in the process of content creation, instead of as an afterthought. Commenters also noted that public entities can avoid taking actions that are unduly burdensome by claiming the fundamental alteration or undue burdens limitations where appropriate.

One commenter argued that, because there are a limited number of third-party vendors that provide web content for public entities, a few major third-party vendors shifting towards accessibility as a result of increased demand stemming from subpart H of this part could have a cascading effect. This could make the content of many entities that use those vendors or their templates accessible by default. Commenters also noted that setting different technical standards for small public entities would create confusion for those attempting to implement needed accessibility changes. One commenter also contended that it may benefit small public entities to use a more recent version of WCAG because doing so may provide a better experience for all members of the public.

Some commenters pointed out that the challenges small public entities may face are not necessarily unique, and that many public entities, regardless of size, face budgetary constraints, staffing issues, and a need for training. In addition, some commenters noted that the size of a public entity may not

[100] 88 FR 51961–51966.

[101] A discussion of the comment from the Small Business Administration Office of Advocacy can also be found in the Final Regulatory Flexibility Analysis.

[102] *See* Katrina Crankshaw, U.S. Census Bureau, *Disability Rates Higher in Rural Areas than Urban Areas* (June 26, 2023), *https://www.census.gov/library/stories/2023/06/disability-rates-higher-in-rural-areas-than-urban-areas.html#:~:text=Examining%20disability%20rates%20across%20geography,ACS)%201%2Dyear%20estimates* [*https://perma.cc/NP5Y-CUJS*].

always be a good proxy for the number of people who may need access to an entity's website.

Having carefully considered these comments, the Department believes that subpart H of this part strikes the appropriate balance by requiring small public entities to comply with the same technical standard as larger public entities while giving small public entities additional time to do so. The Department believes this longer compliance time frame is prudent in recognition of the additional challenges that small public entities may face in complying, such as limited budgets, lack of technical expertise, and lack of personnel. The Department believes that providing an extra year for small public entities to comply will give those entities sufficient time to properly allocate their personnel and financial resources to make their web content and mobile apps conform to WCAG 2.1 Level AA, without providing so much additional time that individuals with disabilities have a reduced level of access to their State and local government entities' resources for an extended period.

The Department believes that having provided an additional year for small public entities to comply with subpart H of this part, it is appropriate to require those entities to comply with the same technical standard and conformance level as all other public entities. This approach ensures consistent levels of accessibility for public entities of all sizes in the long term, which will promote predictability and reduce confusion about which standard applies. It will allow for individuals with disabilities to know what they can expect when navigating a public entity's web content; for example, it will be helpful for individuals with disabilities to know that they can expect to be able to navigate any public entity's web content independently using their assistive technology. It also helps to ensure that individuals with disabilities who reside in rural areas have comparable access to their counterparts in urban areas, which is critical given the transportation and other barriers that people in rural areas may face.[103] In addition, for the reasons discussed elsewhere in this appendix, the Department believes that WCAG 2.1 Level AA contains success criteria that are critical to accessing services, programs, or activities of public entities, which may not be included under a lower standard. The Department notes that under appropriate circumstances, small public entities may also rely on the exceptions, flexibilities, and other mechanisms described in the section-by-section analysis of §§ 35.201, 35.202, 35.203, 35.204, and 35.205, which the Department believes should help make compliance feasible for those entities.

Some commenters suggested that the Department should provide additional exceptions or flexibilities to small public entities. For example, the Small Business Administration suggested that the Department explore developing a wholesale exception to subpart H of this part for certain small public entities. The Department does not believe that setting forth a wholesale exception for small public entities would be appropriate for the same reasons that it would not be appropriate to adopt a different technical standard for those entities. Such an exception would mean that an individual with a disability who lives in a small, rural area, might not have the same level of access to their local government's web-based services, programs, and activities as an individual with a disability in a larger, urban area. This would significantly undermine consistency and predictability in web accessibility. It would also be particularly problematic given the interconnected nature of many different websites. Furthermore, an exception for small public entities would reduce the benefits of subpart H of this part for those entities. The Department has heard from public entities seeking clarity about how to comply with their nondiscrimination obligations under title II of the ADA when offering services via the web. Promulgating an exception for small public entities from the technical standard described in subpart H would not only hinder access for individuals with disabilities but would also leave those entities with no clear standard for how to satisfy their existing obligations under the ADA and the title II regulation.

Other commenters made alternative suggestions, such as making WCAG 2.1 Level AA compliance recommended but not required. The Department does not believe this suggestion is workable or appropriate. As discussed in the section entitled, ''Inadequacy of Voluntary Compliance with Technical Standards,'' and as the last few decades have shown, the absence of a mandatory technical standard for web content and mobile apps has not resulted in widespread equal access for people with disabilities. For subpart H of this part to have a meaningful effect, the Department believes it must set forth specific requirements so that both individuals with disabilities and public entities have clarity and predictability in terms of what the law requires. The Department believes that creating a recommended, non-mandatory technical standard would not provide this clarity or predictability and would instead largely maintain the status quo.

Some commenters suggested that the Department should allow small public entities to avoid making their web content and mobile apps accessible by instead offering services to individuals with disabilities via the phone, providing an accessibility disclaimer or statement, or offering services to individuals with disabilities through other alternative methods that are not web-based. As discussed in the section entitled ''History of the Department's Title II Web-Related Interpretation and Guidance'' and in the NPRM,[104] given the way the modern web has developed, the Department no longer believes 24/7 staffed telephone lines can realistically provide equal opportunity to individuals with disabilities in the way that web content and content in mobile apps can. If a public entity provides services, programs, or activities to the public via the web or mobile apps, it generally needs to ensure that those services, programs, or activities are accessible. The Department also does not believe that requirement is met by a public entity merely providing an accessibility disclaimer or statement explaining how members of the public can request accessible web content or mobile apps. If none of a public entity's web content or mobile apps were to conform to the technical standard adopted in subpart H of this part, individuals with disabilities would need to request access each and every time they attempted to interact with the public entity's services, programs, or activities, which would not provide equal opportunity. Similarly, it would not provide equal opportunity to offer services, programs, or activities via the web or mobile apps to individuals without disabilities but require individuals with disabilities to rely exclusively on other methods to access those services.

Many commenters also asked the Department to provide additional resources and guidance to help small entities comply. The Small Business Administration Office of Advocacy also highlighted the need for the Department to produce a small entity compliance guide.[105] The Department plans to issue the required small entity compliance guide. The Department is also issuing a Final Regulatory Flexibility Analysis as part of this rulemaking, which explains the impact of subpart H of this part on small public entities. In addition, although the Department does not currently operate a grant program to assist public entities in complying with the ADA, the Department will consider offering additional technical assistance and guidance in the future to help entities better understand their obligations. The Department also operates a toll-free ADA Information Line at (800) 514–0301 (voice) or 1–833–610–1264 (TTY), which public entities can call to get technical assistance about the ADA, including information about subpart H.

Many commenters also expressed concern about the potential for an increase in litigation for small public entities as a result of subpart H of this part. Some commenters asked the Department to create a safe harbor or other flexibilities to protect small public entities from frivolous litigation. In part to address these concerns, subpart H includes a new section, at § 35.205, which states that a public entity that is not in full compliance with the requirements of § 35.200(b) will be deemed to have met the requirements of § 35.200 in the limited circumstance in which the public entity can demonstrate that the noncompliance has such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app in a substantially equivalent manner as individuals without disabilities. As discussed at more length in the section-by-section analysis of § 35.205, the Department

[103] *See, e.g.,* NORC Walsh Ctr. for Rural Health Analysis & Rural Health Info. Hub, *Access to Care for Rural People with Disabilities Toolkit* (Dec. 2016), *https://www.ruralhealthinfo.org/toolkits/disabilities.pdf* [*https://perma.cc/YX4E-QWEE*].

[104] 88 FR 51953.

[105] *See* Contract with America Advancement Act of 1996, Public Law 104–121, sec. 212, 110 Stat. 847, 858 (5 U.S.C. 601 note).

believes this provision will reduce the risk of litigation for public entities while ensuring that individuals with disabilities have substantially equivalent access to public entities' services, programs, and activities. Section 35.205 will allow public entities to avoid falling into noncompliance with § 35.200 if they are not exactly in conformance to WCAG 2.1 Level AA, but the nonconformance would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app with substantially equivalent timeliness, privacy, independence, and ease of use. The Department believes that this will afford more flexibility for all public entities, including small ones, while simultaneously ensuring access for individuals with disabilities.

One commenter asked the Department to state that public entities, including small ones, that are working towards conformance to WCAG 2.1 Level AA before the compliance dates are in compliance with the ADA and not engaging in unlawful discrimination. The Department notes that while the requirement to comply with the technical standard set forth in subpart H of this part is new, the underlying obligation to ensure that all services, programs, and activities, including those provided via the web and mobile apps, are accessible is not.[106] Title II currently requires public entities to, for example, provide equal opportunity to participate in or benefit from services, programs, or activities;[107] make reasonable modifications to policies, practices, or procedures;[108] and ensure that communications with people with disabilities are as effective as communications with others, which includes considerations of timeliness, privacy, and independence.[109] Accordingly, although public entities do not need to comply with subpart H until two or three years after the publication of the final rule, they will continue to have to take steps to ensure accessibility in the meantime, and will generally have to achieve compliance with the technical standard by the date specified in subpart H.

Some commenters asked the Department to provide additional flexibility for small public entities with respect to captioning requirements. A discussion of the approach to captioning in subpart H of this part can be found in the section entitled ''Captions for Live-Audio and Prerecorded Content.'' Some commenters also expressed that it would be helpful for small entities if the Department could provide additional guidance on how the undue burdens limitation operates in practice. Additional information on this issue can be found in the section-by-section analysis of § 35.204, entitled ''Duties.'' Some commenters asked the Department to add a notice-and-cure provision to subpart H to help protect small entities from liability. For the reasons discussed in the section-by-section analysis of § 35.205, entitled ''Effect of noncompliance that has a minimal impact on access,'' the Department does not believe this approach is appropriate.

Special District Governments

In addition to small public entities, § 35.200(b)(2) also covers public entities that are special district governments. As previously noted, special district governments are governments that are authorized to provide a single function or a limited number of functions, such as a zoning or transit authority. As discussed elsewhere in this appendix, § 35.200 proposes different compliance dates according to the size of the Census-defined population of the public entity, or, for public entities without Census-defined populations, the Census-defined population of any State or local governments of which the public entity is an instrumentality or commuter authority. The Department believes applying to special district governments the same compliance date as small public entities (*i.e.,* compliance in three years) is appropriate for two reasons. First, because the Census Bureau does not provide population estimates for special district governments, these limited-purpose public entities might find it difficult to obtain population estimates that are objective and reliable in order to determine their duties under subpart H of this part. Though some special district governments may estimate their total populations, these entities may use varying methodology to calculate population estimations, which may lead to confusion and inconsistency in the application of the compliance dates in § 35.200. Second, although special district governments may sometimes serve a large population, unlike counties, cities, or townships with large populations that provide a wide range of online government services and programs and often have large and varying budgets, special district governments are authorized to provide a single function or a limited number of functions (*e.g.,* to provide mosquito abatement or water and sewer services). They therefore may have more limited or specialized budgets. Therefore, § 35.200(b)(2) extends the deadline for compliance for special district governments to three years, as it does for small public entities.

The Department notes that some commenters opposed giving special district governments three years to comply with subpart H of this part. One commenter asserted that most special district governments are aware of the size of the regions they serve and would be able to determine whether they fall within the threshold for small entities. One commenter noted that some special district governments may serve larger populations and should therefore be treated like large public entities. Another commenter argued that a public entity that has sufficient administrative and fiscal autonomy to qualify as a separate government should have the means to comply with subpart H in a timely manner. However, as noted in the preceding paragraph, the Department is concerned that, because these special district governments do not have a population calculated by the Census Bureau and may not be instrumentalities of a public entity that does have a Census-calculated population, it is not clear that there is a straightforward way for these governments to calculate their precise population. The Department also understands that these governments have limited functions and may have particularly limited or constrained budgets in some cases. The Department therefore continues to believe it is appropriate to give these governments three years to comply.

Compliance Time Frame Alternatives

In addition to asking that the compliance time frames be lengthened or shortened, commenters also suggested a variety of other alternatives and models regarding how § 35.200's compliance time frames could be structured. Commenters proposed that existing content be treated differently than new content by, for example, requiring that new content be made accessible first and setting delayed or deferred compliance time frames for existing content. Other commenters suggested that the Department use a ''runway'' or ''phase in'' model. Under this model, commenters suggested, the Department could require conformance to some WCAG success criteria sooner than others. Commenters also suggested a phase-in model where public entities would be required to prioritize certain types of content, such as making all frequently used content conform to WCAG 2.1 Level AA first.

Because § 35.200 gives public entities two or three years to come into compliance depending on entity size, public entities have the flexibility to structure their compliance efforts in the manner that works best for them. This means that if public entities want to prioritize certain success criteria or content during the two or three years before the compliance date—while still complying with their existing obligations under title II—they have the flexibility to do so. The Department believes that this flexibility appropriately acknowledges that different public entities might have unique needs based on the type of content they provide, users that they serve, and resources that they have or procure. The Department, therefore, is not specifying certain criteria or types of content that should be prioritized. Public entities have the flexibility to determine how to make sure they comply with § 35.200 in the two- or three-year period before which compliance with § 35.200 is first required. After the compliance date, ongoing compliance is required.

In addition, the Department believes that requiring only new content to be accessible or using another method for prioritization could lead to a significant accessibility gap for individuals with disabilities if public entities rely on content that is not regularly updated or changed. The Department notes that unless otherwise covered by an exception, subpart H of this part requires that new and existing content be made accessible within the meaning of § 35.200 after the date initial compliance is required. Because some exceptions in § 35.201 only apply to preexisting content, the Department believes it is likely that public entities' own newly created or added content will largely need to comply with § 35.200 because such content may not qualify for exceptions. For more information about how the exceptions under

[106] *See, e.g.,* §§ 35.130 and 35.160.

[107] Sections 35.130(b)(1)(ii) and 35.160(b)(1).

[108] Section 35.130(b)(7)(i).

[109] Section 35.160.

§ 35.201 function and how they will likely apply to existing and new content, please review the analysis of § 35.201 in this section-by-section analysis.

Commenters also suggested that public entities be required to create transition plans like those discussed in the existing title II regulation at §§ 35.105 and 35.150(d). The Department does not believe it is appropriate to require transition plans as part of subpart H of this part for several reasons. Public entities are already required to ensure that their services, programs, and activities, including those provided via the web or mobile apps, meet the requirements of the ADA. The Department expects that many entities already engage in accessibility planning and self-evaluation to ensure compliance with title II. By not being prescriptive about the type of planning required, the Department will allow public entities flexibility to build on existing systems and processes or develop new ones in ways that work for each entity. Moreover, the Department has not adopted new self-evaluation and transition plan requirements in other sections in this part in which it adopted additional technical requirements, such as in the 2010 ADA Standards for Accessible Design.[110] Finally, the Department believes that public entities' resources may be better spent making their web content and mobile apps accessible under § 35.200, instead of drafting required self-evaluation and transition plans. The Department notes that public entities can still engage in self-evaluation and create transition plans, and would likely find it helpful, but they are not required to do so under § 35.200.

Fundamental Alteration or Undue Financial and Administrative Burdens

As discussed at greater length in the section-by-section analysis of § 35.204, subpart H of this part provides that where a public entity can demonstrate that compliance with the requirements of § 35.200 would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, compliance with § 35.200 is only required to the extent that it does not result in a fundamental alteration or undue financial and administrative burdens. For example, where it would impose undue financial and administrative burdens to conform to WCAG 2.1 Level AA (or part of WCAG 2.1 Level AA), public entities would not be required to remove their web content and mobile apps, forfeit their web presence, or otherwise undertake changes that would be unduly financially and administratively burdensome. These limitations on a public entity's duty to comply with the regulatory provisions in subpart H of this part mirror the fundamental alteration or undue burdens limitations currently provided in the title II regulation in §§ 35.150(a)(3) (existing facilities) and 35.164 (effective communication) and the fundamental alteration limitation currently provided in the title II regulation in § 35.130(b)(7) (reasonable modifications in policies, practices, or procedures).

If a public entity believes that a proposed action would fundamentally alter a service, program, or activity or would result in undue financial and administrative burdens, the public entity has the burden of proving that compliance would result in such an alteration or such burdens. The decision that compliance would result in such an alteration or such burdens must be made by the head of the public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. As set forth in § 35.200(b)(1) and (2), if an action required to comply with the accessibility standard in subpart H of this part would result in such an alteration or such burdens, a public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity. Section 35.204, entitled ''Duties,'' lays out the circumstances in which an alteration or such burdens can be claimed. For more information, see the discussion regarding limitations on obligations in the section-by-section analysis of § 35.204.

Requirements for Selected Types of Content

In the NPRM, the Department asked questions about the standards that should apply to two particular types of content: social media platforms and captions for live-audio content.[111] In this section, the Department includes information about the standards that subpart H of this part applies to these types of content and responds to the comments received on these topics.

Public Entities' Use of Social Media Platforms

Public entities are increasingly using social media platforms to provide information and communicate with the public about their services, programs, or activities in lieu of or in addition to engaging the public on the public entities' own websites. Consistent with the NPRM, the Department is using the term ''social media platforms'' to refer to websites or mobile apps of third parties whose primary purpose is to enable users to create and share content in order to participate in social networking (*i.e.,* the creation and maintenance of personal and business relationships online through websites and mobile apps like Facebook, Instagram, X (formerly Twitter), and LinkedIn).

Subpart H of this part requires that web content and mobile apps that public entities provide or make available, directly or through contractual, licensing, or other arrangements, be made accessible within the meaning of § 35.200. This requirement applies regardless of whether that content is located on the public entity's own website or mobile app or elsewhere on the web or in mobile apps. The requirement therefore covers web content or content in a mobile app that a public entity makes available via a social media platform. With respect to social media posts that are posted before the compliance date, however, the Department has decided to add an exception, which is explained more in the section-by-section analysis of § 35.201(e), ''Preexisting Social Media Posts''.

Many social media platforms that are widely used by members of the public are available to members of the public separate and apart from any arrangements with public entities to provide a service, program, or activity. As a result, subpart H of this part does not require public entities to ensure that such platforms themselves conform to WCAG 2.1 Level AA. However, because the posts that public entities disseminate through those platforms are provided or made available by the public entities, the posts generally must conform to WCAG 2.1 Level AA. The Department understands that social media platforms often make available certain accessibility features like the ability to add captions or alt text. It is the public entity's responsibility to use these features when it makes web content available on social media platforms.[112] For example, if a public entity posts an image to a social media platform that allows users to include alt text, the public entity needs to ensure that appropriate alt text accompanies that image so that screen-reader users can access the information.

The Department received many comments explaining the importance of social media to accessing public entities' services, programs, or activities. Both public entities and disability advocates shared many examples of public entities using social media to transmit time-sensitive and emergency information, among other information, to the public. The vast majority of these commenters supported covering social media posts in subpart H of this part. Commenters specifically pointed to examples of communications designed to help the public understand what actions to take during and after public emergencies, and commenters noted that these types of communications need to be accessible to individuals with disabilities. Commenters from public entities and trade groups representing public accommodations opposed the coverage of social media posts in subpart H, arguing that social media is more like advertising. These commenters also said it is difficult to make social media content accessible because the platforms sometimes do not enable accessibility features.

The Department agrees with the many commenters who opined that social media posts should be covered by subpart H of this part. The Department believes public entities should not be relieved from their duty under subpart H to provide accessible content to the public simply because that content is being provided through a social media platform. The Department was particularly persuaded by the many examples that commenters shared of emergency and time-sensitive communications that public entities share

[110] Section 35.151.

[111] 88 FR 51958, 51962–51963, 51965–51966.

[112] *See* U.S. Gen. Servs. Admin., *Federal Social Media Accessibility Toolkit Hackpad, https://digital.gov/resources/federal-social-media-accessibility-toolkit-hackpad/* [*https://perma.cc/DJ8X-UCHA*] (last visited Mar. 13, 2024).

through social media platforms, including emergency information about toxic spills and wildfire smoke, for example. The Department believes that this information must also be accessible to individuals with disabilities. The fact that public entities use social media platforms to disseminate this type of crucial information also belies any analogy to advertising. And even to the extent that information does not rise to the level of an emergency, if an entity believes information is worth posting on social media for members of the public without disabilities, it is no less important for that information to reach members of the public with disabilities. Therefore, the entity cannot deny individuals with disabilities equal access to that content, even if it is not about an emergency.

The Department received several comments explaining that social media platforms sometimes have limited accessibility features, which can be out of public entities' control. Some of these commenters suggested that the Department should prohibit or otherwise limit a public entity's use of inaccessible social media platforms when the public entity cannot ensure accessibility of the platform. Other commenters shared that even where there are accessibility features available, public entities frequently do not use them. The most common example of this issue was public entities failing to use alt text, and some commenters also shared that public entities frequently use inaccessible links. Several commenters also suggested that the Department should provide that where the same information is available on a public entity's own accessible website, public entities should be considered in compliance with this part even if their content on social media platforms cannot be made entirely accessible.

The Department declines to modify subpart H of this part in response to these commenters, because the Department believes the framework in subpart H balances the appropriate considerations to ensure equal access to public entities' postings to social media. Public entities must use available accessibility features on social media platforms to ensure that their social media posts comply with subpart H. However, where public entities do not provide social media platforms as part of their services, programs, or activities, they do not need to ensure the accessibility of the platform as a whole. Finally, the Department is declining to adopt the alternative suggested by some commenters that where the same information is available on a public entity's own accessible website, the public entity should be considered in compliance with subpart H. The Department heard concerns from many commenters about allowing alternative accessible versions when the original content itself can be made accessible. Disability advocates and individuals with disabilities shared that this approach has historically resulted in inconsistent and dated information on the accessible version and that this approach also creates unnecessary segregation between the content available for individuals with disabilities and the original content. The Department agrees with these concerns and therefore declines to adopt this approach. Social media posts enable effective outreach from public entities to the public, and in some cases social media posts may reach many more people than a public entity's own website. The Department sees no acceptable reason why individuals with disabilities should be excluded from this outreach.

The Department received a few other comments related to social media, suggesting for example that the Department adopt guidance on making social media accessible instead of covering social media in subpart H of this part, and suggesting that the Department require inclusion of a disclaimer with contact information on social media platforms so that the public can notify a public entity about inaccessible content. The Department believes that these proposals would be difficult to implement in a way that would ensure content is proactively made accessible, rather than reactively corrected after it is discovered to be inaccessible, and thus the Department declines to adopt these proposals.

Captions for Live-Audio and Prerecorded Content

WCAG 2.1 Level AA Success Criterion 1.2.4 requires captions for live-audio content in synchronized media.[113] The intent of this success criterion is to ''enable people who are deaf or hard of hearing to watch *real-time* presentations. Captions provide the part of the content available via the audio track. Captions not only include dialogue, but also identify who is speaking and notate sound effects and other significant audio.'' [114] Modern live captioning often can be created with the assistance of technology, such as by assigning captioners through Zoom or other conferencing software, which integrates captioning with live meetings.

As proposed in the NPRM,[115] subpart H of this part applies the same compliance dates (determined primarily by size of public entity) to all of the WCAG 2.1 Level AA success criteria, including live-audio captioning requirements. As stated in § 35.200(b), this provides three years after publication of the final rule for small public entities and special district governments to comply, and two years for large public entities. Subpart H takes this approach for several reasons. First, the Department understands that live-audio captioning technology has developed in recent years and continues to develop. In addition, the COVID–19 pandemic moved a significant number of formerly in-person meetings, activities, and other gatherings to online settings, many of which incorporated live-audio captioning. As a result of these developments, live-audio captioning has become even more critical for individuals with certain types of disabilities to participate fully in civic life. Further, the Department believes that requiring conformance to all success criteria by the same date (according to entity size) will address the need for both clarity for public entities and predictability for individuals with disabilities. As with any other success criterion, public entities would not be required to satisfy Success Criterion 1.2.4 if they can demonstrate that doing so would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

The Department solicited comments to inform this approach, seeking input on the proposed compliance timeline, the type of live-audio content that entities make available through the web or mobile apps, and the cost of providing captioning for live-audio content for entities of all sizes.[116] Commenters expressed strong support for requiring captions as a general matter, noting that they benefit people with a variety of disabilities, including those who are deaf, deafblind, or neurodivergent, or have auditory processing disabilities. No commenters argued for an outright exception to the captioning requirement. The vast majority of commenters who responded to these questions, including disability advocates, public entities, and accessible technology industry members, agreed with the Department's proposal to require compliance with requirements for captioning live-audio content on the same timeline as all other WCAG 2.1 Level AA success criteria. Such commenters noted that a different compliance timeline for live-audio captioning would unfairly burden people who are deaf or have hearing loss and would limit their access to a wide swath of content. One commenter who had worked in higher education, for instance, noted challenges of providing live-audio captioning, including the limited number of captioners available and resulting need for lead time to reserve one, but nonetheless stated that entities should strive for the same compliance date.

A smaller number of commenters urged the Department to adopt a longer compliance time frame in order to allow live-captioning technology to develop further. Some of these commenters supported a longer time frame for smaller entities in particular, which may have fewer resources or budgetary flexibility to comply. Others supported a longer time frame for larger entities because they are likely to have more content to caption. Commenters also noted the difficulty that public entities sometimes encounter in the availability of quality professional live captioners and the lead time necessary to reserve those services, but at the same time noted that public entities do not necessarily want to rely on automatically generated captioning in all scenarios because it may be insufficient for an individual's needs.

Commenters shared that public entities make many types of live-audio content available, including town hall meetings, board meetings, and other public engagement meetings; emergency-related and public-service announcements or information; special events like graduations, conferences, or symposia; online courses; and press conferences. Commenters also posed questions about whether Success Criterion

[113] W3C, *Understanding WCAG 2.0: Captions (Live), Understanding SC 1.2.4* (2023), *http://www.w3.org/TR/UNDERSTANDING-WCAG20/media-equiv-real-time-captions.html* [*https://perma.cc/NV74-U77R*].

[114] *Id.* (emphasis in original).

[115] 88 FR 51965–51966.

[116] 88 FR 51965–51966.

1.2.4 would apply to particular situations and types of media. The Department suggests referring to the explanation and definitions of the terms in Success Criterion 1.2.4 in WCAG 2.1 to determine the live-audio web content and content in mobile apps that must have captions.

Success Criterion 1.2.4 is crucial for individuals with disabilities to access State and local government entities' live services, programs, or activities. The Department believes that setting a different compliance date would only delay this essential access and leave people who are deaf or have hearing disabilities at a particular disadvantage in accessing these critical services. It also would hinder access for people with a variety of other disabilities, including cognitive disabilities.[117]

The Department believes that the compliance dates set forth in subpart H of this part will give public entities sufficient time to locate captioning resources and implement or enhance processes to ensure they can get captioning services when needed. Captioning services are also likely to continue to expand. Given the quick acceleration in the availability of captioning technology during the COVID–19 pandemic, the Department believes that public entities' capacity as well as the technology and personnel on which they rely will be able to continue to develop quickly.

The Department declines to establish a different compliance time frame for Success Criterion 1.2.4 for other reasons as well. This success criterion in WCAG 2.1 was also part of WCAG 2.0, which was finalized in 2008. As a result, the Department expects that public entities and associated web developers will be able to become familiar with it quickly, if they are not already familiar. Additionally, setting a separate compliance date for one success criterion could result in confusion and additional difficulty, as covered entities would need to separately keep track of when they need to meet the live-audio captioning success criterion and bifurcate their compliance planning. The Department also does not see a sufficient reason to distinguish this success criterion from others as meriting a separate timeline, particularly when this criterion has existed since 2008 and is so essential for individuals who are deaf or have hearing disabilities. For these reasons, and because of the need for individuals with disabilities to access State and local government entities' live programs, services, and activities, subpart H of this part establishes a uniform compliance date for all success criteria in subpart H.

Commenters also expressed a range of opinions about whether using automatically generated captions instead of professional live-captioning services would be sufficient to comply with Success Criterion 1.2.4. These commenters noted that automatic captions are a widely available option that is low cost for public entities and will likely continue to improve, perhaps eventually surpassing the quality of professional live-captioning services. However, commenters also pointed out that automatic captions may not be sufficient in many contexts such as virtual classrooms or courtrooms, where mistakes in identifying a speaker, word, or punctuation can significantly change the meaning and the participant with a disability needs to be able to respond in real time. Commenters also argued, though, that requiring human captioners in all circumstances may lead to public entities making fewer meetings, hearings, courses, and other live-audio content available online due to cost and availability of captioners, which could have a detrimental effect on overall access to these services for people with mobility and other disabilities. Public entities noted that automatic captioning as part of services like Zoom does not cost them anything beyond the Zoom license, but public entities and the Small Business Administration reported that costs can be much higher for human-generated captions for different types of content over the course of a year.

To balance these competing concerns, commenters supported requiring captions in general, but proposed a variety of tiered approaches such as: a default of human-generated captions with automatic captions as a last resort; automatic captions as a default with human-generated captions when an individual with a disability requests them; or human-generated captions as a default for events with a wide audience like graduations, but automatic captions as a default for private meetings and courses, unless human-generated captions are requested. An accessible technology industry member urged the Department to just require captions that provide ''equivalent access'' to live-audio content, rather than mandate a particular type of captioning.

After consideration of commenters' concerns and its independent assessment, the Department does not believe it is prudent to prescribe captioning requirements beyond the WCAG 2.1 Level AA requirements, whether by specifying a numerical accuracy standard, a method of captioning that public entities must use to satisfy this success criterion, or other measures. The Department recognizes commenters' concerns that automatic captions are currently not sufficiently accurate in many contexts, including contexts involving technical or complex issues. The Department also notes that informal guidance from W3C provides that automatic captions are not sufficient on their own unless they are confirmed to be fully accurate, and that they generally require editing to reach the requisite level of accuracy.[118] On the other hand, the Department recognizes the significant costs and supply challenges that can accompany use of professional live-captioning services, and the pragmatic concern that a requirement to use these services for all events all the time could discourage public entities from conducting services, programs, or activities online, which could have unintended detrimental consequences for people with and without disabilities who benefit from online offerings. Further, it is the Department's understanding, supported by comments, that captioning technology is rapidly evolving and any additional specifications regarding how to meet WCAG 2.1's live-audio captioning requirements could quickly become outdated.

Rather than specify a particular accuracy level or method of satisfying Success Criterion 1.2.4 at this time, subpart H of this part provides public entities with the flexibility to determine the best way to comply with this success criterion based on current technology. The Department further encourages public entities to make use of W3C's and others' guidance documents available on captioning, including the informal guidance mentioned in the preceding paragraph.[119] In response to commenters' concerns that captioning requirements could lead to fewer online events, the Department reminds public entities that, under § 35.204, they are not required to take any action that would result in a fundamental alteration to their services, programs, or activities or undue financial and administrative burdens; but even in those circumstances, public entities must comply with § 35.200 to the maximum extent possible. The Department believes the approach in subpart H strikes the appropriate balance of increasing access for individuals with disabilities, keeping pace with evolving technology, and providing a workable standard for public entities.

Some commenters expressed similar concerns related to captioning requirements for prerecorded (*i.e.,* non-live) content under Success Criterion 1.2.2, including concerns that public entities may choose to remove recordings of past events such as public hearings and local government sessions rather than comply with captioning requirements in the required time frames. The Department recommends that public entities consider other options that may alleviate costs, such as evaluating whether any exceptions apply, depending on the particular circumstances. And as with live-audio captioning, public entities can rely on the fundamental alteration or undue burdens provisions in § 35.204 where they can satisfy the requirements of those provisions. Even where a public entity can demonstrate that conformance to Success Criterion 1.2.2 would result in a fundamental alteration or undue financial and administrative burdens, the Department believes public entities may often be able to take other actions that do not result in such an alteration or such burdens; if they can, § 35.204 requires them to do so.

The same reasoning discussed regarding Success Criterion 1.2.4 also applies to

[117] *See* W3C, Web Accessibility Initiative, *Video Captions, https://www.w3.org/WAI/perspective-videos/captions/* [*https://perma.cc/QW6X-5SPG*] (Jan. 23, 2019) (explaining that captions benefit ''people with cognitive and learning disabilities who need to see and hear the content to better understand it'').

[118] W3C, Web Accessibility Initiative, *Captions/Subtitles, https://www.w3.org/WAI/media/av/captions* [*https://perma.cc/D73P-RBZA*] (July 14, 2022).

[119] *E.g.,* W3C, Web Accessibility Initiative, *Captions/Subtitles, https://www.w3.org/WAI/media/av/captions* [*https://perma.cc/D73P-RBZA*] (July 14, 2022); W3C, *WCAG 2.2 Understanding Docs: Understanding SC 1.2.4: Captions (Live) (Level AA), https://www.w3.org/WAI/WCAG22/Understanding/captions-live.html* [*https://perma.cc/R8SZ-JA6Z*] (Mar. 7, 2024).

Success Criterion 1.2.2. The Department declines to adopt a separate timeline for this success criterion or to prescribe captioning requirements beyond those in WCAG 2.1 due to rapidly evolving technology, the importance of these success criteria, and the other factors already noted. After full consideration of all the comments received, subpart H of this part requires conformance to WCAG 2.1 Level AA as a whole on the same compliance time frame, for all of the reasons stated in this section.

Section 35.201 Exceptions

Section 35.200 requires public entities to make their web content and mobile apps accessible by complying with a technical standard for accessibility—WCAG 2.1 Level AA. However, some types of content do not have to comply with the technical standard in certain situations. The Department's aim in setting forth exceptions was to make sure that individuals with disabilities have ready access to public entities' web content and mobile apps, especially those that are current, commonly used, or otherwise widely needed, while also ensuring that practical compliance with subpart H of this part is feasible and sustainable for public entities. The exceptions help to ensure that compliance with subpart H is feasible by enabling public entities to focus their resources on making frequently used or high impact content WCAG 2.1 Level AA compliant first.

Under § 35.201, the following types of content generally do not need to comply with the technical standard for accessibility—WCAG 2.1 Level AA: (1) archived web content; (2) preexisting conventional electronic documents, unless they are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities; (3) content posted by a third party; (4) individualized, password-protected or otherwise secured conventional electronic documents; and (5) preexisting social media posts. The Department notes that if web content or content in mobile apps is covered by one exception, the content does not need to conform to WCAG 2.1 Level AA to comply with subpart H of this part, even if the content fails to qualify for another exception.

However, as discussed in more detail later in this section-by-section analysis, there may be situations in which the content otherwise covered by an exception must still be made accessible to meet the needs of an individual with a disability under existing title II requirements.[120] Because these exceptions are specifically tailored to address what the Department understands to be existing areas where compliance might be particularly difficult based on current content types and technologies, the Department also expects that these exceptions may become less relevant over time as new content is added and technology changes.

The previously listed exceptions are those included in § 35.201. They differ in some respects from those exceptions proposed in the NPRM. The Department made changes to the proposed exceptions identified in the NPRM after consideration of the public comments and its own independent assessment. Notably, § 35.201 does not include exceptions for password-protected course content in elementary, secondary, and postsecondary schools, which had been proposed in the NPRM.[121] As will be discussed in more detail, it also does not include an exception for linked third-party content because that proposed exception would have been redundant and could have caused confusion. In the NPRM, the Department discussed the possibility of including an exception for public entities' preexisting social media posts.[122] After consideration of public feedback, § 35.201 includes such an exception. In addition, the Department made some technical tweaks and clarifications to the exceptions.[123]

The Department heard a range of views from public commenters on the exceptions proposed in the NPRM. The Department heard from some commenters that exceptions are necessary to avoid substantial burdens on public entities and would help public entities determine how to allocate their limited resources in terms of which content to make accessible more quickly, especially when initially determining how best to ensure they can start complying with § 35.200 by the compliance date. The Department heard that public entities often have large volumes of content that are archived, or documents or social media posts that existed before subpart H of this part was promulgated. The Department also heard that although making this content available online is important for transparency and ease of access, this content is typically not frequently used and is likely to be of interest only to a discrete population. Such commenters also emphasized that making such content, like old PDFs, accessible by the compliance date would be quite difficult and time consuming. Some commenters also expressed that the exceptions may help public entities avoid uncertainty about whether they need to ensure accessibility in situations where it might be extremely difficult—such as for large quantities of archived materials retained only for research purposes or where they have little control over content posted to their website by unaffiliated third parties. Another commenter noted that public entities may have individualized documents that apply only to individual members of the public and that in most cases do not need to be accessed by a person with a disability.

On the other hand, the Department has also heard from commenters who objected to the inclusion of exceptions. Many commenters who objected to the inclusion of exceptions cited the need for all of public entities' web content and mobile apps to be accessible to better ensure predictability and access for individuals with disabilities to critical government services. Some commenters who opposed including exceptions also asserted that a title II regulation need not include any exceptions to its specific requirements because the compliance limitation for undue financial and administrative burdens would suffice to protect public entities from any overly burdensome requirements. Some commenters argued that the exceptions would create loopholes that would result in public entities not providing sufficient access for individuals with disabilities, which could undermine the purpose of subpart H of this part.

Commenters also contended that the proposed exceptions create confusion about what is covered and needs to conform to WCAG 2.1, which creates difficulties with compliance for public entities and barriers for individuals with disabilities seeking to access public entities' web content or mobile apps. Some commenters also noted that there are already tools that can help public entities make web content and mobile apps accessible, such that setting forth exceptions for certain content is not necessary to help public entities comply.

After consideration of the various public comments and after its independent assessment, the Department is including, with some refinements, five exceptions in § 35.201. As noted in the preceding paragraphs and as will be discussed in greater detail, the Department is not including in the final regulations three of the exceptions that were proposed in the NPRM, but the Department is also adding an exception for preexisting social media posts that it previewed in the NPRM. The five particular exceptions included in § 35.201 were crafted with careful consideration of which discrete types of content would promote as much clarity and certainty as possible for individuals with disabilities as well as for public entities when determining which content must conform to WCAG 2.1 Level AA, while also still promoting accessibility of web content and mobile apps overall. The limitations for actions that would require fundamental alterations or result in undue burdens would not provide, on their own, the same level of clarity and certainty. The rationales with respect to each individual exception are discussed in more detail in the section-by-section analysis of each exception. The Department believes that including these five exceptions, and clarifying situations in which content covered by an exception might still need to be made accessible, strikes the appropriate balance between ensuring access for individuals with disabilities and feasibility for public entities so that they can comply with § 35.200, which will ensure greater accessibility moving forward.

The Department was mindful of the pragmatic concern that, should subpart H of this part require actions that are likely to result in fundamental alterations or undue burdens for large numbers of public entities or large swaths of their content, subpart H could in practice lead to fewer impactful improvements for accessibility across the board as public entities encountered these limitations. The Department believes that such a rule could result in public entities' prioritizing accessibility of content that is ''easy'' to make accessible, rather than content that is essential, despite the spirit and letter of the rule. The Department agrees with commenters that clarifying that public

[120] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

[121] 88 FR 52019.

[122] *Id.* at 51962–51963.

[123] *Id.* at 52019–52020.

entities do not need to focus resources on certain content helps ensure that public entities can focus their resources on the large volume of content not covered by exceptions, as that content is likely more frequently used or up to date. In the sections that follow, the Department provides explanations for why the Department has included each specific exception and how the exceptions might apply.

The Department understands and appreciates that including exceptions for certain types of content reduces the content that would be accessible at the outset to individuals with disabilities. The Department aimed to craft the exceptions with an eye towards providing exceptions for content that would be less commonly used by members of the public and would be particularly difficult for public entities to make accessible quickly. And the Department reiterates that subpart H of this part is adding specificity into the existing title II regulatory framework when it comes to web content and mobile apps. The Department emphasizes that, even if certain content does not have to conform to the technical standard, public entities still need to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities on a case-by-case basis in accordance with their existing obligations under title II of the ADA. These obligations include making reasonable modifications to avoid discrimination on the basis of disability, ensuring that communications with people with disabilities are as effective as communications with people without disabilities, and providing people with disabilities an equal opportunity to participate in or benefit from the entity's services, programs, and activities.[124] For example, a public entity might need to provide a large print version or a version of an archived document that implements some WCAG criteria—such as a document explaining park shelter options and rental prices from 2013—to a person with vision loss who requests it, even though this content would fall within the archived web content exception. Thus, § 35.201's exceptions for certain categories of content are layering specificity onto title II's regulatory requirements. They do not function as permanent or blanket exceptions to the ADA's nondiscrimination mandate. They also do not add burdens on individuals with disabilities that did not already exist as part of the existing title II regulatory framework. As explained further, nothing in this part prohibits an entity from going beyond § 35.200's requirements to make content covered by the exceptions fully or partially compliant with WCAG 2.1 Level AA.

The following discussion provides information on each of the exceptions, including a discussion of public comments.

[124] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160. For more information about public entities' existing obligation to ensure that communications with individuals with disabilities are as effective as communications with others, see U.S. Dep't of Just., *ADA Requirements: Effective Communication, ada.gov* (Feb 28, 2020), *https://www.ada.gov/resources/effective-communication/* [*https://perma.cc/CLT7-5PNQ*].

Archived Web Content

Public entities may retain a significant amount of archived content, which may contain information that is outdated, superfluous, or replicated elsewhere. The Department's understanding is that, generally, this historic information is of interest to only a small segment of the general population. The Department is aware and concerned, however, that based on current technologies, public entities would need to expend considerable resources to retroactively make accessible the large quantity of historic or otherwise outdated information that public entities created in the past and that they may need or want to make available on their websites. Thus, § 35.201(a) provides an exception from the requirements of § 35.200 for web content that meets the definition of ''archived web content'' in § 35.104.[125] As mentioned previously, the definition of ''archived web content'' in § 35.104 has four parts. First, the web content was created before the date the public entity is required to comply with subpart H of this part, reproduces paper documents created before the date the public entity is required to comply with subpart H, or reproduces the contents of other physical media created before the date the public entity is required to comply with subpart H. Second, the web content is retained exclusively for reference, research, or recordkeeping. Third, the web content is not altered or updated after the date of archiving. Fourth, the web content is organized and stored in a dedicated area or areas clearly identified as being archived. The archived web content exception allows public entities to retain historic web content, while utilizing their resources to make accessible the most widely and consistently used content that people need to access public services or to participate in civic life.

The Department anticipates that public entities may retain various types of web content consistent with the exception for archived web content. For example, a town might create a web page for its annual parade. In addition to providing current information about the time and place of the parade, the web page might contain a separate archived section with several photos or videos from the parade in past years. The images and videos would likely be covered by the exception if they were created before the date the public entity is required to comply with subpart H of this part, are reproductions of paper documents created before the date the public entity is required to comply with subpart H, or are reproductions of the contents of other physical media created before the date the public entity is required to comply with subpart H; they are only used for reference, research, or recordkeeping; they are not altered or updated after they are posted in the archived section of the web page; and the archived section of the web page is clearly identified. Similarly, a municipal court may have a web page that includes links to download PDF documents that contain a photo and short biography of past judges who are retired. If the PDF documents were created before the date the public entity is required to comply with subpart H, are reproductions of paper documents created before the date the public entity is required to comply with subpart H, or are reproductions of the contents of other physical media created before the date the public entity is required to comply with subpart H; they are only used for reference, research, or recordkeeping; they are not altered or updated after they are posted; and the web page with the links to download the documents is clearly identified as being an archive, the documents would likely be covered by the exception. The Department reiterates that these examples are meant to be illustrative and that the analysis of whether a given piece of web content meets the definition of ''archived web content'' depends on the specific circumstances.

The Department recognizes, and commenters emphasized, that archived information may be of interest to some members of the public, including some individuals with disabilities, who are conducting research or are otherwise interested in these historic documents. Furthermore, some commenters expressed concerns that public entities would begin (or already are in some circumstances) improperly moving content into an archive. The Department emphasizes that under this exception, public entities may not circumvent their accessibility obligations by merely labeling their web content as ''archived'' or by refusing to make accessible any content that is old. The exception focuses narrowly on content that satisfies all four of the criteria necessary to qualify as ''archived web content,'' namely web content that was created before the date the public entity is required to comply with subpart H of this part, reproduces paper documents created before the date the public entity is required to comply with subpart H, or reproduces the contents of other physical media created before the date the public entity is required to comply with subpart H; is retained exclusively for reference, research, or recordkeeping; is not altered or updated after the date of archiving; and is organized and stored in a dedicated area or areas clearly identified as being archived. If any one of those criteria is not met, the content does not qualify as ''archived web content.'' For example, if an entity maintains content for any purpose other than reference, research, or recordkeeping, then that content would not fall within the exception regardless of the date it was created, even if an entity labeled it as ''archived'' or stored it in an area clearly identified as being archived. Similarly, an entity would not be able to circumvent its accessibility obligations by moving web content containing meeting minutes or agendas related to meetings that take place after the date the public entity is required to comply with subpart H from a non-archived section of its website to an archived section, because such newly created content would likely not satisfy the first part of the definition based on the date it was created. Instead, such

[125] In the NPRM, § 35.201(a) referred to archived web content as defined in § 35.104 ''of this chapter.'' 88 FR 52019. The Department has removed the language ''of this chapter'' because it was unnecessary.

newly created documents would generally need to conform to WCAG 2.1 Level AA for their initial intended purpose related to the meetings, and they would need to remain accessible if they were later added to an area clearly identified as being archived.

The Department received comments both supporting and opposing the exception. In support of the exception, commenters highlighted various benefits. For example, commenters noted that remediating archived web content can be very burdensome, and the exception allows public entities to retain content they might otherwise remove if they had to make the content conform to WCAG 2.1 Level AA. Some commenters also agreed that public entities should prioritize making current and future web content accessible.

In opposition to the exception, commenters highlighted various concerns. For example, some commenters stated that the exception perpetuates unequal access to information for individuals with disabilities, and it continues to inappropriately place the burden on individuals with disabilities to identify themselves to public entities, request access to content covered by the exception, and wait for the request to be processed. Some commenters also noted that the exception is not necessary because the compliance limitations for fundamental alteration and undue financial and administrative burdens would protect public entities from any unrealistic requirements under subpart H of this part.[126] Commenters also stated that the proposed exception is not timebound; it does not account for technology that exists, or might develop in the future, that may allow for easy and reliable wide-scale remediation of archived web content; it might deter development of technology that could reliably remediate archived web content; and it does not include a time frame for the Department to reassess whether the exception is necessary based on technological developments.[127] In addition, commenters stated that the exception covers HTML content, which is easier to make accessible than other types of web content; and it might cover archived web content posted by public entities in accordance with other laws. As previously discussed with respect to the definition of ''archived web content,'' some commenters also stated that it is not clear when web content is retained exclusively for reference, research, or recordkeeping, and public entities may therefore improperly designate important web content as archived.

The Department has decided to keep the exception in § 35.201. After reviewing the range of different views expressed by commenters, the Department continues to believe that the exception appropriately encourages public entities to utilize their resources to make accessible the critical up-to-date materials that are most consistently used to access public entities' services, programs, or activities. The Department believes the exception provides a measure of clarity and certainty for public entities about what is required of archived web content. Therefore, resources that might otherwise be spent making accessible large quantities of historic or otherwise outdated information available on some public entities' websites are freed up to focus on important current and future web content that is widely and frequently used by members of the public. However, the Department emphasizes that the exception is not without bounds. As discussed in the preceding paragraphs, archived web content must meet all four parts of the archived web content definition in order to qualify for the exception. Content must meet the time-based criteria specified in the first part of the definition. The Department believes the addition of the first part of the definition will lead to greater predictability about the application of the exception for individuals with disabilities and public entities. In addition, web content that is used for something other than reference, research, or recordkeeping is not covered by the exception.

The Department understands the concerns raised by commenters about the burdens that individuals with disabilities may face because archived web content is not required to conform to WCAG 2.1 Level AA. The Department emphasizes that even if certain content does not have to conform to the technical standard, public entities still need to ensure that their services, programs, and activities offered using web content are accessible to individuals with disabilities on a case-by-case basis in accordance with their existing obligations under title II. These obligations include making reasonable modifications to avoid discrimination on the basis of disability, ensuring that communications with people with disabilities are as effective as communications with people without disabilities, and providing people with disabilities an equal opportunity to participate in or benefit from the entity's services, programs, or activities.[128] Some commenters suggested that the Department should also specify that if a public entity makes archived web content conform to WCAG 2.1 Level AA in response to a request from an individual with a disability, such as by remediating a PDF stored in an archived area on the public entity's website, the public entity should replace the inaccessible version in the archive with the updated accessible version that was sent to the individual. The Department agrees that this is a best practice public entities could implement, but did not add this to the text of this part because of the importance of providing public entities flexibility to meet the needs of individuals with disabilities on a case-by-case basis.

Some commenters suggested that the Department should require public entities to adopt procedures and timelines for how individuals with disabilities could request access to inaccessible archived web content covered by the exception. The Department declines to make specific changes to the exception in response to these comments. The Department reiterates that, even if content is covered by this exception, public entities still need to ensure that their services, programs, and activities offered using web content are accessible to individuals with disabilities on a case-by-case basis in accordance with their existing obligations under title II.[129] The Department notes that it is helpful to provide individuals with disabilities with information about how to obtain the reasonable modifications or auxiliary aids and services they may need. Public entities can help to facilitate effective communication by providing notice to the public on how an individual who cannot access archived web content covered by the exception because of a disability can request other means of effective communication or reasonable modifications in order to access the public entity's services, programs, or activities with respect to the archived content. Public entities can also help to facilitate effective communication by providing an accessibility statement that tells the public how to bring web content or mobile app accessibility problems to the public entities' attention, and developing and implementing a procedure for reviewing and addressing any such issues raised. For example, a public entity could help to facilitate effective communication by providing an email address, accessible link, accessible web page, or other accessible means of contacting the public entity to provide information about issues that individuals with disabilities may encounter accessing web content or mobile apps or to request assistance. Providing this information will help public entities to ensure that they are satisfying their obligations to provide equal access, effective communication, and reasonable modifications.

Some commenters suggested that this part should require a way for users to search through archived web content, or information about the contents of the archive should otherwise be provided, so individuals with disabilities can identify what content is contained in an archive. Some other commenters noted that searching through an archive is inherently imprecise and involves sifting through many documents, but the exception places the burden on individuals with disabilities to know exactly which archived documents to request in accessible formats. After carefully considering these comments, the Department decided not to change the text of this part. The Department emphasizes that web content that is not archived, but instead notifies users about the existence of archived web content and provides users access to archived web content, generally must still conform to WCAG 2.1 Level AA. Therefore, the Department anticipates that members of the public will have information about what content is contained in an archive. For example, a public entity's archive may include a list of links to download archived documents. Under WCAG 2.1 Success Criterion 2.4.4, a public entity would generally have to provide sufficient information in the text of the link alone, or

[126] A discussion of the relationship between these limitations and the exceptions in § 35.201 is also provided in the general explanation at the beginning of the discussion of § 35.201 in the section-by-section analysis.

[127] The section-by-section analysis of § 35.200 includes a discussion of the Department's obligation to do a periodic retrospective review of its regulations pursuant to Executive Order 13563.

[128] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

[129] *Id.*

in the text of the link together with the link's programmatically determined link context, so users could understand the purpose of each link and determine whether they want to access a given document in the archive.[130]

Some commenters suggested that public entities should ensure that the systems they use to retain and store archived web content do not convert the content into an inaccessible format. The Department does not believe it is necessary to make updates to this part in response to these comments. Content that does not meet the definition of ''archived web content'' must generally conform to WCAG 2.1 Level AA, unless it qualifies for another exception, so public entities would not be in compliance with subpart H of this part if they stored such content using a system that converts accessible web content into an inaccessible format. The Department anticipates that public entities will still move certain newly created web content into an archive alongside historic content after the date they are required to comply with subpart H, even though the newly created content will generally not meet the definition of ''archived web content.'' For example, after the time a city is required to comply with subpart H, the city might post a PDF flyer on its website identifying changes to the dates its sanitation department will pick up recycling around a holiday. After the date of the holiday passes, the city might move the flyer to an archive along with other similar historic flyers. Because the newly created flyer would not meet the first part of the definition of ''archived web content,'' it would generally need to conform to WCAG 2.1 Level AA even after it is moved into an archive. Therefore, the city would need to ensure its system for retaining and storing archived web content does not convert the flyer into an inaccessible format.

Some commenters also suggested that the exception should not apply to public entities whose primary function is to provide or make available what commenters perceived as archived web content, such as some libraries, museums, scientific research organizations, or state or local government agencies that provide birth or death records. Commenters expressed concern that the exception could be interpreted to cover the entirety of such entities' web content. The Department reiterates that whether archived web content is retained exclusively for reference, research, or recordkeeping depends on the particular circumstances. For example, a city's research library may have both archived and non-archived web content related to a city park. If the library's collection included a current map of the park that was created by the city, that map would likely not be retained exclusively for reference, research, or recordkeeping, as it is a current part of the city's program of providing and maintaining a park. Furthermore, if the map was newly created after the date the public entity was required to comply with subpart H of this part, and it does not reproduce paper documents or the contents of other physical media created before the date the public entity was required to comply with subpart H, the map would likely not meet the first part of the definition of ''archived web content.'' In addition, the library may decide to curate and host an exhibition on its website about the history of the park, which refers to and analyzes historic web content pertaining to the park that otherwise meets the definition of ''archived web content.'' All content used to deliver the online exhibition likely would not be used exclusively for reference, research, or recordkeeping, as the library is using the materials to create and provide a new educational program for the members of the public. The Department believes the exception, including the definition of ''archived web content,'' provides a workable framework for determining whether all types of public entities properly designate web content as archived.

In the NPRM, the Department asked commenters about the relationship between the content covered by the archived web content exception and the exception for preexisting conventional electronic documents set forth in § 35.201(b).[131] In response, some commenters sought clarification about the connection between the exceptions or recommended that there should only be one exception. The Department believes both exceptions are warranted because they play different roles in freeing up public entities' personnel and financial resources to make accessible the most significant content that they provide or make available. As discussed in the preceding paragraphs, the archived web content exception provides a framework for public entities to prioritize their resources on making accessible the up-to-date materials that people use most widely and consistently, rather than historic or outdated web content. However, public entities cannot disregard such content entirely. Instead, historic or outdated web content that entities intend to treat as archived web content must be located and added to an area or areas clearly designated as being archived. The Department recognizes that creating an archive area or areas and moving content into the archive will take time and resources. As discussed in the section-by-section analysis of § 35.201(b), the preexisting conventional electronic documents exception provides an important measure of clarity and certainty for public entities as they initially consider how to address all the various conventional electronic documents available through their web content and mobile apps. Public entities will not have to immediately focus their time and resources on remediating or archiving less significant preexisting documents that are covered by the exception. Instead, public entities can focus their time and resources elsewhere and attend to preexisting documents covered by the preexisting conventional electronic documents exception in the future as their resources permit, such as by adding them to an archive.

The Department recognizes that there may be some overlap between the content covered by the archived web content exception and the exception for preexisting conventional electronic documents set forth in § 35.201(b). The Department notes that if web content is covered by the archived web content exception, it does not need to conform to WCAG 2.1 Level AA to comply with subpart H of this part, even if the content fails to qualify for another exception, such as the preexisting conventional electronic document exception. For example, after the date a public university is required to comply with subpart H, its athletics website may still include PDF documents containing the schedules for sports teams from academic year 2017–2018 that were posted in non-archived areas of the website in the summer of 2017. Those PDFs may be covered by the preexisting conventional electronic documents exception because they were available on the university's athletics website prior to the date it was required to comply with subpart H, unless they are currently used to apply for, gain access to, or participate in a public entity's services, programs, or activities, in which case, as discussed in more detail in the section-by-section analysis of § 35.201(b), they would generally need to conform to WCAG 2.1 Level AA. However, if the university moved the PDFs to an archived area of its athletics site and the PDFs satisfied all parts of the definition of ''archived web content,'' the documents would not need to conform to WCAG 2.1 Level AA, regardless of how the preexisting conventional electronic document exception might otherwise have applied, because the content would fall within the archived web content exception.

Some commenters also made suggestions about public entities' practices and procedures related to archived web content, but these suggestions fall outside the scope of this part. For example, some commenters stated that public entities' websites should not contain archived materials, or that all individuals should have to submit request forms to access archived materials. The Department did not make any changes to this part in response to these comments because this part is not intended to control whether public entities can choose to retain archived material in the first instance, or whether members of the public must follow certain steps to access archived web content.

Preexisting Conventional Electronic Documents

Section 35.201(b) provides that conventional electronic documents that are available as part of a public entity's web content or mobile apps before the date the public entity is required to comply with subpart H of this part do not have to comply with the accessibility requirements of § 35.200, unless such documents are currently used to apply for, gain access to, or participate in a public entity's services, programs, or activities. As discussed in the section-by-section analysis of § 35.104, the term ''conventional electronic documents'' is defined in § 35.104 to mean web content or content in mobile apps that is in the following electronic file formats: portable document formats, word processor file formats, presentation file formats, and spreadsheet file formats. This list of

[130] *See* W3C, *Understanding SC 2.4.4.: Link Purpose (In Context)* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Understanding/link-purpose-in-context.html* [*https://perma.cc/RE3T-J9PN*].

[131] 88 FR 51968.

conventional electronic documents is an exhaustive list of file formats, rather than an open-ended list. The Department understands that many websites of public entities contain a significant number of conventional electronic documents that may contain text, images, charts, graphs, and maps, such as comprehensive reports on water quality. The Department also understands that many of these conventional electronic documents are in PDF format, but many conventional electronic documents may also be formatted as word processor files (*e.g.,* Microsoft Word files), presentation files (*e.g.,* Apple Keynote or Microsoft PowerPoint files), and spreadsheet files (*e.g.,* Microsoft Excel files).

Because of the substantial number of conventional electronic documents that public entities make available through their web content and mobile apps, and because of the personnel and financial resources that would be required for public entities to remediate all preexisting conventional electronic documents to make them accessible after the fact, the Department believes public entities should generally focus their personnel and financial resources on developing new conventional electronic documents that are accessible and remediating existing conventional electronic documents that are currently used to access the public entity's services, programs, or activities. For example, if before the date a public entity is required to comply with subpart H of this part the entity's website contains a series of out-of-date PDF reports on local COVID–19 statistics, those reports generally need not conform to WCAG 2.1 Level AA. Similarly, if a public entity maintains decades' worth of water quality reports in conventional electronic documents on the same web page as its current water quality report, the old reports that were posted before the date the entity was required to comply with subpart H generally do not need to conform to WCAG 2.1 Level AA. As the public entity posts new reports going forward, however, those reports generally must conform to WCAG 2.1 Level AA.

The Department modified the language of this exception from the NPRM. In the NPRM, the Department specified that the exception applied to conventional electronic documents ''created by or for a public entity'' that are available ''on a public entity's website or mobile app.'' The Department believes the language ''created by or for a public entity'' is no longer necessary in the regulatory text of the exception itself because the Department updated the language of § 35.200 to clarify the overall scope of content generally covered by subpart H of this part. In particular, the text of § 35.200(a)(1) and (2) now states that subpart H applies to all web content and mobile apps that a public entity provides or makes available either directly or through contractual, licensing, or other arrangements. Section 35.201(b), which is an exception to the requirements of § 35.200, is therefore limited by the new language added to the general section. In addition, the Department changed the language ''that are available on a public entity's website or mobile app'' to ''that are available as part of a public entity's web content or mobile apps'' to ensure consistency with other parts of the regulatory text by referring to ''web content'' rather than ''websites.'' Finally, the Department removed the phrase ''members of the public'' from the language of the exception in the proposed rule for consistency with the edits to § 35.200 aligning the scope of subpart H with the scope of title II of the ADA, as described in the explanation of § 35.200 in the section-by-section analysis.

Some commenters sought clarification about how to determine whether a conventional electronic document is ''preexisting.'' They pointed out that the date a public entity posted or last modified a document may not necessarily reflect the actual date the document was first made available to members of the public. For example, a commenter noted that a public entity may copy its existing documents unchanged into a new content management system after the date the public entity is required to comply with subpart H of this part, in which case the date stamp of the documents will reflect the date they were copied rather than the date they were first made available to the public. Another commenter recommended that the exception should refer to the date a document was ''originally'' posted to account for circumstances in which there is an interruption to the time the document is provided or made available to members of the public, such as when a document is temporarily not available due to technical glitches or server problems.

The Department believes the exception is sufficiently clear. Conventional electronic documents are preexisting if a public entity provides them or makes them available prior to the date the public entity is required to comply with subpart H of this part. While one commenter recommended that the exception should not apply to documents provided or made available during the two- or three-year compliance timelines specified in § 35.200(b), the Department believes the timelines specified in that section are the appropriate time frames for assessing whether a document is preexisting and requiring compliance with subpart H. If a public entity changes or revises a preexisting document following the date it is required to comply with subpart H, the document would no longer be ''preexisting'' for the purposes of the exception. Whether documents would still be preexisting if a public entity generally modifies or updates the entirety of its web content or mobile apps after the date it is required to comply with subpart H would depend on the particular facts and circumstances. For example, if a public entity moved all of its web content, including preexisting conventional electronic documents, to a new content management system, but did not change or revise any of the preexisting documents when doing so, the documents would likely still be covered by the exception. In contrast, if the public entity decided to edit the content of certain preexisting documents in the process of moving them to the new content management system, such as by updating the header of a benefits application form to reflect the public entity's new mailing address, the updated documents would no longer be preexisting for the purposes of the exception. The Department emphasizes that the purpose of the exception is to free up public entities' resources that would otherwise be spent focusing directly on preexisting documents covered by the exception.

Because the exception only applies to preexisting conventional electronic documents, it would not cover documents that are open for editing if they are changed or revised after the date a public entity is required to comply with subpart H of this part. For example, a town may maintain an editable word processing file, such as a Google Docs file, that lists the dates on which the town held town hall meetings. The town may post a link to the document on its website so members of the public can view the document online in a web browser, and it may update the contents of the document over time after additional meetings take place. If the document was posted to the town's website prior to the date it was required to comply with subpart H, it would be a preexisting conventional electronic document unless the town added new dates to the document after the date it was required to comply with subpart H. If the town made such additions to the document, the document would no longer be preexisting. Nevertheless, there are some circumstances where conventional electronic documents may be covered by the exception even if copies of the documents can be edited after the date the public entity is required to comply with subpart H. For example, a public entity may post a Microsoft Word version of a flyer on its website prior to the date it is required to comply with subpart H. A member of the public could technically download and edit that Word document after the date the public entity is required to comply with subpart H, but their edits would not impact the ''official'' posted version. Therefore, the official version would still qualify as preexisting under the exception. Similarly, PDF files that include fillable form fields (*e.g.,* areas for a user to input their name and address) may also be covered by the exception so long as members of the public do not edit the content contained in the official posted version of the document. However, as discussed in the following paragraph, the exception does not apply to documents that are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities. The Department notes that whether a PDF document is fillable may be relevant in considering whether the document is currently used to apply for, gain access to, or participate in a public entity's services, programs, or activities. For example, a PDF form that must be filled out and submitted when renewing a driver's license is currently used to apply for, gain access to, or participate in a public entity's services, programs, or activities, and therefore would not be subject to the exception under § 35.201(b) for preexisting conventional electronic documents. One commenter recommended that the Department clarify in the text of the regulation that conventional electronic documents include only those documents that are not open for editing by

the public. The Department believes this point is adequately captured by the requirement that conventional electronic documents must be preexisting to qualify for the exception.

This exception is not without bounds: it does not apply to any preexisting documents that are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities. In referencing ''documents that are currently used,'' the Department intends to cover documents that are used at any given point in the future, not just at the moment in time when the final rule is published. For example, a public entity generally must make a preexisting PDF application for a business license conform to WCAG 2.1 Level AA if the document is still currently used. The Department notes that preexisting documents are also not covered by the exception if they provide instructions or guidance related to other documents that are directly used to apply for, gain access to, or participate in the public entity's services, programs, or activities. Therefore, in addition to making the aforementioned preexisting PDF application for a business license conform to WCAG 2.1 Level AA, public entities generally must also make other preexisting documents conform to WCAG 2.1 Level AA if they may be needed to obtain the license, complete the application, understand the process, or otherwise take part in the program, such as business license application instructions, manuals, sample knowledge tests, and guides, such as ''Questions and Answers'' documents.

Various commenters sought additional clarification about what it means for conventional electronic documents to be ''used'' in accordance with the limited scope of the exception. In particular, commenters questioned whether informational documents are used by members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities. Some commenters expressed concern that the scope of the exception would be interpreted inconsistently, including with respect to documents posted by public entities in accordance with other laws. Some commenters also urged the Department to add additional language to the exception, such as specifying that documents would not be covered by the exception if they are used by members of the public to ''enable or assist'' them to apply for, gain access to, or participate in a public entity's services, programs, or activities, or the documents ''provide information about or describe'' a public entity's services, programs, or activities.

Whether a document is currently used to apply for, gain access to, or participate in a public entity's services, programs, or activities is a fact-specific analysis. For example, one commenter questioned whether a document containing a city's description of a public park and its accessibility provisions would be covered by the exception if the document did not otherwise discuss a particular event or program. The Department anticipates that the exception would likely not cover such a document. One of the city's services, programs, or activities is providing and maintaining a public park and its accessibility features. An individual with a disability who accesses the document before visiting the park to understand the park's accessibility features would be currently using the document to gain access to the park.

One commenter suggested that if a public entity cannot change preexisting conventional electronic documents due to legal limitations or other similar restrictions, then the public entity should not have to make those documents accessible under subpart H of this part, even if they are currently used by members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities. The Department did not make changes to the exception because subpart H already includes a provision that addresses such circumstances in § 35.202. Namely, public entities are permitted to use conforming alternate versions of web content where it is not possible to make web content directly accessible due to technical or legal limitations. Therefore, a public entity could provide an individual with a disability a conforming alternate version of a preexisting conventional electronic document currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities if the document could not be made accessible for the individual due to legal limitations.

One commenter expressed concern that public entities might convert large volumes of web content to formats covered by the exception ahead of the compliance dates in subpart H of this part. In contrast, a public entity stated that there is limited incentive to rush to post inaccessible documents prior to the compliance dates because documents are frequently updated, and it would be easier for the public entity to create accessible documents in the first place than to try to remediate inaccessible documents in the future. The Department emphasizes that a public entity may not rely on the exception to circumvent its accessibility obligations under subpart H by, for example, converting all of its web content to conventional electronic document formats and posting those documents before the date the entity must comply with subpart H. Even if a public entity did convert various web content to preexisting conventional electronic documents before the date it was required to comply with subpart H, the date the documents were posted is only one part of the analysis under the exception. If any of the converted documents are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities, they would not be covered by the exception and would generally need to conform to WCAG 2.1 Level AA, even if those documents were posted before the date the entity was required to comply with subpart H. And if a public entity revises a conventional electronic document after the date the entity must comply with subpart H, that document would no longer qualify as ''preexisting'' and would thus need to be made accessible as defined in § 35.200.

The Department received comments both supporting and opposing the exception. In support of the exception, commenters highlighted various benefits. For example, commenters noted that the exception would help public entities preserve resources because remediating preexisting documents is time consuming and expensive. Commenters also noted that the exception would focus public entities' resources on current and future content rather than preexisting documents that may be old, rarely accessed, or of little benefit. Commenters stated that in the absence of this exception public entities might remove preexisting documents from their websites.

In opposition to the exception, commenters highlighted various concerns. For example, commenters argued that the exception is inconsistent with the ADA's goal of equal access for individuals with disabilities because it perpetuates unequal access to information available through public entities' web content and mobile apps, and it is unnecessary because the compliance limitations for fundamental alteration and undue financial and administrative burdens would protect public entities from any unrealistic requirements under subpart H of this part. Commenters also asserted that the exception excludes relevant and important content from becoming accessible, and it inappropriately continues to place the burden on individuals with disabilities to identify themselves to public entities, request access to the content covered by the exception, and wait for the request to be processed. In addition, commenters argued that the exception covers file formats that do not need to be covered by an exception because they can generally be remediated easily; it is not timebound; it does not account for technology that exists, or might develop in the future, that may allow for easy and reliable wide-scale remediation of conventional electronic documents; and it might deter development of technology to reliably remediate conventional electronic documents. Commenters also stated that the exception is confusing because, as described elsewhere in this appendix, it may not be clear when documents are ''preexisting'' or ''used'' to apply for, gain access to, or participate in a public entity's services, programs, or activities, and confusion or a lack of predictability would make advocacy efforts more difficult.

After reviewing the comments, the Department has decided to keep the exception in § 35.201. The Department continues to believe that the exception provides an important measure of clarity and certainty for public entities as they initially consider how to address all the various conventional electronic documents provided and made available through their web content and mobile apps. The exception will allow public entities to primarily focus their resources on developing new conventional electronic documents that are accessible as defined under subpart H of this part and remediating preexisting conventional electronic documents that are currently used to apply for, gain access to, or participate in their services, programs, or activities. In contrast, public entities will not have to expend their resources on identifying, cataloguing, and remediating preexisting

conventional electronic documents that are not currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities. Based on the exception, public entities may thereby make more efficient use of the resources available to them to ensure equal access to their services, programs, or activities for all individuals with disabilities.

The Department understands the concerns raised by commenters about the potential burdens that individuals with disabilities may face because some conventional electronic documents covered by the exception are not accessible. The Department emphasizes that even if certain content does not have to conform to the technical standard, public entities still need to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities on a case-by-case basis in accordance with their existing obligations under title II of the ADA. These obligations include making reasonable modifications to avoid discrimination on the basis of disability, ensuring that communications with people with disabilities are as effective as communications with people without disabilities, and providing people with disabilities an equal opportunity to participate in or benefit from the entity's services, programs, or activities.[132]

Some commenters suggested that the Department should require public entities to adopt procedures and timelines for how individuals with disabilities could request access to inaccessible conventional electronic documents covered by the exception. One commenter also suggested that subpart H of this part should require the ongoing provision of accessible materials to an individual with a disability if a public entity is on notice that the individual needs access to preexisting conventional electronic documents covered by the exception in accessible formats. The Department declines to make specific changes to the exception in response to these comments and reiterates that public entities must determine on a case-by-case basis how best to meet the needs of those individuals who cannot access the content contained in documents that are covered by the exception. It is helpful to provide individuals with disabilities with information about how to obtain the modifications or auxiliary aids and services they may need. Public entities can help to facilitate effective communication by providing notice to the public on how an individual who cannot access preexisting conventional electronic documents covered by the exception because of a disability can request other means of effective communication or reasonable modifications in order to access the public entity's services, programs, or activities with respect to the documents. Public entities can also facilitate effective communication by providing an accessibility statement that tells the public how to bring web content or mobile app accessibility problems to the public entities' attention and developing and implementing a procedure for reviewing and addressing any such issues raised. For example, a public entity could facilitate effective communication by providing an email address, accessible link, accessible web page, or other accessible means of contacting the public entity to provide information about issues that individuals with disabilities may encounter accessing web content or mobile apps or to request assistance. Providing this information will help public entities to ensure that they are satisfying their obligations to provide equal access, effective communication, and reasonable modifications.

Commenters also suggested other possible revisions to the exception. Commenters recommended various changes that would cause conventional electronic documents covered by the exception to become accessible over time. For example, commenters suggested that if a public entity makes a copy of a preexisting conventional electronic document covered by the exception conform to WCAG 2.1 Level AA in response to a request from an individual with a disability, the public entity should replace the inaccessible version posted on its web content or mobile app with the updated accessible version that was sent to the individual; the exception should ultimately expire after a certain amount of time; public entities should be required to remediate preexisting documents over time, initially prioritizing documents that are most important and frequently accessed; or public entities should be required to convert certain documents to HTML format according to the same schedule that other HTML content is made accessible.

The Department already expects the impact of the exception will diminish over time for various reasons. For example, public entities may update the documents covered by the exception, in which case they are no longer ''preexisting.'' In addition, the Department notes that there is nothing in subpart H of this part that would prevent public entities from taking steps, such as those identified by commenters, to make preexisting conventional electronic documents conform to WCAG 2.1 Level AA. In fact, public entities might find it beneficial to do so.

One commenter recommended that the exception should apply to all preexisting conventional electronic documents regardless of how they are used by members of the public. The Department does not believe this approach is advisable because it has the potential to cause a significant accessibility gap for individuals with disabilities if public entities rely on conventional electronic documents that are not regularly updated or changed. This could result in inconsistent access to web content and mobile apps and therefore less predictability for people with disabilities in terms of what to expect when accessing public entities' web content and mobile apps.

One public entity recommended that the exception should also apply to preexisting documents posted on a public entity's web content or mobile apps after the date the public entity is required to comply with subpart H of this part if the documents are of historical value and were only minimally altered before posting. One goal of the exception is to assist public entities in focusing their personnel and financial resources on developing new web content and mobile apps that are accessible as defined under subpart H. Therefore, the exception neither applies to content that is newly added to a public entity's web content or mobile app after the date the public entity is required to comply with subpart H nor to preexisting content that is updated after that date. The Department notes that if a public entity wishes to post archival documents, such as the types of documents described by the commenter, after the date the public entity is required to comply with subpart H, the public entity should assess whether the documents can be archived under § 35.201(a), depending on the facts. In particular, the definition of ''archived web content'' in § 35.104 includes web content posted to an archive after the date a public entity is required to comply with subpart H only if the web content was created before the date the public entity is required to comply with subpart H, reproduces paper documents created before the date the public entity is required to comply with subpart H, or reproduces the contents of other physical media created before the date the public entity is required to comply with subpart H.

Several commenters also requested clarification about how the exception applies to preexisting conventional electronic documents that are created by a third party on behalf of a public entity or hosted on a third party's web content or mobile apps on behalf of a public entity. As previously discussed, the Department made general changes to § 35.200 that address public entities' contractual, licensing, or other arrangements with third parties. The Department clarified that the general requirements for web content and mobile app accessibility apply when a public entity provides or makes available web content or mobile apps, directly or through contractual, licensing, or other arrangements. The same is also true for the application of this exception. Therefore, preexisting conventional electronic documents that a public entity provides or makes available, directly or through contractual, licensing, or other arrangements, would be subject to subpart H of this part, and the documents would be covered by this exception unless they are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities.

Third-Party Content

Public entities' web content or mobile apps can include or link to many different types of content created by someone other than the public entity, some of which is posted by or on behalf of public entities and some of which is not. For example, many public entities' websites contain content created by third parties, like scheduling tools, reservations systems, or payment systems. Web content or content in mobile apps created by third parties may also be posted by members of the public on a public entity's online message board or other sections of the public entity's content that allow public comment. In addition to content created by third parties that is posted on the public

[132] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

entity's own web content or content in mobile apps, public entities frequently provide links to third-party content (*i.e.,* links on the public entity's website to content that has been posted on another website that does not belong to the public entity), including links to outside resources and information.

Subpart H of this part requires web content and mobile apps created by third parties to comply with § 35.200 if the web content and mobile apps are provided or made available due to contractual, licensing, or other arrangements with the public entity. In other words, web content and mobile apps that are created or posted on behalf of a public entity fall within the scope of § 35.200. Where a public entity links to third-party content but the third-party content is truly unaffiliated with the public entity and not provided on behalf of the public entity due to contractual, licensing, or other arrangements, the linked content falls outside the scope of § 35.200. Additionally, due to the exception in § 35.201(c), content posted by a third party on an entity's web content or mobile app falls outside the scope of § 35.200, unless the third party is posting due to contractual, licensing, or other arrangements with the public entity.

The Department has heard a variety of views regarding whether public entities should be responsible for ensuring that third-party content on their websites and linked third-party content are accessible as defined by § 35.200. Some maintain that public entities cannot be held accountable for third-party content on their websites, and without such an exception, public entities may have to remove the content altogether. Others have suggested that public entities should not be responsible for third-party content and linked content unless that content is necessary for individuals to access public entities' services, programs, or activities. The Department has also heard the view, however, that public entities should be responsible for third-party content because a public entity's reliance on inaccessible third-party content can prevent people with disabilities from having equal access to the public entity's own services, programs, or activities. Furthermore, boundaries between web content generated by a public entity and by a third party are often difficult to discern.

In anticipation of these concerns, the Department originally proposed two limited exceptions related to third-party content in the NPRM. After review of the public's comments to those exceptions and the comments related to third-party content generally, the Department is proceeding with one of those exceptions in subpart H of this part, as described in the following paragraph. As further explained elsewhere in this appendix, the Department notes that it eliminates redundancy to omit the previously proposed exception for third-party content linked from a public entity's website, but it does not change the scope of content that is required to be made accessible under subpart H.

Content Posted by a Third Party

Section 35.201(c) provides an exception to the web and mobile app accessibility requirements of § 35.200 for content posted by a third party, unless the third party is posting due to contractual, licensing, or other arrangements with the public entity. Section 35.201 includes this exception in recognition of the fact that individuals other than a public entity's agents sometimes post content on a public entity's web content and mobile apps. For example, members of the public may sometimes post on a public entity's online message boards, wikis, social media, or other web forums, many of which are unmonitored, interactive spaces designed to promote the sharing of information and ideas. Members of the public may post frequently, at all hours of the day or night, and a public entity may have little or no control over the content posted. In some cases, a public entity's website may include posts from third parties dating back many years, which are likely of limited, if any, relevance today. Because public entities often lack control over this third-party content, it may be challenging (or impossible) for them to make it accessible. Moreover, because this third-party content may be outdated or less frequently accessed than other content, there may be only limited benefit to requiring public entities to make this content accessible. Accordingly, the Department believes an exception for this content is appropriate. However, while this exception applies to web content or content in mobile apps posted by third parties, it does not apply to the tools or platforms the public uses to post third-party content on a public entity's web content or content in mobile apps, such as message boards—these tools and platforms generally must conform to the technical standard in subpart H of this part.

This exception applies to, among other third-party content, documents filed by independent third parties in administrative, judicial, and other legal proceedings that are available on a public entity's web content or mobile apps. This example helps to illustrate why the Department believes this exception is necessary. Many public entities have either implemented or are developing an automated process for electronic filing of documents in administrative, judicial, or legal proceedings in order to improve efficiency in the collection and management of these documents. Courts and other public entities receive high volumes of filings in these sorts of proceedings each year. Documents are often submitted by third parties—such as a private attorney in a legal case or other members of the public—and those documents often include appendices, exhibits, or other similar supplementary materials that may be difficult to make accessible.

However, the Department notes that public entities have existing obligations under title II of the ADA to ensure the accessibility of their services, programs, or activities.[133] Accordingly, for example, if a person with a disability is a party to a case and requests access to inaccessible filings submitted by a third party in a judicial proceeding that are available on a State court's website, the court generally must timely provide those filings in an accessible format. Similarly, public entities generally must provide reasonable modifications to ensure that individuals with disabilities have access to the public entities' services, programs, or activities. For example, if a hearing had been scheduled in the proceeding referenced in this paragraph, the court might need to postpone the hearing if the person with a disability was not provided filings in an accessible format before the scheduled hearing.

Sometimes a public entity itself chooses to post content created by a third party on its website. The exception in § 35.201(c) does not apply to content posted by the public entity itself, or posted on behalf of the public entity due to contractual, licensing, or other arrangements, even if the content was originally created by a third party. For example, many public entities post third-party content on their websites, such as calendars, scheduling tools, maps, reservations systems, and payment systems that were developed by an outside technology company. Sometimes a third party might even build a public entity's website template on the public entity's behalf. To the extent a public entity chooses to rely on third-party content on its website in these ways, it must select third-party content that meets the requirements of § 35.200. This is because a public entity may not delegate away its obligations under the ADA.[134] If a public entity relies on a contractor or another third party to post content on the public entity's behalf, the public entity retains responsibility for ensuring the accessibility of that content. To provide another example, if a public housing authority relies on a third-party contractor to collect online applications on the third-party contractor's website for placement on a waitlist for housing, the public housing authority must ensure that this content is accessible.

The Department has added language to the third-party posted exception in § 35.201(c) to make clear that the exception does not apply where a third party is posting on behalf of the public entity. The language in § 35.201(c) provides that the exception does not apply if the third party is posting due to contractual, licensing, or other arrangements with the public entity. The Department received many comments expressing concern with how this exception as originally proposed could have applied in the context of third-party vendors and other entities acting on behalf of the public entity. The Department added language to make clear that the exception only applies where the third-party posted content is independent from the actions of the public entity—that is, where there is no arrangement under which the third party is acting on behalf of the public entity. If such an arrangement exists, the third-party content is not covered by the exception and must be made accessible in accordance with subpart H of this part. This point is also made clear in language the Department added to the general requirements of § 35.200, which provides that public entities shall ensure web

[133] *See, e.g.,* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

[134] *See* § 35.130(b)(1)(ii) (prohibiting discrimination through a contractual, licensing, or other arrangement that would provide an aid, benefit, or service to a qualified individual with a disability that is not equal to that afforded others).

content and mobile apps that the public entities provide or make available, directly or through contractual, licensing, or other arrangements, are readily accessible to and usable by individuals with disabilities.[135] The Department decided to add the same clarification to the exception for third-party posted content because this is the only exception in § 35.201 that applies solely based upon the identity of the poster (whereas the other exceptions identify the type of content at issue), and the Department believes clarity about the meaning of ''third party'' in the context of this exception is critical to avoid the exception being interpreted overly broadly. The Department believes this clarification is justified by the concerns raised by commenters.

On another point, some commenters expressed confusion about when authoring tools and other embedded content that enables third-party postings would need to be made accessible. The Department wishes to clarify that while the exception for third-party posted content applies to that content which is posted by an independent third party, the exception does not apply to the authoring tools and embedded content provided by the public entity, directly or through contractual, licensing, or other arrangements. Because of this, authoring tools, embedded content, and other similar functions provided by the public entity that facilitate third-party postings are not covered by this exception and must be made accessible in accordance with subpart H of this part. Further, public entities should consider the ways in which they can facilitate accessible output of third-party content through authoring tools and guidance. Some commenters suggested that the Department should add regulatory text requiring public entities to use authoring tools that generate compliant third-party posted content. The Department declines to adopt this approach at this time because the technical standard adopted by subpart H is WCAG 2.1 Level AA, and the Department believes the commenters' proposed approach would go beyond that standard. The Department believes going beyond the requirements of WCAG 2.1 Level AA in this way would undermine the purpose of relying on an existing technical standard that web developers are already familiar with, and for which guidance is readily available, which could prove confusing for public entities.

The Department received many comments either supporting or opposing the exception for content posted by a third party. Public entities and trade groups representing public accommodations generally supported the exception, and disability advocates generally opposed the exception. Commenters supporting the exception argued that the content covered by this exception would not be possible for public entities to remediate since they lack control over unaffiliated third-party content. Commenters in support of the exception also shared that requiring public entities to remediate this content would stifle engagement between public entities and members of the public, because requiring review and updating of third-party postings would take time. Further, public entities shared that requiring unaffiliated third-party web content to be made accessible would in many cases either be impossible or require the public entity to make changes to the third party's content in a way that could be problematic.

Commenters opposing the exception argued that unaffiliated third-party content should be accessible so that individuals with disabilities can engage with their State or local government entities, and commenters shared examples of legal proceedings, development plans posted by third parties for public feedback, and discussions of community grievances or planning. Some of the commenters writing in opposition to the exception expressed concern that content provided by vendors and posted by third parties on behalf of the public entity would also be covered by this exception. The Department emphasizes in response to these commenters that this exception does not apply where a third party such as a vendor is acting on behalf of a public entity, through contractual, licensing, or other arrangements. The Department added language to ensure this point is clear in regulatory text, as explained previously.

After reviewing the comments, the Department emphasizes at the outset the narrowness of this exception—any third-party content that is posted due to contractual, licensing, or other arrangements with the public entity would not be covered by this exception. The Department sometimes refers to the content covered by this exception as ''independent'' or ''unaffiliated'' content to emphasize that this exception only applies to content that the public entity has not contracted, licensed, or otherwise arranged with the third party to post. This exception would generally apply, for example, where the public entity enables comments from members of the public on its social media page and third-party individuals independently comment on that post, or where a public entity allows for legal filings through an online portal and a third-party attorney independently submits a legal filing on behalf of their private client (which is then available on the public entity's web content or mobile apps).

The Department has determined that maintaining this exception is appropriate because of the unique considerations relevant to this type of content. The Department takes seriously public entities' concerns that they will often be unable to ensure independent third-party content is accessible because it is outside of their control, and that if they were to attempt to control this content it could stifle communication between the public and State or local government entities. The Department further believes there are unique considerations that could prove problematic with public entities editing or requiring third parties to edit their postings. For example, if public entities were required to add alt text to images or maps in third parties' legal or other filings, it could require the public entity to make decisions about how to describe images or maps in a way that could be problematic from the perspective of the third-party filer. Alternatively, if the public entity were to place this burden on the third-party filer, it could lead to different problematic outcomes. For example, if a public entity rejects a posting from an unaffiliated third party (someone who does not have obligations under subpart H of this part) and requires the third party to update it, the result could be a delay of an emergency or time-sensitive filing or even impeding access to the forum if the third party is unable or does not have the resources to remediate the filing.

The Department understands the concerns raised by the commenters who oppose this exception, and the Department appreciates that the inclusion of this exception means web content posted by third parties may not consistently be accessible by default. The Department emphasizes that even if certain content does not have to conform to the technical standard, public entities still need to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities on a case-by-case basis in accordance with their existing obligations under title II of the ADA. These obligations include making reasonable modifications to avoid discrimination on the basis of disability, ensuring that communications with people with disabilities are as effective as communications with people without disabilities, and providing people with disabilities an equal opportunity to participate in or benefit from the entity's services, programs, or activities.[136]

The Department believes the balance this exception strikes thus ensures accessibility to the extent feasible without requiring public entities to take actions that may be impossible or lead to problematic outcomes as described previously. These problematic outcomes include public entities needing to characterize independent third-party content by adding image descriptions, for example, and stifling engagement between public entities and the public due to public entities' need to review and potentially update independent third-party posts, which could lead to delay in posting. Independent third-party content should still be made accessible upon request when required under the existing obligations within title II of the ADA. However, public entities are not required to ensure the accessibility at the outset of independent third-party content. The Department believes, consistent with commenters' suggestions, that reliance solely on the fundamental alteration or undue burdens provisions discussed in the ''Duties'' section of the section-by-section analysis of § 35.204 would not avoid these problematic outcomes. This is because, for example, even where the public entity may have the resources to make the third-party content accessible (such as by making changes to the postings or blocking posting until the third party makes changes), and even where the public entity does not believe modifying the postings would result in a fundamental alteration in the nature of the service, program, or activity at issue, the problematic outcomes described previously would likely persist. The Department thus believes that

[135] *See supra* section-by-section analysis of § 35.200(a)(1) and (2) and (b)(1) and (2).

[136] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

this exception appropriately balances the relevant considerations while ensuring access for individuals with disabilities.

Some commenters suggested alternative formulations that would narrow or expand the exception. For example, commenters suggested that the Department limit the exception to advertising and marketing or activities not used to access government services, programs, or activities; mandate that third-party postings providing official comment on government actions still be required to be made accessible; provide alternative means of access as permissible ways of achieving compliance; consider more content as third-party created content; provide for no liability for third-party sourced content; require that emergency information posted by third parties still be accessible; and require that public entities post guidance on making third-party postings accessible. The Department has considered these alternative formulations, and with each proposed alternative the Department found that the proposal would not avoid the problematic outcomes described previously, would result in practical difficulties to implement and define, or would be too expansive of an exception in that too much content would be inaccessible to individuals with disabilities.

Commenters also suggested that the Department include a definition of ''third party.'' The Department is declining to add this definition because the critical factor in determining whether this exception applies is whether the third party is posting due to contractual, licensing, or other arrangements with the public entity, and the Department believes the changes to the regulatory text provide the clarity commenters sought. For example, the Department has included language making clear that public entities are responsible for the content of third parties acting on behalf of State or local government entities through the addition of the ''contractual, licensing, or other arrangements'' clauses in the general requirements and in this exception. One commenter also suggested that subpart H of this part should cover third-party creators of digital apps and content regardless of whether the apps and content are used by public entities. Independent third-party providers unaffiliated with public entities are not covered by the scope of subpart H, as they are not title II entities.

Finally, the Department made a change to the exception for third-party posted content from the NPRM to make the exception more technology neutral. The NPRM provided that the exception applies only to ''web content'' posted by a third party.[137] The Department received a comment suggesting that third-party posted content be covered by the exception regardless of whether the content is posted on web content or mobile apps, and several commenters indicated that subpart H of this part should apply the same exceptions across these platforms to ensure consistency in user experience and reduce confusion. For example, if a third party posts information on a public entity's social media page, that information would be available on both the web and on a mobile app. However, without a technology-neutral exception for third-party posted content, that same information would be subject to different requirements on different platforms, which could create perverse incentives for public entities to only make certain content available on certain platforms. To address these concerns, § 35.201(c) includes a revised exception for third-party posted content to make it more technology neutral by clarifying that the exception applies to ''content'' posted by a third party. The Department believes this will ensure consistent application of the exception whether the third-party content is posted on web content or mobile apps.

Previously Proposed Exception for Third-Party Content Linked From a Public Entity's Website

In the NPRM, the Department proposed an exception for third-party content linked from a public entity's website. After reviewing public comments on this proposed exception, the Department has decided not to include it in subpart H of this part. The Department agrees with commenters who shared that the exception is unnecessary and would only create confusion. Further, the Department believes that the way the exception was framed in the NPRM is consistent with the way subpart H would operate in the absence of this exception (with some clarifications to the regulatory text), so the fact that this exception is not included in subpart H will not change what content is covered by subpart H. Under subpart H, consistent with the approach in the NPRM, public entities are not responsible for making linked third-party content accessible where they do not provide or make available that content, directly or through contractual, licensing, or other arrangements.

Exception Proposed in the NPRM

The exception for third-party-linked content that was proposed in the NPRM provided that a public entity would not be responsible for the accessibility of third-party web content linked from the public entity's website unless the public entity uses the third-party web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities. Many public entities' websites include links to other websites that contain information or resources in the community offered by third parties that are not affiliated with the public entity. Clicking on one of these links will take an individual away from the public entity's website to the website of a third party. Often, the public entity has no control over or responsibility for a third party's web content or the operation of the third party's website. Accordingly, the proposed regulatory text in the NPRM provided that the public entity would have no obligation to make the content on a third party's website accessible.[138] This exception was originally provided to make clear that public entities can continue to provide links to independent third-party web content without making the public entity responsible for the accessibility of the third party's web content.

However, in the NPRM, the Department provided that if the public entity uses the linked third-party web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities, then the public entity must ensure it only links to third-party web content that complies with the web accessibility requirements of § 35.200. The Department clarified that this approach is consistent with public entities' obligation to make all of their services, programs, and activities accessible to the public, including those that public entities provide through third parties.[139]

Most commenters opining on this subject opposed the exception for third-party content linked from a public entity's website, including disability advocates and individuals with disabilities. Commenters raised many concerns with the exception as drafted. Principally, commenters shared that the exception could lead to confusion about when third-party content is covered by subpart H, and that it could result in critical third-party content being interpreted to be excluded from the requirements of § 35.200. Although the Department proposed a limitation to the exception (*i.e.,* a scenario under which the proposed exception would not apply) that would have required linked third-party content to be made accessible when it is used to participate in or benefit from the public entity's services, programs, or activities, commenters pointed out that this limitation would be difficult to apply to third-party content, and that many public entities would interpret the exception to allow them to keep services, programs, and activities inaccessible. Many commenters, including public entities, even demonstrated this confusion through their comments. For example, commenters believed that web content like fine payment websites, zoning maps, and other services provided by third-party vendors on behalf of public entities would be allowed to be inaccessible under this exception. This misinterprets the proposed exception as originally drafted because third-party web content that is used to participate in or benefit from the public entity's services, programs, or activities would have still been required to be accessible as defined under proposed § 35.201 due to the limitation to the exception. But the Department noted that many commenters from disability advocacy groups, public entities, and trade groups representing public accommodations either expressed concern with or confusion about the exception, or demonstrated confusion through inaccurate statements about what content would fall into this exception to the requirements in subpart H of this part.

Further, commenters also expressed concern with relieving public entities of the responsibility to ensure that the links they provide lead to accessible content.

[137] 88 FR 52019.

[138] 88 FR 52019; *see also id.* at 51969 (preamble text).

[139] 88 FR 51969; *see also* § 35.130(b)(1)(ii) (prohibiting discrimination through a contractual, licensing, or other arrangement that would provide an aid, benefit, or service to a qualified individual with a disability that is not equal to that afforded others).

Commenters stated that when public entities provide links, they are engaging in activities that would be covered by subpart H of this part. In addition, commenters said that public entities might provide links to places where people can get vaccinations or collect information for tourists, and that these constitute the activities of the public entity. Also, commenters opined that when public entities engage in these activities, they should not be absolved of the responsibility to provide information presented in a non-discriminatory manner. Commenters said that public entities have control over which links they use when they organize these pages, and that public entities can and should take care to only provide information leading to accessible web content. Commenters stated that in many cases public entities benefit from providing these links, as do the linked websites, and that public entities should thus be responsible for ensuring the accessibility of the linked content. Some commenters added that this exception would have implied that title III entities are permitted to discriminate by keeping their web content inaccessible, though the Department emphasizes in response to these commenters that subpart H does not alter the responsibilities title III entities have with regard to the goods, services, privileges, or activities offered by public accommodations on the web.[140] Commenters universally expressed their concern that the content at issue is often inaccessible, accentuating this problem.

Some commenters supported the exception, generally including individuals, public entities, and trade groups representing public accommodations. These commenters contended that the content at issue in this exception should properly be considered ''fluff,'' and that it would be unrealistic to expect tourist or small business promotion to exist through only accessible websites. The Department also received some examples from commenters who supported the exception of web content the commenters inaccurately believed would be covered by the exception, such as highway toll management account websites. The Department would have likely considered that type of content to be required to comply with § 35.200, even with the exception, due to the limitation to the third-party-linked exception as proposed in the NPRM. Many of the comments the Department received on this proposed exception demonstrated confusion with how the third-party-linked exception and its limitation as proposed in the NPRM would apply in practice, which would lead to misconceptions in terms of when public entities must ensure conformance to WCAG 2.1 and what kinds of content individuals with disabilities can expect to be accessible.

Approach to Linked Third-Party Content in Subpart H of This Part

After reviewing public comments, the Department believes that inclusion of this exception is unnecessary, would result in confusion, and that removing the exception more consistently aligns with the language of title II of the ADA and the Department's intent in proposing the exception in the NPRM.

Consistent with what many commenters opined, the Department believes that the proper analysis is whether an entity has directly, or through contractual, licensing, or other arrangements, provided or made available the third-party content. This means that, for example, when a public entity posts links to third-party web content on the public entity's website, the links located on the public entity's website and the organization of the public entity's website must comply with § 35.200. Further, when a public entity links to third-party web content that is provided by the public entity, directly or through contractual, licensing, or other arrangements, the public entity is also responsible for ensuring the accessibility of that linked content. However, when public entities link to third-party websites, unless the public entity has a contractual, licensing, or other arrangement with the website to provide or make available content, those third-party websites are not covered by title II of the ADA, because they are not services, programs, or activities provided or made available by public entities, and thus public entities are not responsible for the accessibility of that content.

Rather than conduct a separate analysis under the proposed exception in the NPRM, the Department believes the simpler and more legally consistent approach is for public entities to assess whether the linked third-party content reflects content that is covered under subpart H of this part to determine their responsibility to ensure the accessibility of that content. If that content is covered, it must be made accessible in accordance with the requirements of § 35.200. For example, if a public entity allows the public to pay for highway tolls using a third-party website, that website would be a service that the public entity provides through arrangements with a third party, and the toll payment website would need to be made accessible consistent with subpart H. However, if the content is not provided or made available by a public entity, directly or through contractual, licensing, or other arrangements, even though the public entity linked to that content, the public entity would not be responsible for making that content accessible. The public entity would still need to ensure the links themselves are accessible, but not the unaffiliated linked third-party content. For example, if a public entity has a tourist information website that provides a link to a private hotel's website, then the public entity would need to ensure the link to that hotel is accessible, because the link is part of the web content of the public entity. The public entity would, for example, need to ensure that the link does not violate the minimum color contrast ratio by being too light of a color blue against a light background, which would make it inaccessible to certain individuals with disabilities.[141] However, because the hotel website itself is private and is not being provided on behalf of the public entity due to a contractual, licensing, or other arrangement, the public entity would not be responsible for ensuring the hotel website's ADA compliance.[142]

The Department believes that this approach is consistent with what the Department sought to achieve by including the exception in the NPRM, so this modification to subpart H of this part from the proposal in the NPRM does not change the web content that is ultimately covered by subpart H. Rather, the Department believes that removing the exception will alleviate the confusion expressed by many commenters and allow public entities to make a more straightforward assessment of the coverage of the web content they provide to the public under subpart H. For example, a public entity that links to online payment processing websites offered by third parties to accept the payment of fees, parking tickets, or taxes must ensure that the third-party web content it links to in order for members of the public to pay for the public entity's services, programs, or activities complies with the web accessibility requirements of § 35.200. Similarly, if a public entity links to a third-party website that processes applications for benefits or requests to sign up for classes or programs the public entity offers, the public entity is using the third party's linked web content as part of the public entity's services, programs, or activities, and the public entity must thus ensure that it links to only third-party web content that complies with the requirements of § 35.200.

The Department considered addressing commenters' confusion by providing more guidance on the proposed exception, rather than removing the exception. However, the Department believes that the concept of an exception for this type of content, when that content would not be covered by title II in the first place, would make the exception especially prone to confusion, such that including it in subpart H of this part even with further explanation would be insufficient to avoid confusion. The Department believes that because the content at issue would generally not be covered by title II in the first place, including this exception could inadvertently cause public entities to assume that the exception is broader than it is, which could result in the inaccessibility of content that is critical to accessing public entities' services, programs, or activities.

The Department also reviewed proposals by commenters to both narrow and expand the language of the exception proposed in the NPRM. Commenters suggested narrowing the exception by revising the limitation to cover information that ''enables or assists'' members of the public to participate in or

[140] *See* U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA, ADA.gov* (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/WH9E-VTCY*].

[141] *See* W3C, *Web Content Accessibility Guidelines 2.1, Contrast (Minimum)* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#contrast-minimum* [*https://perma.cc/VAA3-TYN9*].

[142] The Department reminds the public, however, that the hotel would still have obligations under title III of the ADA. *See* U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA, ADA.gov* (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/WH9E-VTCY*].

benefit from services, programs, or activities. Commenters also proposed expanding the exception by allowing third-party web content to remain inaccessible if there is no feasible manner for the content to be made compliant with the requirements of § 35.200 or by removing the limitation. Several commenters made additional alternative proposals to both narrow and expand the language of the exception. The Department has reviewed these alternatives and is still persuaded that the most prudent approach is removing the exception altogether, for the reasons described previously.

External Mobile Apps

Many public entities use mobile apps that are developed, owned, and operated by third parties, such as private companies, to allow the public to access the public entity's services, programs, or activities. This part of the section-by-section analysis refers to mobile apps that are developed, owned, and operated by third parties as ''external mobile apps.'' [143] For example, members of the public use external mobile apps to pay for parking in a city (*e.g.,* ''ParkMobile'' app [144]) or to submit non-emergency service requests such as fixing a pothole or a streetlight (*e.g.,* ''SeeClickFix'' app [145]). In subpart H of this part, external mobile apps are subject to § 35.200 in the same way as mobile apps that are developed, owned, and operated by a public entity. The Department is taking this approach because such external apps are generally made available through contractual, licensing, or other means, and this approach ensures consistency with existing ADA requirements that apply to other services, programs, and activities that a public entity provides in this manner. Consistent with these principles, if a public entity, directly or through contractual, licensing, or other arrangements, provides or makes available an external mobile app, that mobile app must comply with § 35.200 unless it is subject to one of the exceptions outlined in § 35.201.

The Department requested feedback on the external mobile apps that public entities use to offer their services, programs, or activities and received comments on its approach to external mobile apps. Commenters pointed out that external mobile apps are used for a variety of purposes by public entities, including for public information, updates on road conditions, transportation purposes, information on recreation, class information, map-based tools for finding specific information like air quality, and emergency planning, among other things.

Commenters overwhelmingly supported the Department's position to not include a wholesale exception for every external mobile app, given how often these apps are used in public entities' services, programs, and activities. As commenters noted, the public's reliance on mobile devices makes access to external apps critical, and commenters shared their belief that the usage of mobile devices, like smartphones, will increase in the coming years. For example, some commenters indicated that many individuals with disabilities, especially those with vision disabilities, primarily rely on smartphones rather than computers, and if mobile apps are not accessible, then people who are blind or have low vision would need to rely on others to use apps that include sensitive data like bank account information. Accordingly, commenters argued there should be little, if any, difference between the information and accessibility provided using a mobile app and a conventional web browser, and if the Department were to provide an exception for external mobile apps, commenters said that there would be a large loophole for accessibility because so many members of the public rely on external mobile apps to access a public entity's services, programs, or activities.

Some commenters sought clarity on the scope of external mobile apps that might be covered by subpart H of this part, such as whether apps used to vote in an election held by a public entity would be covered. Under subpart H, external mobile apps that public entities provide or make available, including apps used in a public entity's election, would be covered by subpart H. As discussed in the section-by-section analysis of § 35.200, subpart H applies to a mobile app even if the public entity does not create or own the mobile app, if there is a contractual, licensing, or other arrangement through which the public entity provides or makes the mobile app available to the public.

Some commenters raised concerns with applying accessibility standards to external mobile apps that a public entity provides or makes available, directly or through contractual, licensing, or other arrangements. Specifically, commenters indicated there may be challenges related to costs, burdens, and cybersecurity with making these apps accessible and, because external mobile apps are created by third-party vendors, public entities may have challenges in ensuring that these apps are accessible. Accordingly, some commenters indicated the Department should set forth an exception for external mobile apps. Another commenter suggested that the Department should delay the compliance date of subpart H of this part to ensure there is sufficient time for external mobile apps subject to § 35.200 to come into compliance with the requirements in subpart H.

While the Department understands these concerns, the Department believes that the public relies on many public entities' external mobile apps to access public entities' services, programs, or activities, and setting forth an exception for these apps would keep public entities' services, programs, or activities inaccessible in practice for many individuals with disabilities. The Department believes that individuals with disabilities should not be excluded from these government services because the external mobile apps on which public entities rely are inaccessible. In addition, this approach of applying ADA requirements to services, programs, or activities that a public entity provides through a contractual, licensing, or other arrangement with a third party is consistent with the existing framework in title II of the ADA.[146] Under this framework, public entities have obligations in other title II contexts where they choose to contract, license, or otherwise arrange with third parties to provide services, programs, or activities.[147]

With respect to concerns about an appropriate compliance date, the section-by-section analysis of § 35.200 addresses this issue. The Department believes the compliance dates in subpart H of this part will provide sufficient time for public entities to ensure they are in compliance with the requirements of subpart H. Further lengthening the compliance dates would only further extend the time that individuals with disabilities remain excluded from the same level of access to public entities' services, programs, and activities through mobile apps.

Previously Proposed Exceptions for Password-Protected Class or Course Content of Public Educational Institutions

In the NPRM, the Department proposed exceptions to the requirements of § 35.200 for certain password-protected class or course content of public elementary, secondary, and postsecondary institutions.[148] For the reasons discussed in this section, the Department has decided not to include these exceptions in subpart H of this part.[149] Accordingly, under subpart H, password-protected course content will be treated like any other content and public educational institutions will generally need to ensure that that content complies with WCAG 2.1 Level AA starting two or three years after the publication of the final rule, depending on whether the public educational institution is covered by § 35.200(b)(1) or (2).

[143] The Department does not use the term ''third-party'' to describe mobile apps in this section to avoid confusion. It is the Department's understanding that the term ''third-party mobile app'' may have a different meaning in the technology industry, and some understand ''a third-party app'' as an application that is provided by a vendor other than the manufacturer of the device or operating system provider. *See* Alice Musyoka, *Third-Party Apps, Webopedia* (Aug. 4, 2022), *https://www.webopedia.com/definitions/third-party-apps/* [*https://perma.cc/SBW3-RRGN*].

[144] *See ParkMobile Parking App, https://parkmobile.io* [*https://perma.cc/G7GY-MDFE*].

[145] *See Using Mobile Apps in Government,* IBM Ctr. for the Bus. of Gov't, at 32–33 (2015), *https://www.businessofgovernment.org/sites/default/files/Using%20Mobile%20Apps%20in%20Government.pdf* [*https://perma.cc/248X-8A6C*].

[146] *See* § 35.130(b)(1) and (3).

[147] For example, under title II, a State is required to make sure that the services, programs, or activities offered by a State park inn that is operated by a private entity under contract with the State comply with title II. *See* 56 FR 35694, 35696 (July 26, 1991).

[148] *See* 88 FR 52019.

[149] Some commenters asked for clarification about how the proposed course content exceptions would operate in practice. For example, one commenter asked for clarification about what it would mean for a public educational institution to be ''on notice'' about the need to make course content accessible for a particular student, one of the limitations proposed in the NPRM. Because the Department is eliminating the course content exceptions from subpart H of this part, these questions about how the exceptions would have operated are moot and are not addressed in subpart H.

Course Content Exceptions Proposed in the NPRM

The NPRM included two proposed exceptions for password-protected class or course content of public educational institutions. The first proposed exception, which was included in the NPRM as proposed § 35.201(e),[150] stated that the requirements of § 35.200 would not apply to course content available on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution.[151] Although the proposed exception applied to password-protected course content, it did not apply to the Learning Management System platforms on which public educational institutions make content available.[152]

This proposed exception was cabined by two proposed limitations, which are scenarios under which the proposed exception would not apply. The first such limitation provided that the proposed exception would not apply if a public entity is on notice that an admitted student with a disability is pre-registered in a specific course offered by a public postsecondary institution and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course.[153] In those circumstances, the NPRM proposed, all content available on the public entity's password-protected or otherwise secured website for the specific course must comply with the requirements of § 35.200 by the date the academic term begins for that course offering, and new content added throughout the term for the course must also comply with the requirements of § 35.200 at the time it is added to the website.[154]

The second limitation to the proposed exception for public postsecondary institutions' course content provided that the exception would not apply once a public entity is on notice that an admitted student with a disability is enrolled in a specific course offered by a public postsecondary institution after the start of the academic term and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course.[155] In those circumstances, the NPRM proposed, all content available on the public entity's password-protected or otherwise secured website for the specific course must comply with the requirements of § 35.200 within five business days of such notice, and new content added throughout the term for the course must also comply with the requirements of § 35.200 at the time it is added to the website.[156]

The second proposed course content exception, which was included in the NPRM as § 35.201(f), proposed the same exception as proposed § 35.201(e), but for public elementary and secondary schools. The proposed exception also contained the same limitations and timing requirements as the proposed exception for public postsecondary schools, but the limitations to the exception would have applied not only when there was an admitted student with a disability enrolled in the course whose disability made them unable to access the course content, but also when there was a parent with a disability whose child was enrolled in the course and whose disability made them unable to access the course content.[157]

The Department proposed these exceptions in the NPRM based on its initial assessment that it might be too burdensome to require public educational institutions to make accessible all of the course content that is available on password-protected websites, particularly given that content can be voluminous and that some courses in particular terms may not include any students with disabilities or students whose parents have disabilities. However, the Department recognized in the NPRM that it is critical for students with disabilities to have access to course content for the courses in which they are enrolled; the same is true for parents with disabilities in the context of public elementary and secondary schools. The Department therefore proposed procedures that a public educational institution would have to follow to make course content accessible on an individualized basis once the institution was on notice that there was a student or parent who needed accessible course content because of a disability. Because of the need to ensure prompt access to course content, the Department proposed to require public educational institutions to act quickly upon being on notice of the need for accessible content; public entities would have been required to provide accessible course content either by the start of the term if the institution was on notice before the date the term began, or within five business days if the institution was on notice after the start of the term.

The Department stated in the NPRM that it believed the proposed exceptions for password-protected course content struck the proper balance between meeting the needs of students and parents with disabilities while crafting a workable standard for public entities, but it welcomed public feedback on whether alternative approaches might strike a more appropriate balance.[158] The Department also asked a series of questions about whether these exceptions were necessary or appropriate.[159] For example, the Department asked how difficult it would be for public educational institutions to comply with subpart H of this part in the absence of these exceptions, what the impact of the exceptions would be on individuals with disabilities, how long it takes to make course content accessible, and whether the Department should consider an alternative approach.[160]

Public Comments on Proposed Course Content Exceptions

The overwhelming majority of comments on this topic expressed opposition to the course content exceptions as proposed in the NPRM. Many commenters suggested that the Department should take an alternative approach on this issue; namely, the exceptions should not be included in subpart H of this part. Having reviewed the public comments and given careful additional consideration to this issue, the Department has decided not to include these exceptions in subpart H. The public comments supported the conclusion that the exceptions would exacerbate existing educational inequities for students and parents with disabilities without serving their intended purpose of meaningfully alleviating burdens for public educational institutions.

Infeasibility for Public Educational Institutions

Many commenters, including some commenters affiliated with public educational institutions, asserted that the course content exceptions and limitations as proposed in the NPRM would not be workable for schools, and would almost inevitably result in delays in access to course content for students and parents with disabilities. Commenters provided varying reasons for these conclusions.

Some commenters argued that because making course content accessible often takes time and intentionality to implement, it is more efficient and effective for public educational institutions to create policies and procedures to make course content accessible proactively, without waiting for a student with a disability (or student with a parent with a disability) to enroll and then making content accessible reactively.[161] Some commenters pointed out that although the Department proposed the course content exceptions in an effort to make it easier for public educational institutions to comply with subpart H of this part, the exceptions would in fact likely result in more work for entities struggling to remediate content on the back end.

Commenters noted that in many cases, public educational institutions do not generate course content themselves, but instead procure such content through third-party vendors. As a result, some commenters stated, public educational institutions may be dependent on vendors to make their course content accessible, many of which are unable or unwilling to respond to ad hoc requests for accessibility within the expedited time frames that would be required to comply with the limitations to the proposed exceptions. Some commenters argued that it is more efficient and effective to incentivize third-party vendors to make course content produced for public educational institutions accessible on the front end. Otherwise, some commenters contended, it may fall to

[150] Section 35.201(e) no longer refers to a course content exception, but now refers to a different exception for preexisting social media posts, as discussed in this section.

[151] 88 FR 52019.

[152] *Id.* at 51970.

[153] *Id.* at 52019.

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.*

[158] *Id.* at 51973, 51976.

[159] *Id.* at 51973, 51974, 51976.

[160] *Id.* at 51973, 51974, 51976.

[161] Many comments on this topic indicated that they were drawing from the philosophy of ''universal design.'' *See, e.g.,* 29 U.S.C. 3002(19).

individual instructors to scramble to make course content accessible at the last minute, regardless of those instructors' background or training on making content accessible, and despite the fact that many instructors already have limited time to devote to teaching and preparing for class. One commenter noted that public educational institutions can leverage their contracting power to choose only to work with third-party vendors that can offer accessible content. This commenter noted that there is precedent for this approach, as many universities and college stores already leverage their contracting power to limit participation in certain student discount programs to third-party publishers that satisfy accessibility requirements. Some commenters suggested that rulemaking in this area will spur vendors, publishers, and creators to improve the accessibility of their offerings.

Some commenters also observed that even if public educational institutions might be able to make a subset of content accessible within the compressed time frames provided under the proposed exceptions, it could be close to impossible for institutions to do so for all course content for all courses, given the wide variation in the size and type of course content. Some commenters noted that content for science, technology, engineering, and mathematics courses may be especially difficult to remediate under the expedited time frames provided under the proposed exceptions. Some commenters indicated that it is more effective for public educational institutions to conduct preparations in advance to make all materials accessible from the start. One commenter asserted that remediating materials takes, on average, twice as long as developing materials that are accessible from the start. Some commenters also pointed out that it might be confusing for public educational institutions to have two separate standards for the accessibility of course content depending on whether there is a student (or student with a parent) with a disability in a particular course.

Many commenters took particular issue with the five-day remediation time frame for course content when a school becomes on notice after the start of the term that there is a student or parent with a disability who needs accessible course content. Some commenters argued that this time frame was too short for public entities to ensure the accessibility of all course content for a particular course, while simultaneously being too long to avoid students with disabilities falling behind. Some commenters noted that the five-day time frame would be particularly problematic for short courses that occur during truncated academic terms, which may last only a small number of days or weeks.

Some commenters also argued that the course content exceptions would create a series of perverse incentives for public educational institutions and the third-party vendors with whom they work, such as incentivizing institutions to neglect accessibility until the last minute and attempt to rely on the fundamental alteration or undue burdens limitations more frequently when they are unable to comply as quickly as required under subpart H of this part. Some commenters also contended that the course content exceptions would undermine public educational institutions' settled expectations about what level of accessibility is required for course content and would cause the institutions that already think about accessibility proactively to regress to a more reactive model. Some commenters asserted that because the course content exceptions would cover only password-protected or otherwise secured content, the exceptions would also incentivize public educational institutions to place course content behind a password-protected wall, thereby making less content available to the public as a whole.

Some commenters asserted that if the exceptions were not included in subpart H of this part, the existing fundamental alteration and undue burdens limitations would provide sufficient protection for public educational institutions. One commenter also suggested that making all course content accessible would offer benefits to public educational institutions, as accessible content often requires less maintenance than inaccessible content and can more readily be transferred between different platforms or accessed using different tools. This commenter contended that by relying on accessible content, public educational institutions would be able to offer better services to all students, because accessible content is more user friendly and provides value for all users.

Some commenters pointed out that there are other factors that will ease the burden on public educational institutions of complying with subpart H of this part without the course content exceptions proposed in the NPRM. For example, one commenter reported that elementary and secondary curriculum materials are generally procured at the district level. Thus, course content is generally the same for all schools in a given district. This commenter argued that school districts could therefore address the accessibility of most course materials for all schools in their district at once by making digital accessibility an evaluation criterion in their procurement process.

Impact on Individuals With Disabilities

As noted elsewhere in this appendix, many commenters asserted that the course content exceptions proposed in the NPRM could result in an untenable situation in which public educational institutions would likely be unable to fully respond to individualized requests for accessible materials, potentially leading to widespread noncompliance with the technical standard and delays in access to course content for students and parents with disabilities. Many commenters emphasized the negative impact that this situation would have on individuals with disabilities.

Some commenters highlighted the pervasive discrimination that has affected generations of students with disabilities and prevented them from obtaining equal access to education, despite existing statutory and regulatory obligations. As one recent example, some commenters cited studies conducted during the COVID–19 pandemic that demonstrated inequities in access to education for students with disabilities, particularly in the use of web-based educational materials.[162] Commenters stated that due to accessibility issues, students with disabilities have sometimes been unable to complete required assignments, needed continuous support from others to complete their work, and as a result have felt frustrated, discouraged, and excluded. Some commenters also reported that some students with disabilities have dropped a class, taken an incomplete, or left their academic program altogether because of the inaccessibility of their coursework. Some commenters argued that the proposed course content exceptions would exacerbate this discouraging issue and would continue to exclude students with disabilities from equally accessing an education and segregate them from their classmates.

Some commenters contended that the proposed exceptions would perpetuate the status quo by inappropriately putting the onus on students (or parents) with disabilities to request accessible materials on an individualized basis. Some commenters asserted that this can be problematic because some individuals may not recognize that they have an accessibility need that their school could accommodate and because requesting accessible materials is sometimes burdensome and results in unfair stigma or invasions of privacy. Some commenters noted that this may result in students or parents with disabilities not requesting accessible materials. Some commenters also argued that because these proposed exceptions would put public educational institutions in a reactionary posture and place burdens on already-overburdened instructors, some instructors and institutions might view requesting students as an inconvenience, in spite of their obligations not to discriminate against those students. One commenter noted that constantly having to advocate for accessibility for years on end can be exhausting for students with disabilities and damaging to their self-esteem, sense of belonging, and ability to engage in academic exploration.

Some commenters also noted that the structure of the proposed exceptions would be in significant tension with the typical structure of a public educational institution's academic term. For example, some

[162] Arielle M. Silverman et al., *Access and Engagement III: Reflecting on the Impacts of the COVID–19 Pandemic on the Education of Children Who Are Blind or Have Low Vision,* Am. Found. for the Blind (June 2022), *https://afb.org/sites/default/files/2022-06/AFB_AccessEngagement_III_Report_Accessible_FINAL.pdf* (A Perma archive link was unavailable for this citation.); L. Penny Rosenblum et al., *Access and Engagement II: An Examination of How the COVID–19 Pandemic Continued to Impact Students with Visual Impairments, Their Families, and Professionals Nine Months Later,* Am. Found. for the Blind (May 2021), *https://static.afb.org/legacy/media/AFB_AccessEngagement_II_Accessible_F2.pdf?_ga=2.176468773.1214767753* [*https://perma.cc/H5P4-JZAB*]; *see also* L. Penny Rosenblum et al., *Access and Engagement: Examining the Impact of COVID–19 on Students Birth–21 with Visual Impairments, Their Families, and Professionals in the United States and Canada,* Am. Found. for the Blind (Oct. 2020), *https://afb.org/sites/default/files/2022-03/AFB_Access_Engagement_Report_Revised-03-2022.pdf* [*https://perma.cc/T3AY-ULAQ*].

commenters noted that students, particularly students at public postsecondary institutions, often have the opportunity to electronically review course syllabi and materials and ''shop'' the first sessions(s) of a particular course to determine whether they wish to enroll, enroll in a course late, or drop a course. Commenters stated that because these processes typically unfold quickly and early in the academic term, the proposed course content exceptions would make it hard or impossible for students with disabilities to take advantage of these options that are available to other students. Commenters also noted that the course content exceptions could interfere with students' ability to transfer to a new school in the middle of a term.

Some commenters also stated many other ways in which the delays in access to course content likely resulting from these exceptions could disadvantage students with disabilities. Some commenters noted that even if public educational institutions were able to turn around accessible materials within the compressed time frames provided under the proposed exceptions—an unlikely result, for the reasons noted elsewhere in this appendix—students with disabilities still might be unable to access course materials as quickly as would be needed to fully participate in their courses. For example, some commenters stated that because students are often expected to complete reading assignments before the first day of class, it is problematic that the proposed exceptions did not require public educational institutions to make course content accessible before the first day of class for students who preregister. Some commenters also observed that because some students with disabilities do not file accessibility requests until after the start of the academic term, it would be impossible to avoid delays in access to course materials under the exceptions. Some commenters also noted that students are often expected to collaborate on assignments, and even a brief delay in access to course material could make it challenging or impossible for students with disabilities to participate in that collaborative process.

Some commenters argued that in the likely outcome that schools are unable to provide accessible course content as quickly as the proposed limitations to the exceptions would require, the resulting delays could cause students with disabilities to fall behind in course readings and assignments, sometimes forcing them to withdraw from or fail the course. Some commenters noted that even if students were able to rely on others to assist them in reviewing inaccessible course materials, doing so is often slower and less effective, and can have a negative emotional effect on students, undermining their senses of independence and self-sufficiency.

Some commenters took particular issue with the proposed exception for postsecondary course content. For example, some commenters asserted that it is often more onerous and complicated for students with disabilities to obtain accessible materials upon request in the postsecondary context, given that public postsecondary schools are not subject to the same obligations as public elementary and secondary institutions to identify students with disabilities under other laws addressing disability rights in the educational context. Accordingly, those commenters argued, the proposed exceptions might be especially harmful for postsecondary students with disabilities.

Other commenters argued that the proposed exception for elementary and secondary course content was especially problematic because it would affect virtually every child with a disability in the country. Some commenters contended that this exception would undermine the requirements of other laws addressing disability rights in the educational context. Some commenters also noted that in the elementary and secondary school context, password-protected course sites often enable parents to communicate with their children's teachers, understand what their children are learning, keep track of any potential issues related to their child's performance, review time-sensitive materials like permission slips, and obtain information about important health and safety issues affecting their children. Some commenters opined that the proposed course content exceptions could make it hard or impossible for parents with disabilities to be involved in their children's education in these ways.

Some commenters contended that the proposed course content exceptions would be problematic in the wake of the COVID–19 pandemic, which has led to a rise in purely online courses. One commenter pointed out that students with disabilities may be more likely to enroll in purely online courses for a variety of reasons, including that digital content tends to be more flexible and operable with assistive devices, and it is therefore especially important to ensure that online courses are fully accessible. At least one commenter also stated that the proposed course content exceptions would have treated students—some of whom pay tuition—less favorably than the general public with respect to accessible materials.

Although the Department anticipated that the limitations to the proposed course content exceptions would naturally result in course materials becoming accessible over time, some commenters took issue with that prediction. Some commenters argued that because there is significant turnover in instructors and course content, and because the proposed limitations to the exceptions did not require content to remain accessible once a student with a disability was no longer in a particular course, the limitations to the exceptions as drafted in the NPRM would not be likely to ensure a fully accessible future in this area.

Limited Support for Course Content Exceptions

Although many commenters expressed opposition to the course content exceptions, some commenters, including some commenters affiliated with public educational institutions, expressed support for some form of exception for course content. Some commenters argued that it would be very challenging or infeasible for public educational institutions to comply with subpart H of this part in the absence of an exception, particularly when much of the content is controlled by third-party vendors. Some commenters also noted that public educational institutions may be short-staffed and have limited resources to devote towards accessibility. Some commenters stated that frequent turnover in faculty may make it challenging to ensure that faculty members are trained on accessibility issues. One commenter pointed out that requiring schools to make all course content accessible may present challenges for professors, some of whom are accustomed to being able to select course content without regard to its accessibility. Notably, however, even among those commenters who supported the concept of an exception, many did not support the exceptions as drafted in the NPRM, in part because they did not believe the proposed remediation time frames were realistic.

Approach to Course Content in Subpart H of This Part

Having reviewed the public comments, the Department believes it is appropriate to, as many commenters suggested, not include the previously proposed course content exceptions in subpart H of this part. For many of the reasons noted by commenters, the Department has concluded that the proposed exceptions would not meaningfully ease the burden on public educational institutions and would significantly exacerbate educational inequities for students with disabilities. The Department has concluded that the proposed exceptions would have led to an unsustainable and infeasible framework for public entities to make course content accessible, which would not have resulted in reliable access to course content for students with disabilities. As many commenters noted, it would have been extremely burdensome and sometimes even impossible for public educational institutions to comply consistently with the rapid remediation time frames set forth in the limitations to the proposed exceptions in the NPRM, which would likely have led to widespread delays in access to course content for students with disabilities. While extending the remediation time frames might have made it more feasible for public educational institutions to comply under some circumstances, this extension would have commensurately delayed access for students with disabilities, which would have been harmful for the many reasons noted by commenters. The Department believes that it is more efficient and effective for public educational institutions to use the two- or three-year compliance time frame to prepare to make course content accessible proactively, instead of having to scramble to remediate content reactively.

Accordingly, under subpart H of this part, password-protected course content will be treated like any other content and will generally need to conform to WCAG 2.1 Level AA. To the extent that it is burdensome for public educational institutions to make all of their content, including course content, accessible, the Department believes subpart H contains a series of mechanisms that are designed to make it feasible for these institutions to comply, including the delayed compliance dates discussed in § 35.200, the

other exceptions discussed in § 35.201, the provisions relating to conforming alternate versions and equivalent facilitation discussed in §§ 35.202 and 35.203, the fundamental alteration and undue burdens limitations discussed in § 35.204, and the approach to measuring compliance with § 35.200 discussed in § 35.205.

Alternative Approaches Considered

There were some commenters that supported retaining the proposed course content exceptions with revisions. Commenters suggested a wide range of specific revisions, examples of which are discussed in this section. The Department appreciates the variety of thoughtful approaches that commenters proposed in trying to address the concerns that would arise under the previously proposed course content exceptions. However, for the reasons noted in this section, the Department does not believe that the commenters' proposed alternatives would avoid the issues associated with the exceptions proposed in the NPRM. In addition, although many commenters suggested requiring public entities to follow specific procedures to comply with subpart H of this part, the sheer variety of proposals the Department received from commenters indicates the harm from being overly prescriptive in how public educational institutions comply with subpart H. Subpart H provides educational institutions with the flexibility to determine how best to bring their content into compliance within the two or three years they have to begin complying with subpart H.

Many commenters suggested that the Department should require all new course content to be made accessible more quickly, while providing a longer time period for public entities to remediate existing course content. There were a wide range of proposals from commenters about how this could be implemented. Some commenters suggested that the Department could set up a prioritization structure for existing content, requiring public educational institutions to prioritize the accessibility of, for example, entry-level course content; content for required courses; content for high-enrollment courses; content for courses with high rates of droppage, withdrawal, and failing grades; content for the first few weeks of all courses; or, in the postsecondary context, content in academic departments in which students with disabilities have decided to major.

The Department does not believe this approach would be feasible. Treating new course content differently than existing course content could result in particular courses being partially accessible and partially inaccessible, which could be confusing for both educational institutions and students, and make it challenging for students with disabilities to have full and timely access to their courses. Moreover, even under this hybrid approach, the Department would presumably need to retain remediation time frames for entities to meet upon receiving a request to make existing course content accessible. For the reasons discussed in this section, it would be virtually impossible to set forth a remediation time frame that would provide public educational institutions sufficient time to make content accessible without putting students with disabilities too far behind their peers. In addition, given the wide variation in types of courses and public educational institution structures, it would be difficult to set a prioritization structure for existing content that would be workable across all such institutions.

Some commenters suggested that the Department should set an expiration date for the course content exceptions. The Department does not believe this would be a desirable solution because the problems associated with the proposed exceptions—namely the harm to individuals with disabilities stemming from delayed access to course content and the likely infeasibility of complying with the expedited time frames set forth in the limitations to the exceptions—would likely persist during the lifetime of the exceptions.

Some commenters suggested that the Department could retain the exceptions and accompanying limitations but revise their scope. For example, commenters suggested that the Department could revise the limitations to the exceptions to require public educational institutions to comply only with the WCAG 2.1 success criteria relevant to the particular student requesting accessible materials. Although this might make it easier for public educational institutions to comply in the short term, this approach would still leave public entities in the reactionary posture that so many other commenters criticized in this context and would dramatically reduce the speed at which course content would become accessible to all students. As another example, some commenters recommended that instead of creating exceptions for all password-protected course content, the Department could create exceptions from complying with particular WCAG 2.1 success criteria that may be especially onerous. The Department does not believe this piecemeal approach is advisable, because it would result in course content being only partially accessible, which would reduce predictability for individuals with disabilities. This approach could also make it confusing for public entities to determine the applicable technical standard. Some commenters suggested that the Department should require public entities to prioritize certain types of content that are simpler to remediate. Others suggested that the Department could require certain introductory course documents, like syllabi, to be accessible across the board. One commenter suggested that the Department require public educational institutions to make 20 percent of their course materials accessible each semester. The Department believes that these types of approaches would present similar issues as those discussed in this paragraph and would result in courses being only partially accessible, which would reduce predictability for individuals with disabilities and clarity for public entities. These approaches would also limit the flexibility that public entities have to bring their content into compliance in the order that works best for them during the two or three years they have to begin complying with subpart H of this part.

Some commenters suggested that the Department should revise the remediation timelines in the limitations to the course content exceptions. For example, one commenter suggested that the five-day remediation time frame should be reduced to three days. Another commenter suggested the five-day remediation time frame could be expanded to 10 to 15 days. Some commenters suggested that the time frame should be fact-dependent and should vary depending on factors such as how often the class meets and the type of content. Others recommended that the Department not adopt a specific required remediation time frame, but instead provide that a 10-business-day remediation time frame would be presumptively permissible.

The conflicting comments on this issue illustrate the challenges associated with setting remediation time frames in this context. If the Department were to shorten the remediation time frames, it would make it even harder for public educational institutions to comply, and commenters have already indicated that the previously proposed remediation time frames would not be workable for those institutions. If the Department were to lengthen the remediation time frames, it would further exacerbate the inequities for students with disabilities that were articulated by commenters. The Department believes the better approach is to not include the course content exceptions in subpart H of this part to avoid the need for public educational institutions to make content accessible on an expedited time frame on the back end, and to instead require public entities to treat course content like any other content covered by subpart H.

Some commenters suggested that the Department should take measures to ensure that once course content is accessible, it stays accessible, including by requiring institutions to regularly conduct course accessibility checks. Without the course content exceptions proposed in the NPRM, the Department believes these commenters' concerns are addressed because course content will be treated like all other content under § 35.200, which requires public entities to ensure on an ongoing basis that the web content and mobile apps they provide or make available are readily accessible to and usable by individuals with disabilities.

Some commenters suggested that the Department should give public educational institutions additional time to comply with subpart H of this part beyond the compliance time frames specified in § 35.200(b). The Department does not believe this would be appropriate. Although the requirement for public educational institutions to provide accessible course content and comply with title II is not new, this requirement has not resulted in widespread equal access for individuals with disabilities to public entities' web content and mobile apps. Giving public educational institutions additional time beyond the two- to three-year compliance time frames set forth in § 35.200(b) would potentially prolong the exclusion of individuals with disabilities from certain educational programs, which would be especially problematic given that some of those programs last only a few years

in total, meaning that individuals with disabilities might, for example, be unable to access their public university's web content and mobile apps for the entire duration of their postsecondary career. While access to public entities' web content and mobile apps is important for individuals with disabilities in all contexts, it is uniquely critical to the public educational experience for students with disabilities, because exclusion from that content and those apps would make it challenging or impossible for those individuals to keep up with their peers and participate in their courses, which could have lifelong effects on career outcomes. In addition, the Department received feedback indicating that the course content offered by many public educational institutions is frequently changing. The Department is therefore not convinced that giving public educational institutions additional time to comply with subpart H would provide meaningful relief to those entities. Public educational institutions will continually need to make new or changed course content accessible after the compliance date. Extending the compliance date would, therefore, provide limited relief while having a significant negative impact on individuals with disabilities. Moreover, regardless of the compliance date of subpart H, public educational institutions have an ongoing obligation to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities on a case-by-case basis in accordance with their existing obligations under title II of the ADA.[163] Accordingly, even if the Department were to further delay the compliance time frames for public educational institutions, those institutions would not be able to simply defer all accessibility efforts in this area. The Department also believes it is appropriate to treat public educational institutions the same as other public entities with respect to compliance time frames, which will promote consistency and predictability for individuals with disabilities. Under this approach, some public educational institutions will qualify as small public entities and will be entitled to an extra year to comply, while other public educational institutions in larger jurisdictions will need to comply within two years.

Some commenters recommended that the Department give public educational institutions more flexibility with respect to their compliance with subpart H of this part. For example, some commenters suggested that the Department should give public educational institutions additional time to conduct an assessment of their web content and mobile apps and develop a plan for achieving compliance. Some commenters suggested the Department should give public educational institutions flexibility to stagger their compliance as they see fit and to focus on the accessibility of those materials that they consider most important. The Department does not believe such deference is appropriate. As history has demonstrated, requiring entities to comply with their nondiscrimination obligations without setting clear and predictable standards for when content must be made accessible has not resulted in widespread web and mobile app accessibility. The Department therefore believes it is critical to establish clear and consistent requirements for public entities to follow in making their web content and mobile apps accessible.

As noted in the preceding paragraph, although the Department believes it is important to set clear and consistent requirements for public educational institutions, the Department does not believe it is appropriate to be overly prescriptive with respect to the procedures that those institutions must follow to comply with subpart H of this part. Some commenters suggested that the Department should require public educational institutions to take particular steps to comply with subpart H, such as by holding certain trainings for faculty and staff and dedicating staff positions and funding to accessibility. The Department believes it is appropriate to allow public educational institutions to determine how best to allocate their resources, so long as they satisfy the requirements of subpart H.

Some commenters suggested that the Department should adopt a more permissive approach to conforming alternate versions for public educational institutions. Commenters also suggested that the Department allow public educational institutions to provide an equally effective method of alternative access in lieu of directly accessible, WCAG 2.1 Level AA-conforming versions of materials. For the reasons noted in the discussion of § 35.202 in this appendix, the Department believes that permitting public entities to rely exclusively on conforming alternate versions when doing so is not necessary for technical or legal reasons could result in segregation of people with disabilities, which would be inconsistent with the ADA's core principles of inclusion and integration.[164] The same rationale would apply to public educational institutions that wish to provide an equally effective method of alternative access to individuals with disabilities.

Some commenters argued that the Department should provide additional resources, funding, and guidance to public educational institutions to help them comply with subpart H of this part. The Department notes that it will issue a small entity compliance guide,[165] which should help public educational institutions better understand their obligations under subpart H. The Department also notes that there are free and low-cost training materials available that would help public entities to produce content compliant with WCAG 2.1 Level AA. In addition, although the Department does not currently operate a grant program to assist public entities in complying with the ADA, the Department will consider offering additional technical assistance and guidance in the future to help entities better understand their obligations.

One commenter suggested that the Department should create a list of approved third-party vendors for public educational institutions to use to obtain accessible content. Any such specific list that the Department could provide is unlikely to be helpful given the rapid pace at which software and contractors' availability changes. Public entities may find it useful to consult other publicly available resources that can assist in selecting accessibility evaluation tools and experts.[166] Public entities do not need to wait for the Department's guidance before consulting with technical experts and using resources that already exist.

One commenter suggested that the Department should require public educational institutions to offer mandatory courses on accessibility to students pursuing degrees in certain fields, such as computer science, information technology, or computer information systems. This commenter argued that this approach would increase the number of information technology professionals in the future who have the skills to make content accessible. The Department believes this suggestion is outside of the scope of subpart H of this part, which focuses on web and mobile app accessibility under title II. The Department notes that public educational institutions are free to offer such courses if they so choose.

One commenter suggested that if the course content exceptions were retained, the Department should explicitly require public educational institutions to provide clear notice to students with disabilities on whether a particular piece of course content is accessible and how to request accessible materials. The Department believes these concerns are addressed by the decision not to include the course content exceptions in subpart H of this part, which should generally obviate the need for students with disabilities to make individualized requests for course content that complies with WCAG 2.1 Level AA.

Many commenters expressed concern about the extent to which public educational institutions are dependent on third parties to ensure the accessibility of course content, and some commenters suggested that instead of or in addition to regulating public educational institutions, the Department should also regulate the third parties with which those institutions contract to provide course materials. Because subpart H of this part is issued under title II of the ADA, it does not apply to private third parties, and the ultimate responsibility for complying with subpart H rests with public entities. However, the Department appreciates the concerns expressed by commenters that public educational institutions may have limited power to require third-party vendors to make content accessible on an expedited,

[163] *See* §§ 35.130(b)(1)(ii) and (7) and 35.160.

[164] *See, e.g.,* 42 U.S.C. 12101(a)(2) (finding that society has tended to isolate and segregate individuals with disabilities); § 35.130(b)(1)(iv) (stating that public entities generally may not provide different or separate aids, benefits, or services to individuals with disabilities than is provided to others unless such action is necessary); *id.* § 35.130(d) (requiring that public entities administer services, programs, and activities in the most integrated setting appropriate).

[165] *See* Public Law 104–121, sec. 212, 110 Stat. at 858.

[166] *See, e.g.,* W3C, *Evaluating Web Accessibility Overview, https://www.w3.org/WAI/test-evaluate/* [*https://perma.cc/6RDS-X6AR*] (Aug. 1, 2023).

last-minute basis. The Department believes that not including the course content exceptions in subpart H—coupled with the delayed compliance dates in subpart H—will put public educational institutions in a better position to establish contracts with third-party vendors with sufficient lead time to enable the production of materials that are accessible upon being created. One commenter pointed out that, currently, much of the digital content for courses for public educational institutions is created by a small number of digital publishers. Accordingly, if the rulemaking incentivizes those publishers to produce accessible content, that decision may enable hundreds of public educational institutions to obtain accessible content. The Department also expects that as a result of the rulemaking, there will be an increase in demand for accessible content from third-party vendors, and therefore a likely increase in the number of third-party vendors that are equipped to provide accessible content.

Some commenters also expressed views about whether public educational institutions should be required to make posts by third parties on password-protected course websites accessible. The Department wishes to clarify that, because content on password-protected course websites will be treated like any other content under subpart H of this part, posts by third parties on course websites may be covered by the exception for content posted by a third party. However, that exception only applies where the third party is not posting due to contractual, licensing, or other arrangements with the public entity. Accordingly, if the third party is acting on behalf of the public entity, the third-party posted content exception would not apply. The Department believes that whether particular third-party content qualifies for this exception will involve a fact-specific inquiry.

Other Issues Pertaining to Public Educational Entities and Public Libraries

In connection with the proposed exceptions for password-protected course content, the Department also asked if there were any particular issues the Department should consider regarding digital books, textbooks, or libraries. The Department received a variety of comments that addressed these topics.

Some commenters raised issues pertaining to intellectual property law. In particular, commenters expressed different views about whether public entities can alter or change inaccessible electronic books created by third-party vendors to make them accessible for individuals with disabilities. Several commenters requested that the Department clarify how intellectual property law applies to subpart H of this part. Subpart H is not intended to interpret or clarify issues related to intellectual property law. Accordingly, the Department declines to make changes to subpart H in response to commenters or otherwise opine about public entities' obligations with respect to intellectual property law. However, as discussed with respect to § 35.202, ''Conforming Alternate Versions,'' there may be some instances in which a public entity is permitted to make a conforming alternate version of web content where it is not possible to make the content directly accessible due to legal limitations.

Some commenters also discussed the EPUB file format. EPUB is a widely adopted format for digital books.[167] Commenters noted that EPUBs are commonly used by public entities and that they should be accessible. Commenters also stated that the exceptions for archived web content and preexisting conventional electronic documents at § 35.201(a) and (b), should specifically address EPUBs, or that EPUBs should fall within the meaning of the PDF file format with respect to the definition of ''conventional electronic documents'' at § 35.104. Commenters also suggested that other requirements should apply to EPUBs, including W3C's EPUB Accessibility 1.1 standard [168] and Editor's Draft on EPUB Fixed Layout Accessibility.[169]

As discussed with respect to § 35.104, the Department did not change the definition of ''conventional electronic documents'' because it believes the current exhaustive list strikes the appropriate balance between ensuring access for individuals with disabilities and feasibility for public entities so that they can comply with subpart H of this part. The Department also declines to adopt additional technical standards or guidance specifically related to EPUBs. The WCAG standards were designed to be ''technology neutral.'' [170] This means that they are designed to be broadly applicable to current and future web technologies.[171] The Department is concerned that adopting multiple technical standards related to various different types of web content could lead to confusion. However, the Department notes that subpart H allows for equivalent facilitation in § 35.203, meaning that public entities could still choose to apply additional standards specifically related to EPUBs to the extent that the additional standards provide substantially equivalent or greater accessibility and usability as compared to WCAG 2.1 Level AA.

Some commenters also addressed public educational entities' use of digital textbooks in general. Commenters stated that many educational courses use digital materials, including digital textbooks, created by third-party vendors. Consistent with many commenters' emphasis that all educational course materials must be accessible under subpart H of this part, commenters also stated that digital textbooks need to be accessible under subpart H. Commenters stated that third-party vendors that create digital textbooks are in the best position to make that content accessible, and it is costly and burdensome for public entities to remediate inaccessible digital textbooks. While one commenter stated that there are currently many examples of accessible digital textbooks, other commenters stated that many digital textbooks are not currently accessible. A commenter also pointed out that certain aspects of digital books and textbooks cannot be made accessible where the layout and properties of the content cannot be changed without changing the meaning of the content, and they recommended that the Department create exceptions for certain aspects of digital books.

After weighing all the comments, the Department believes the most prudent approach is to treat digital textbooks, including EPUBs, the same as all other educational course materials. The Department believes that treating digital textbooks, including EPUBs, in any other way would lead to the same problems commenters identified with respect to the proposed exceptions for password-protected class or course content. For example, if the Department created a similar exception for digital textbooks, it could result in courses being partially accessible and partially inaccessible for certain time periods while books are remediated to meet the needs of an individual with a disability, which could be confusing for both educational institutions and students with disabilities. Furthermore, as discussed elsewhere in this appendix, it would be virtually impossible to set forth a remediation time frame that would provide public educational institutions sufficient time to make digital textbooks accessible without putting students with disabilities too far behind their peers. Accordingly, the Department did not make any changes to subpart H of this part to specifically address digital textbooks. The Department notes that if there are circumstances where certain aspects of digital textbooks cannot conform to WCAG 2.1 Level AA without changing the meaning of the content, public entities may assess whether the fundamental alteration or undue financial or administrative burdens limitations apply, as discussed in § 35.204. As noted elsewhere in this appendix, the Department also expects that as a result of the rulemaking, there will be an increase in demand for accessible content from third-party vendors, and therefore a likely increase in the number of third-party vendors that are equipped to provide accessible digital textbooks.

Some commenters also discussed circumstances in which public entities seek to modify particular web content to meet the specific needs of individuals with disabilities. One commenter suggested that the Department should provide public entities flexibility to focus on meeting the individual needs of students, rather than simply focusing on satisfying the requirements of WCAG 2.1 Level AA. The Department believes that the title II regulation provides public entities sufficient

[167] *See* W3C, *EPUB 3.3: Recommendation, § 1.1 Overview* (May 25, 2023), *https://www.w3.org/TR/epub-33/* [*https://perma.cc/G2WZ-3M9S*].

[168] W3C, *EPUB Accessibility 1.1: Recommendation* (May 25, 2023), *https://www.w3.org/TR/epub-a11y-11/* [*https://perma.cc/48A5-NC2B*].

[169] W3C, *EPUB Fixed Layout Accessibility: Editor's Draft* (Dec. 8, 2024), *https://w3c.github.io/epub-specs/epub33/fxl-a11y/* [*https://perma.cc/5SP7-VUHJ*].

[170] W3C, *Introduction to Understanding WCAG* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Understanding/intro* [*https://perma.cc/XB3Y-QKVU*].

[171] *See* W3C, *Understanding Techniques for WCAG Success Criteria* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Understanding/understanding-techniques* [*https://perma.cc/AMT4-XAAL*].

flexibility to meet the needs of all individuals with disabilities.

The Department also recognizes that IDEA established the National Instructional Materials Access Center (''NIMAC'') in 2004, to assist State educational agencies and local educational agencies with producing accessible instructional materials to meet the specific needs of certain eligible students with disabilities.[172] The NIMAC maintains a catalog of source files for K–12 instructional materials saved in the National Instructional Materials Accessibility Standard (''NIMAS'') format, and certain authorized users and accessible media producers may download the NIMAS files and produce accessible instructional materials that are distributed to eligible students with disabilities through State systems and other organizations.[173] The Department believes subpart H of this part is complementary to the NIMAC framework. In particular, if a public entity provides or makes available digital textbooks or other course content that conforms to WCAG 2.1 Level AA, but an individual with a disability still does not have equal access to the digital textbooks or other course content, the public entity may wish to assess on a case-by-case basis whether materials derived from NIMAS files can be used to best meet the needs of the individual. Alternatively, a public entity may wish to use materials derived from NIMAS files as a conforming alternate version where it is not possible to make the digital textbook or other course content directly accessible due to technical or legal limitations, consistent with § 35.202.

Some commenters also raised issues relating to public libraries. Commenters stated that libraries have varying levels of resources. Some commenters noted that libraries need additional accessibility training. One commenter requested that the Department identify appropriate accessibility resources and training, and another commenter recommended that the Department should consider allowing variations in compliance time frames for libraries and educational institutions based on their individual needs and circumstances. Commenters noted that digital content available through libraries is often hosted, controlled, or provided by third-party vendors, and libraries purchase subscriptions or licenses to use the material. Commenters stated that it is costly and burdensome for public libraries to remediate inaccessible third-party vendor content. However, one commenter highlighted a number of examples in which libraries at public educational institutions successfully negotiated licensing agreements with third-party vendors that included requirements related to accessibility. Several commenters pointed out that some public libraries also produce content themselves. For example, some libraries participate in the open educational resource movement, which promotes open and free digital educational materials, and some libraries either operate publishing programs or have a relationship with university presses.

After weighing all the comments, the Department believes the most appropriate approach is to treat public libraries the same as other public entities in subpart H of this part. The Department is concerned that treating public libraries in any other way would lead to similar problems commenters identified with respect to the proposed exceptions for password-protected class or course content, especially because some public libraries are connected with public educational entities. With respect to comments about the resources available to libraries and the time frame for libraries to comply with subpart H, the Department also emphasizes that it is sensitive to the need to set a workable standard for all different types of public entities. The Department recognizes that public libraries can vary as much as any other group of public entities covered by subpart H, from small town libraries to large research libraries that are part of public educational institutions. Under § 35.200(b)(2), as under the NPRM, some public libraries will qualify as small public entities and will have an extra year to comply. Subpart H also includes exceptions that are intended to help ensure feasibility for public entities so that they can comply with subpart H and, as discussed in § 35.204, public entities are not required to undertake actions that would represent a fundamental alteration in the nature of a service, program, or activity or impose undue financial and administrative burdens. The Department also notes there that there are free and low-cost training materials available that would help public entities to produce content compliant with WCAG 2.1 Level AA. Accordingly, the Department has not made any changes to subpart H to specifically address public libraries.

Some commenters also noted that public libraries may have collections of materials that are archival in nature, and discussed whether such materials should be covered by an exception. Subpart H of this part contains an exception for archived web content that (1) was created before the date the public entity is required to comply with subpart H, reproduces paper documents created before the date the public entity is required to comply with subpart H, or reproduces the contents of other physical media created before the date the public entity is required to comply with subpart H; (2) is retained exclusively for reference, research, or recordkeeping; (3) is not altered or updated after the date of archiving; and (4) is organized and stored in a dedicated area or areas clearly identified as being archived. In addition, subpart H contains an exception for preexisting conventional electronic documents, unless such documents are currently used to apply for, gain access to, or participate in a public entity's services, programs, or activities. The Department addressed these exceptions in more detail in the section-by-section analysis of § 35.104, containing the definitions of ''archived web content'' and ''conventional electronic documents''; § 35.201(a), the exception for archived web content; and § 35.201(b), the exception for preexisting conventional electronic documents.

Individualized, Password-Protected or Otherwise Secured Conventional Electronic Documents

In § 35.201(d), the Department has set forth an exception to the requirements of § 35.200 for conventional electronic documents that are: (1) about a specific individual, their property, or their account; and (2) password-protected or otherwise secured.

Many public entities use web content and mobile apps to provide access to conventional electronic documents for their customers and other members of the public. For example, some public utility companies provide a website where customers can log in and view a PDF version of their latest bill. Similarly, many public hospitals offer a virtual platform where healthcare providers can send conventional electronic document versions of test results and scanned medical records to their patients. Unlike many other types of content covered by subpart H of this part, these documents are relevant only to an individual member of the public, and in many instances, the individuals who are entitled to view a particular individualized conventional electronic document will not need an accessible version.

While public entities, of course, have existing title II obligations to provide accessible versions of individualized, password-protected or otherwise secured conventional electronic documents in a timely manner when those documents pertain to individuals with disabilities, or otherwise provide the information contained in the documents to the relevant individual,[174] the Department recognizes that it may be too burdensome for some public entities to make all such documents conform to WCAG 2.1 Level AA, regardless of whether the individual to whom the document pertains needs such access. The goal of this exception is to give public entities flexibility to provide such documents, or the information contained within such documents, to the individuals with disabilities to whom they pertain in the manner that the entities determine will be most efficient. Many public entities may retain and produce a large number of individualized, password-protected or otherwise secured conventional electronic documents, and may find that remediating these documents—particularly ones that have been scanned from paper copies—involves a more time- and resource-intensive process than remediating other types of web content. In that scenario, the Department believes that it would be most impactful for public entities to focus their resources on making versions that are accessible to those individuals who need them. However, some public entities may conclude that it is most efficient or effective to make all individualized, password-protected or otherwise secured conventional electronic documents accessible by using, for example, an accessible template to generate such documents, and subpart H of this part preserves flexibility for public entities that

[172] Assistance to States for the Education of Children With Disabilities, 85 FR 31374 (May 26, 2020).

[173] Nat'l Instructional Materials Access Center, *About NIMAC, https://www.nimac.us/about-nimac/* [*https://perma.cc/9PQ2-GLQM*] (last visited Feb. 2, 2024).

[174] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

wish to take that approach. This approach is consistent with the broader title II regulatory framework. For example, public utility companies are not required to affirmatively mail accessible bills to all customers. Instead, the companies need only provide accessible bills to those customers who need them because of a disability.

This exception is limited to ''conventional electronic documents'' as defined in § 35.104. This exception would, therefore, not apply in a case where a public entity makes individualized information available in formats other than a conventional electronic document. For example, if a public medical provider makes individualized medical records available on a password-protected web platform as HTML content (rather than a PDF), that content would not be subject to this exception. Those HTML records, therefore, would need to be made accessible in accordance with § 35.200. On the other hand, if a public entity makes individualized records available on a password-protected web platform as PDF documents, those documents would fall under this exception. In addition, although the exception would apply to individualized, password-protected or otherwise secured conventional electronic documents, the exception would not apply to the platform on which the public entity makes those documents available. The public entity would need to ensure that that platform complies with § 35.200. Further, web content and content in mobile apps that does not take the form of individualized, password-protected or otherwise secured conventional electronic documents but instead notifies users about the existence of such documents must still conform to WCAG 2.1 Level AA unless it is covered by another exception. For example, a public hospital's health records portal may include a list of links to download individualized, password-protected PDF medical records. Under WCAG 2.1 Success Criterion 2.4.4, a public entity would generally have to provide sufficient information in the text of the link alone, or in the text of the link together with the link's programmatically determined link context, so that a user could understand the purpose of each link and determine whether they want to access a given document.[175]

This exception also only applies when the content is individualized for a specific person or their property or account. Examples of individualized documents include medical records or notes about a specific patient, receipts for purchases (like a parent's receipt for signing a child up for a recreational sports league), utility bills concerning a specific residence, or Department of Motor Vehicles records for a specific person or vehicle. Content that is broadly applicable or otherwise for the general public (*i.e.,* not individualized) is not subject to this exception. For instance, a PDF notice that explains an upcoming rate increase for all utility customers and does not address a specific customer's particular circumstances would not be subject to this exception. Such a general notice would not be subject to this exception even if it were attached to or sent with an individualized letter, like a bill, that does address a specific customer's circumstances.

This exception applies only to password-protected or otherwise secured content. Content may be otherwise secured if it requires a member of the public to use some process of authentication or login to access the content. Unless subject to another exception, conventional electronic documents that are on a public entity's general, public web platform would not be covered by the exception.

The Department recognizes that there may be some overlap between the content covered by this exception and the exception for certain preexisting conventional electronic documents, § 35.201(b). The Department notes that if web content is covered by the exception for individualized, password-protected or otherwise secured conventional electronic documents, it does not need to conform to WCAG 2.1 Level AA to comply with subpart H of this part, even if the content fails to qualify for another exception, such as the preexisting conventional electronic document exception. For example, a public entity might retain on its website an individualized, password-protected unpaid water bill in a PDF format that was posted before the date the entity was required to comply with subpart H. Because the PDF would fall within the exception for individualized, password-protected or otherwise secured conventional electronic documents, the documents would not need to conform to WCAG 2.1 Level AA, regardless of how the preexisting conventional electronic documents exception might otherwise have applied.

As noted elsewhere in this appendix, while the exception is meant to alleviate the potential burden on public entities of making all individualized, password-protected or otherwise secured conventional electronic documents generally accessible, individuals with disabilities must still be able to access information from documents that pertain to them.[176] The Department emphasizes that even if certain content does not have to conform to the technical standard, public entities still need to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities on a case-by-case basis in accordance with their existing obligations under title II of the ADA. These obligations include making reasonable modifications to avoid discrimination on the basis of disability, ensuring that communications with people with disabilities are as effective as communications with people without disabilities, and providing people with disabilities an equal opportunity to participate in or benefit from the entity's services, programs, or activities.[177]

The Department received comments expressing both support for and opposition to this exception. A supporter of the exception observed that, because many individualized, password-protected or otherwise secured conventional electronic documents do not pertain to a person with a disability and would never be accessed by a person with a disability, it is unnecessary to require public entities to devote resources to making all of those documents accessible at the outset. Some commenters suggested that it could be burdensome for public entities to make all of these documents accessible, regardless of whether they pertain to a person with a disability. Some commenters noted that even if some public entities might find it more efficient to make all individualized, password-protected or otherwise secured conventional electronic documents accessible from the outset, this exception is valuable because it gives entities flexibility to select the most efficient option to meet the needs of individuals with disabilities.

The Department also received many comments opposing this exception. Commenters pointed out that it is often critical for individuals, including individuals with disabilities, to have timely access to individualized, password-protected or otherwise secured conventional electronic documents, because those documents may contain sensitive, private, and urgently needed information, such as medical test results, educational transcripts, or tax documents. Commenters emphasized the negative consequences that could result from an individual being unable to access these documents in a timely fashion, from missed bill payments to delayed or missed medical treatments. Commenters expressed concern that this exception could exacerbate existing inequities in access to government services for people with disabilities. Commenters argued that it is ineffective and inappropriate to continue to put the burden on individuals with disabilities to request accessible versions of individualized documents, particularly given that many individuals with disabilities may have repeated interactions with different public entities that generate a large number of individualized, password-protected or otherwise secured conventional electronic documents. One commenter contended that the inclusion of this exception is in tension with other statutes and Federal initiatives that are designed to make it easier for individuals to access electronic health information and other digital resources. Commenters contended that public entities often do not have robust, effective procedures under which people can make such requests and obtain accessible versions quickly without incurring invasions of privacy. Commenters argued that it can be cheaper and easier to make individualized conventional electronic documents accessible at the time they are created, instead of on a case-by-case basis, particularly given that many such documents are generated from templates, which can be made accessible relatively easily. Commenters argued that many public entities already make these sorts of documents accessible, pursuant to their longstanding ADA obligations, so introducing this exception might lead some entities to regress toward less overall accessibility. Some commenters suggested that if the exception is retained in subpart H of this part, the

[175] *See* W3C, *Understanding SC 2.4.4.: Link Purpose (In Context)* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Understanding/link-purpose-in-context.html* [*https://perma.cc/RE3T-J9PN*].

[176] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

[177] *See id.*

Department should set forth specific procedures for public entities to follow when they are on notice of the need to make individualized documents accessible for a particular individual with a disability.

After reviewing the comments, the Department has decided to retain this exception in subpart H of this part.[178] The Department continues to believe that public entities often provide or make available a large volume of individualized, password-protected or otherwise secured conventional electronic documents, many of which do not pertain to individuals with disabilities, and it may be difficult to make all such documents accessible. Therefore, the Department believes it is sensible to permit entities to focus their resources on ensuring accessibility for the specific individuals who need accessible versions of those documents. If, as many commenters suggested, it is in fact more efficient and less expensive for some public entities to make all such documents accessible by using a template, there is nothing in subpart H that prevents public entities from taking that approach.

The Department understands the concerns raised by commenters about the potential burdens that individuals with disabilities may face if individualized password-protected or otherwise secured documents are not all made accessible at the time they are created and about the potential negative consequences for individuals with disabilities who do not have timely access to the documents that pertain to them. The Department reiterates that, even when documents are covered by this exception, the existing title II obligations require public entities to furnish appropriate auxiliary aids and services where necessary to ensure an individual with a disability has, for example, an equal opportunity to enjoy the benefits of a service.[179] Such auxiliary aids and services could include, for example, providing PDFs that are accessible. In order for such an auxiliary aid or service to ensure effective communication, it must be provided ''in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.'' [180] Whether a particular solution provides effective communication depends on circumstances in the interaction, including the nature, length, complexity, and context of the communication.[181] For example, the presence of an emergency situation or a situation in which information is otherwise urgently needed would impact what it would mean for a public entity to ensure it is meeting its effective communication obligations. Public entities can help to facilitate effective communication by providing individuals with disabilities with notice about how to request accessible versions of their individualized documents. The Department also notes that where, for example, a public entity is on notice that an individual with a disability needs accessible versions of an individualized, password-protected PDF water bill, that public entity is generally required to continue to provide information from that water bill in an accessible format in the future, and the public entity generally may not require the individual with a disability to make repeated requests for accessibility. Moreover, while individualized, password-protected or otherwise secured conventional electronic documents are subject to this exception, any public-facing, web- or mobile app-based system or platform that a public entity uses to provide or make available those documents, or to allow the public to make accessibility requests, must itself be accessible under § 35.200 if it is not covered by another exception.

The Department also reiterates that a public entity might also need to make reasonable modifications to ensure that a person with a disability has equal access to its services, programs, or activities.[182] For example, if a public medical provider has a policy under which administrative support staff are in charge of uploading PDF versions of X-ray images into patients' individualized accounts after medical appointments, but the provider knows that a particular patient is blind, the provider may need to modify its policy to ensure that a staffer with the necessary expertise provides an accessible version of the information the patient needs from the X-ray.

Some commenters suggested that the Department should require public entities to adopt specific procedures when they are on notice of an individual's need for accessible individualized, password-protected or otherwise secured conventional electronic documents. For example, some commenters suggested that public entities should be required to establish a specific process through which individuals with disabilities can ''opt in'' to receiving accessible documents; to display instructions for how to request accessible versions of documents in specific, prominent places on their websites; to make documents accessible within a specified time frame after being on notice of the need for accessibility (suggested time frames ranged from 5 to 30 business days); or to remediate all documents that are based on a particular template upon receiving a request for remediation of an individualized document based on that template. Although the Department appreciates the need to ensure that individuals with disabilities can obtain easily accessible versions of individualized, password-protected or otherwise secured conventional electronic documents, the Department believes it is appropriate to provide flexibility for a public entity in how it reaches that particular goal on a case-by-case basis, so long as the entity's process satisfies the requirements of title II.[183] Moreover, because the content and quantity of individualized, password-protected documents or otherwise secured may vary widely, from a one-page utility bill to thousands of pages of medical records, the Department does not believe it is workable to prescribe a set number of days under which a public entity must make these documents accessible. The wide range of possible time frames that commenters suggested, coupled with the comments the Department received on the remediation time frames that were associated with the previously proposed course content exceptions, helps to illustrate the challenges associated with selecting a specific number of days for public entities to remediate content.

Some commenters suggested other revisions to the exception. For example, some commenters suggested that the Department could limit the exception to existing individualized, password-protected or otherwise secured conventional electronic documents, while requiring newly created documents to be automatically accessible. The Department does not believe it is advisable to adopt this revision. A central rationale of this exception—the fact that many individuals to whom individualized documents pertain do not need those documents in an accessible format—remains regardless of whether the documents at issue are existing or newly created.

One commenter suggested the Department could create an expiration date for the exception. The Department does not believe this would be workable, because the challenges that public entities might face in making all individualized, password-protected or otherwise secured conventional electronic documents accessible across the board would likely persist even after any expiration date. One commenter suggested that the exception should not apply to large public entities, such as States. The Department believes that the rationales underlying this exception would apply to both large and small public entities. The Department also believes that the inconsistent application of this exception could create unpredictability for individuals with disabilities. Other commenters suggested additional revisions, such as limiting the exception to documents that are not based on templates; requiring public entities to remove inaccessible documents from systems of records once accessible versions of those documents have been created; and requiring public entities to use HTML pages, which may be easier to make accessible than conventional electronic documents, to deliver individualized information in the future. The Department believes it is more appropriate to give public entities flexibility in how they provide or make available individualized, password-protected or otherwise secured documents to the public, so long as those entities ensure that individuals with disabilities have timely access to the information contained in those documents in an accessible format that protects the privacy and independence of the individual with a disability.

Some commenters asked the Department for additional clarification about how the exception would operate in practice. One commenter asked for clarification about how

[178] The Department made a non-substantive change to the header of the exception to match the text of the exception.

[179] *See* § 35.160(b)(1). For more information about public entities' existing obligation to ensure that communications with individuals with disabilities are as effective as communications with others, *see* U.S. Dep't of Just., *ADA Requirements: Effective Communication, ada.gov* (Feb 28, 2020), *https://www.ada.gov/resources/effective-communication/* [*https://perma.cc/CLT7-5PNQ*].

[180] *See* § 35.160(b)(2).

[181] *Id.*

[182] *See* § 35.130(b)(7).

[183] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160(b)(2).

this exception would apply to public hospitals and healthcare clinics, and whether the exception would apply when a patient uses a patient portal to schedule an appointment with their provider. The Department wishes to clarify that this exception is not intended to apply to all content or functionality that a public entity offers that is password-protected. Instead, this exception is intended to narrowly apply to individualized, password-protected or otherwise secured conventional electronic documents, which are limited to the following electronic file formats: PDFs, word processor file formats, presentation file formats, and spreadsheet file formats. Content that is provided in any other format is not subject to this exception. In addition, while individualized, password-protected or otherwise secured conventional electronic documents would be subject to the exception, the platform on which those documents are provided would not be subject to the exception and would need to conform to WCAG 2.1 Level AA. Accordingly, in the scenario raised by the commenter, the exception would not apply unless the public hospital or healthcare clinic used an individualized, password-protected or otherwise secured document in one of the file types listed in this paragraph for scheduling appointments.

The Department also received some comments that suggested that the Department take actions outside the scope of subpart H of this part to make it easier for certain people with disabilities to access platforms that provide individualized, password-protected or otherwise secured documents. For example, the Department received a comment asking the Department to require public entities to offer ''lower tech'' platforms that are generally simpler to navigate. While the Department recognizes that these are important issues, they are outside the scope of subpart H, and they are therefore not addressed in detail in subpart H.

Preexisting Social Media Posts

Subpart H of this part includes an exception in § 35.201(e) for preexisting social media posts, which provides that the requirements of § 35.200 will not apply to a public entity's social media posts that were posted before the date the public entity is required to comply with subpart H. This means that public entities will need to ensure that their social media posts going forward are compliant with the requirements in subpart H beginning on the compliance date outlined in § 35.200(b), but not before that date. The Department includes guidance on public entities' use of social media platforms going forward in the section entitled ''Public Entities' Use of Social Media Platforms'' in the section-by-section analysis of § 35.200.

The Department is including this exception in subpart H of this part because making preexisting social media posts accessible may be impossible or result in a significant burden. Commenters told the Department that many public entities have posted on social media platforms for several years, often numbering thousands of posts, which may not all be compliant with WCAG 2.1 Level AA. The benefits of making all preexisting social media posts accessible will likely be limited as these posts are generally intended to provide then-current updates on platforms that are frequently refreshed with new information. The Department believes public entities' limited resources are better spent ensuring that current web content and content in mobile apps are accessible, rather than reviewing all preexisting social media posts for compliance or possibly deleting public entities' previous posts if remediation is impossible.

In the NPRM, the Department did not propose any regulatory text specific to the web content and content in mobile apps that public entities make available via social media platforms. However, the Department asked for the public's feedback on adding an exception from coverage under subpart H of this part for a public entity's social media posts if they were posted before the effective date of subpart H.[184] After reviewing public comment on this proposed exception, the Department has decided to include an exception in subpart H, which will apply to preexisting social media posts posted before the compliance date of subpart H.

The Department emphasizes that even if preexisting social media posts do not have to conform to the technical standard, public entities still need to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to people with disabilities on a case-by-case basis in accordance with their existing obligations under title II of the ADA. These obligations include making reasonable modifications to avoid discrimination on the basis of disability, ensuring that communications with people with disabilities are as effective as communications with people without disabilities, and providing people with disabilities an equal opportunity to participate in or benefit from the entity's services, programs, and activities.[185]

Most commenters supported an exception for preexisting social media posts, including commenters representing public entities and disability advocates. Commenters shared that making preexisting social media posts accessible would require a massive allocation of resources, and that in many cases these posts would be difficult or impossible to remediate. Commenters shared that in practice, public entities may need to delete preexisting social media posts to comply with subpart H of this part in the absence of this exception, which could result in a loss of historical information about public entities' activities.

A few commenters shared alternative approaches to this exception. One commenter suggested that highlighted or so-called ''pinned'' posts (*e.g.,* social media posts saved at the top of a page) be required to be made accessible regardless of the posting date. Other commenters suggested that the exception should be limited so as not to cover emergency information or information pertinent to accessing core functions, expressing concern that these postings would continue to be inaccessible between publication of the final rule and the date that public entities are required to be in compliance with subpart H of this part.

The Department agrees with the majority of commenters who supported the exception as described in the NPRM, for the reasons shared previously. The Department understands some commenters' concerns with respect to pinned posts as well as concerns with inaccessible postings made after publication of the final rule but before the compliance date. However, the Department believes that the approach provided in subpart H of this part appropriately balances a variety of competing concerns. In particular, the Department is concerned that it would be difficult to define pinned posts given the varied and evolving ways in which different social media platforms allow users to highlight and organize content, such that it could result in confusion. Further, the Department believes that the risk that preexisting pinned posts will stay pinned indefinitely is low, because public entities will likely still want to regularly update their pinned content. Also, requiring these pinned posts to be made accessible risks some of the remediation concerns raised earlier, as public entities may need to delete pinned posts where remediation is infeasible. The Department also has concerns with delineating what content should be considered ''core'' or ''emergency'' content.

For these reasons, the Department believes the appropriate approach is to set forth, as it does in § 35.201(e), an exception from the requirements of § 35.200 for all social media posts that were posted prior to the compliance date for subpart H of this part. The Department emphasizes, however, that after the compliance date, public entities must ensure all of their social media posts moving forward comply with subpart H.

In the NPRM, the Department asked for the public's feedback on whether public entities' preexisting videos posted to social media platforms should be covered by an exception due to these same concerns or whether these platforms should otherwise be treated differently. After reviewing public comments with respect to social media, the Department does not believe it is prudent to single out any individual social media platform or subset of content on those platforms for unique treatment under subpart H of this part, as that could lead to confusion and be difficult to implement, especially as social media platforms continually evolve. The Department thus maintains that social media posts must be made accessible under § 35.200 if they are posted after the compliance date of subpart H. The Department recognizes that due to the continually evolving nature of social media platforms, there may be questions about which content is covered by the exception to subpart H. While the Department is choosing not to single out platforms or subsets of platforms in subpart H for unique treatment, the Department encourages public entities to err on the side of ensuring accessibility where there are doubts about coverage, to maximize access for people with disabilities.

Commenters also suggested other ways to address social media, such as providing that

[184] 88 FR 51962–51963.

[185] Sections 35.130(b)(1)(ii) and (b)(7) and 35.160.

public entities must create a timeline to incorporate accessibility features into their social media or providing that public entities can use separate accessible pages with all of their social media posts. The Department believes the balance struck with this exception in subpart H of this part is appropriate and gives public entities sufficient time to prepare to make all of their new social media posts accessible in accordance with subpart H after the compliance date, consistent with the other content covered by subpart H. One commenter also requested clarification on when social media posts with links to third-party content would be covered by subpart H. The Department notes that social media posts posted after the compliance date are treated consistent with all other web content and content in mobile apps, and the relevant exceptions may apply depending on the content at issue.

Section 35.202—Conforming Alternate Versions

Section 35.202 sets forth the approach to ''conforming alternate versions.'' Under WCAG, a ''conforming alternate version'' is a separate web page that, among other things, is accessible, up to date, contains the same information and functionality as the inaccessible web page, and can be reached via a conforming page or an accessibility-supported mechanism.[186] Conforming alternate versions are allowable under WCAG. For reasons explained in the following paragraphs, the Department believes it is important to put guardrails on when public entities may use conforming alternate versions under subpart H of this part. Section 35.202, therefore, specifies that the use of conforming alternate versions is permitted only in limited, defined circumstances, which represents a slight departure from WCAG 2.1. Section 35.202(a) states that a public entity may use conforming alternate versions of web content to comply with § 35.200 only where it is not possible to make web content directly accessible due to technical or legal limitations.

Generally, to conform to WCAG 2.1, a web page must be directly accessible in that it satisfies the success criteria for one of the defined levels of conformance—in the case of subpart H of this part, Level AA.[187] However, as noted in the preceding paragraph, WCAG 2.1 also allows for the creation of a ''conforming alternate version.'' The purpose of a ''conforming alternate version'' is to provide individuals with relevant disabilities access to the information and functionality provided to individuals without relevant disabilities, albeit via a separate vehicle. The Department believes that having direct access to accessible web content provides the best user experience for many individuals with disabilities, and it may be difficult to reliably maintain conforming alternate versions, which must be kept up to date. W3C explains that providing a conforming alternate version is intended to be a ''fallback option for conformance to WCAG and the preferred method of conformance is to make all content directly accessible.'' [188] However, WCAG 2.1 does not explicitly limit the circumstances under which an entity may choose to create a conforming alternate version of a web page instead of making the web page directly accessible.

The Department is concerned that WCAG 2.1 can be interpreted to permit the development of two separate versions of a public entity's web content—one for individuals with relevant disabilities and another for individuals without relevant disabilities—even when doing so is unnecessary and when users with disabilities would have a better experience using the main web content that is accessible. Such an approach would result in segregated access for individuals with disabilities and be inconsistent with how the ADA's core principles of inclusion and integration have historically been interpreted.[189] The Department is also concerned that the frequent or unbounded creation of separate web content for individuals with disabilities may, in practice, result in unequal access to information and functionality. For example, and as discussed later in this section, the Department is concerned that an inaccessible conforming alternate version may provide information that is outdated or conflicting due to the maintenance burden of keeping the information updated and consistent with the main web content. As another example, use of a conforming alternate version may provide a fragmented, separate, or less interactive experience for people with disabilities because public entities may assume that interactive features are not financially worthwhile or otherwise necessary to incorporate in conforming alternate versions. Ultimately, as discussed later in this section, the Department believes there are particular risks associated with permitting the creation of conforming alternate versions where not necessitated by the presence of technical or legal limitations.

Due to the concerns about user experience, segregation of users with disabilities, unequal access to information, and maintenance burdens mentioned in the preceding paragraph, the Department is adopting a slightly different approach to conforming alternate versions than that provided under WCAG 2.1. Instead of permitting entities to adopt conforming alternate versions whenever they believe it is appropriate, § 35.202(a) states that a public entity may use conforming alternate versions of web content to comply with § 35.200 only where it is not possible to make web content directly accessible due to technical limitations (*e.g.,* technology is not yet capable of being made accessible) or legal limitations (*e.g.,* web content that cannot be changed due to legal reasons). The Department believes conforming alternate versions should be used rarely—when it is truly not possible to make the content accessible for reasons beyond the public entity's control. However, § 35.202 does not prohibit public entities from providing alternate versions of web pages in addition to their WCAG 2.1 Level AA compliant main web page to possibly provide users with certain types of disabilities a better experience.

The Department slightly revised the text that was proposed in the NPRM for this provision.[190] To ensure consistency with other provisions of subpart H of this part, the previously proposed text for § 35.202 was revised to refer to ''web content'' instead of ''websites and web content.'' W3C's discussion of conforming alternate versions generally refers to ''web pages'' and ''content.'' [191] Other provisions of subpart H also refer to ''web content.'' Introducing the concept of ''websites'' in this section when the term is not used elsewhere in subpart H could cause unnecessary confusion, so the Department revised this language for consistency. This change is non-substantive, as ''web content'' encompasses ''websites.''

In the NPRM, the Department requested comments on its approach to conforming alternate versions. In response, the Department received comments from a variety of commenters. Several commenters supported the Department's proposed approach of permitting the use of conforming alternative versions only when there are technical or legal limitations. Commenters believed these limitations would prevent public entities from using conforming alternate versions frequently and for reasons that do not seem appropriate, such as creating a conforming alternate version for a web page that is less accessible because of the public entity's aesthetic preferences.

Some commenters suggested that the Department should permit conforming alternate versions under a broader range of circumstances. For example, some commenters indicated that a conforming alternate version could provide an equal or superior version of web content for people with disabilities. Other commenters noted that some private companies can provide manual alternate versions that look the same as the original web page but that have invisible coding and are accessible. One commenter stated that the transition from a

[186] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1: Recommendation, Conforming Alternate Version* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#dfn-conforming-alternate-version* [*https://perma.cc/GWT6-AMAN*]. WCAG 2.1 provides three options for how a conforming alternate version can be reached—the Department does not modify those options with respect to conforming alternative versions under subpart H of this part.

[187] *See id.*

[188] *See* W3C, *Understanding Conformance, https://www.w3.org/WAI/WCAG21/Understanding/conformance* [*https://perma.cc/QSG6-QCBL*] (June 20, 2023).

[189] *See* § 35.130(b)(1)(iv) (stating that public entities generally may not provide different or separate aids, benefits, or services to individuals with disabilities than is provided to others unless such action is necessary); § 35.130(d) (requiring that public entities administer services, programs, and activities in the most integrated setting appropriate); *cf.* 42 U.S.C. 12101(a)(2) (finding that society has tended to isolate and segregate individuals with disabilities).

[190] 88 FR 52020.

[191] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1: Recommendation, Conforming Alternate Version* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#dfn-conforming-alternate-version* [*https://perma.cc/GWT6-AMAN*].

public entity's original website to an accessible version can be made seamless. Another commenter noted that WCAG 2.1 permits entities to adopt conforming alternate versions under broader circumstances and argued that the Department should adopt this approach rather than permitting conforming alternate versions only where there are technical or legal limitations. One commenter argued that it could be challenging for public entities that already offer conforming alternate versions more broadly to adjust their approach to comply with subpart H of this part. Some commenters gave examples of scenarios in which they found it helpful or necessary to provide conforming alternate versions.

A few commenters expressed serious concerns about the use of conforming alternate versions. These commenters stated that conforming alternate versions often result in two separate and unequal websites. Commenters indicated that some entities' conforming alternate versions neither conform to WCAG standards nor contain the same functionality and content and therefore provide fragmented, separate experiences that are less useful for people with disabilities. Other commenters shared that these alternate versions are designed in a way that assumes users are people who are blind and thus do not want visual presentation, when other people with disabilities rely on visual presentations to access the web content. Further, one group shared that many people with disabilities may be skeptical of conforming alternative versions because historically they have not been updated, have been unequal in quality, or have separated users by disability. Another commenter argued that unlimited use of conforming alternate versions could lead to errors and conflicting information because there are two versions of the same content. One commenter suggested prohibiting conforming alternate versions when interaction is a part of the online user experience. Another commenter suggested permitting conforming alternate versions only when a legal limitation makes it impossible to make web content directly accessible, but not when a technical limitation makes it impossible to do so.

Having reviewed public comments and considered this issue carefully, the Department believes subpart H of this part strikes the right balance to permit conforming alternate versions, but only where it is not possible to make web content directly accessible due to technical or legal limitations. The Department believes that this approach ensures that generally, people with disabilities will have direct access to the same web content that is accessed by people without disabilities, but it also preserves flexibility for public entities in situations where, due to a technical or legal limitation, it is impossible to make web content directly accessible. The Department also believes that this approach will help avoid the concerns noted in the preceding paragraphs with respect to segregation of people with disabilities by defining only specific scenarios when the use of conforming alternate versions is appropriate.

Some commenters emphasized the importance of ensuring that under the limited circumstances in which conforming alternate versions are permissible, those versions provide a truly equal experience. Commenters also expressed concern that it might be hard for people with disabilities to find links to conforming alternate versions. The Department notes that under WCAG 2.1, a conforming alternate version is defined, in part, as a version that ''conforms at the designated level''; ''provides all of the same information and functionality in the same human language''; and ''is as up to date as the non-conforming content.'' [192] Accordingly, even where it is permissible for a public entity to offer a conforming alternate version under subpart H of this part, the public entity must still ensure that the conforming alternate version provides equal information and functionality and is up to date. WCAG 2.1 also requires that ''the conforming version can be reached from the non-conforming page via an accessibility-supported mechanism,'' or ''the non-conforming version can only be reached from the conforming version,'' or ''the non-conforming version can only be reached from a conforming page that also provides a mechanism to reach the conforming version.'' [193] The Department believes these requirements will help to ensure that where a conforming alternate version is permissible, people with disabilities will be able to locate that page.

Some commenters recommended that the Department provide additional guidance and examples of when conforming alternate versions would be permissible, or asked the Department to clarify whether conforming alternate versions would be permissible under particular circumstances. The determination of when conforming alternate versions are needed or permitted varies depending on the facts. For example, a conforming alternate version would not be permissible just because a town's web developer lacked the knowledge or training needed to make content accessible; that would not be a technical limitation within the meaning of § 35.202. By contrast, the town could use a conforming alternate version if its web content included a new type of technology that it is not yet possible to make accessible, such as a specific kind of immersive virtual reality environment. Similarly, a town would not be permitted to claim a legal limitation because its general counsel failed to approve contracts for a web developer with accessibility experience. Instead, a legal limitation would apply when the inaccessible content itself could not be modified for legal reasons specific to that content. The Department believes this approach is appropriate because it ensures that, whenever possible, people with disabilities have access to the same web content that is available to people without disabilities.

One commenter stated that school districts and public postsecondary institutions currently provide accessible alternative content to students with disabilities that is equivalent to the content provided to students without disabilities and that is responsive to the individual student's needs. The commenter argued that public educational institutions should continue to be able to provide these alternative resources to students with disabilities. The Department reiterates that although public educational institutions, like all other public entities, will only be able to provide conforming alternate versions in lieu of directly accessible versions of web content under the circumstances specified in § 35.202, nothing prevents a public educational institution from providing a conforming alternate version in addition to the accessible main version of its web content.

Other commenters requested that the Department impose deadlines or time restrictions on how long a public entity can use a conforming alternate version. However, the Department believes that doing so would conflict with the rationale for permitting conforming alternate versions. Where the technical limitations and legal limitations are truly outside the public entity's control, the Department believes it would be unreasonable to require the public entity to surmount those limitations after a certain period of time, even if they are still in place. However, once a technical or legal limitation no longer exists, a public entity must ensure their web content is directly accessible in accordance with subpart H of this part.

A few commenters also sought clarification on, or broader language to account for, the interaction between the allowance of conforming alternate versions under § 35.202 and the general limitations provided in § 35.204. These two provisions are applicable in separate circumstances. If there is a technical or legal limitation that prevents an entity from complying with § 35.200 for certain content, § 35.202 is applicable. The entity can create a conforming alternate version for that content and, under § 35.202, that entity will be in compliance with subpart H of this part. Separately, if a fundamental alteration or undue financial and administrative burdens prevent a public entity from complying with § 35.200 for certain content, § 35.204 is applicable. As set forth in § 35.204, the public entity must still take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible. A public entity's legitimate claim of fundamental alteration or undue burdens does not constitute a legal limitation under § 35.202 for which a conforming alternate version automatically suffices to comply with subpart H. Rather, the public entity must ensure access ''to the maximum extent possible'' under the specific facts and circumstances of the situation. Under the specific facts a public entity is facing, the public entity's best option to ensure maximum access may be an alternate version of its content, but the public entity also may be required to do something more or something different. Because the language of § 35.204 already allows for alternate versions if appropriate for the facts of public entity's fundamental alteration or undue burdens, the Department does not see a need to expand the language of § 35.202 to address commenters' concerns.

[192] *See id.*

[193] *Id.*

The Department also wishes to clarify the relationship between §§ 35.202 and 35.205, which are analyzed independently of each other. Section 35.202 provides that a public entity may use conforming alternate versions of web content, as defined by WCAG 2.1, to comply with § 35.200 only where it is not possible to make web content directly accessible due to technical or legal limitations. Accordingly, if a public entity does not make its web content directly accessible and instead provides a conforming alternate version when not required by technical or legal limitations, the public entity may not use that conforming alternate version to comply with its obligations under subpart H of this part, either by relying on § 35.202 or by invoking § 35.205.

Section 35.203 Equivalent Facilitation

Section 35.203 provides that nothing prevents a public entity from using designs, methods, or techniques as alternatives to those prescribed in the regulation, provided that such alternatives result in substantially equivalent or greater accessibility and usability. The 1991 and 2010 ADA Standards for Accessible Design both contain an equivalent facilitation provision.[194] The reason for allowing for equivalent facilitation in subpart H of this part is to encourage flexibility and innovation by public entities while still ensuring equal or greater access to web content and mobile apps. Especially in light of the rapid pace at which technology changes, this provision is intended to clarify that public entities can use methods or techniques that provide equal or greater accessibility than subpart H would require. For example, if a public entity wanted to conform its web content or mobile app to a future web content and mobile app accessibility standard that expands accessibility requirements beyond WCAG 2.1 Level AA, this provision makes clear that the public entity would be in compliance with subpart H. Public entities could also choose to comply with subpart H by conforming their web content to WCAG 2.2 Level AA [195] because WCAG 2.2 Level AA provides substantially equivalent or greater accessibility and usability to WCAG 2.1 Level AA; in particular, WCAG 2.2 Level AA includes additional success criteria not found in WCAG 2.1 Level AA and every success criterion in WCAG 2.1 Level AA, with the exception of one success criterion that is obsolete.[196] Similarly, a public entity could comply with subpart H by conforming its web content and mobile apps to WCAG 2.1 Level AAA,[197] which is the same version of WCAG and includes all the WCAG 2.1 Level AA requirements, but includes additional requirements not found in WCAG 2.1 Level AA for even greater accessibility. For example, WCAG 2.1 Level AAA includes Success Criterion 2.4.10 [198] for section headings used to organize content and Success Criterion 3.1.4 [199] that includes a mechanism for identifying the expanded form or meaning of abbreviations, among others. The Department believes that this provision offers needed flexibility for entities to provide usability and accessibility that meet or exceed what subpart H of this part would require as technology continues to develop. The responsibility for demonstrating equivalent facilitation rests with the public entity. Subpart H adopts the approach as proposed in the NPRM,[200] but the Department edited the regulatory text to fix a grammatical error by adding a comma in the original sentence in the provision.

The Department received a comment arguing that providing phone support in lieu of a WCAG 2.1-compliant website should constitute equivalent facilitation. As discussed in the section entitled ''History of the Department's Title II Web-Related Interpretation and Guidance,'' the Department no longer believes telephone lines can realistically provide equal access to people with disabilities. Websites—and often mobile apps—allow members of the public to get information or request a service within just a few minutes, and often to do so independently. Getting the same information or requesting the same service using a staffed telephone line takes more steps and may result in wait times or difficulty getting the information.

For example, State and local government entities' web content and mobile apps may allow members of the public to quickly review large quantities of information, like information about how to register for government services, information on pending government ordinances, or instructions about how to apply for a government benefit. Members of the public can then use government web content or mobile apps to promptly act on that information by, for example, registering for programs or activities, submitting comments on pending government ordinances, or filling out an application for a government benefit. A member of the public could not realistically accomplish these tasks efficiently over the phone.

Additionally, a person with a disability who cannot use an inaccessible online tax form might have to call to request assistance with filling out either online or mailed forms, which could involve significant delay, added costs, and could require providing private information such as banking details or Social Security numbers over the phone without the benefit of certain security features available for online transactions. A staffed telephone line also may not be accessible to someone who is deafblind, or who may have combinations of other disabilities, such as a coordination issue impacting typing, and an audio processing disability impacting comprehension over the phone. However, such individuals may be able to use web content and mobile apps that are accessible.

Finally, calling a staffed telephone line lacks the privacy of looking up information on a public entity's web content or mobile app. A caller needing public safety resources, for example, might be unable to access a private location to ask for help on the phone, whereas accessible web content or mobile apps would allow users to privately locate resources. For these reasons, the Department does not now believe that a staffed telephone line—even if it is offered 24/7—provides equal opportunity in the way that accessible web content or mobile apps would.

Section 35.204 Duties

Section 35.204 sets forth the general limitations on the obligations under subpart H of this part. Section 35.204 provides that in meeting the accessibility requirements set out in subpart H, a public entity is not required to take any action that would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. These limitations on a public entity's duty to comply with the regulatory provisions mirror the fundamental alteration and undue burdens compliance limitations currently provided in the title II regulation in §§ 35.150(a)(3) (existing facilities) and 35.164 (effective communication), and the fundamental alteration compliance limitation currently provided in the title II regulation in § 35.130(b)(7) (reasonable modifications in policies, practices, or procedures). These limitations are thus familiar to public entities.

The word ''full'' was removed in § 35.204 so that the text reads ''compliance'' rather than ''full compliance.'' The Department made this change because § 35.200(b)(1) and (2) clarifies that compliance with subpart H of this part includes complying with the success criteria and conformance requirements under Level A and Level AA specified in WCAG 2.1. This minor revision does not affect the meaning of § 35.204, but rather removes an extraneous word to avoid redundancy and confusion.

In determining whether an action would result in undue financial and administrative burdens, all of a public entity's resources available for use in the funding and operation of the service, program, or activity should be considered. The burden of proving that compliance with the requirements of § 35.200 would fundamentally alter the nature of a service, program, or activity, or would result in undue financial and administrative burdens, rests with the public entity. As the Department has consistently maintained since promulgation of the title II regulation

[194] *See* 28 CFR part 36, appendix D, at 1000 (2022) (1991 ADA Standards); 36 CFR part 1191, appendix B, at 329 (2022) (2010 ADA Standards).

[195] W3C, *WCAG 2 Overview, https://www.w3.org/WAI/standards-guidelines/wcag/* [*https://perma.cc/RQS2-P7JC*] (Oct. 5, 2023).

[196] W3C, *What's New in WCAG 2.2 Draft, https://www.w3.org/WAI/standards-guidelines/wcag/new-in-22/* [*https://perma.cc/GDM3-A6SE*] (Oct. 5, 2023).

[197] W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, § 5.2 Conformance Requirements* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#conformance-reqs* [*https://perma.cc/XV2E-ESM8*].

[198] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 2.4.10 Section Headings* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#conformance-reqs:~:text=Success%20Criterion%202.4.10,Criterion%204.1.2* [*https://perma.cc/9BNS-8LWK*].

[199] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 3.1.4 Abbreviations* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#conformance-reqs:~:text=Success%20Criterion%203.1.4,abbreviations%20is%20available* [*https://perma.cc/ZK6C-9RHD*].

[200] 88 FR 52020.

in 1991, the decision that compliance would result in a fundamental alteration or impose undue burdens must be made by the head of the public entity or their designee, and must be memorialized with a written statement of the reasons for reaching that conclusion.[201] The Department has recognized the difficulty public entities have in identifying the official responsible for this determination, given the variety of organizational structures within public entities and their components.[202] The Department has made clear that the determination must be made by a high level official, no lower than a Department head, having budgetary authority and responsibility for making spending decisions.[203]

The Department believes, in general, it would not constitute a fundamental alteration of a public entity's services, programs, or activities to modify web content or mobile apps to make them accessible within the meaning of subpart H of this part. However, this is a fact-specific inquiry, and the Department provides some examples later in this section of when a public entity may be able to claim a fundamental alteration. Moreover, like the fundamental alteration or undue burdens limitations in the title II regulation referenced in the preceding paragraphs, § 35.204 does not relieve a public entity of all obligations to individuals with disabilities. Although a public entity under this part is not required to take actions that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, it nevertheless must comply with the requirements of subpart H of this part to the extent that compliance does not result in a fundamental alteration or undue financial and administrative burdens. For instance, a public entity might determine that complying with all of the success criteria under WCAG 2.1 Level AA would result in a fundamental alteration or undue financial and administrative burdens. However, the public entity must then determine whether it can take any other action that would not result in such an alteration or such burdens, but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible. To the extent that the public entity can, it must do so. This may include the public entity's bringing its web content into conformance to some of the WCAG 2.1 Level A or Level AA success criteria.

It is the Department's view that most entities that choose to assert a claim that complying with all of the requirements under WCAG 2.1 Level AA would result in undue financial and administrative burdens will be able to attain at least partial compliance in many circumstances. The Department believes that there are many steps a public entity can take to conform to WCAG 2.1 Level AA that should not result in undue financial and administrative burdens, depending on the particular circumstances.

Complying with the web and mobile app accessibility requirements set forth in subpart H means that a public entity is not required by title II of the ADA to make any further modifications to the web content or content in mobile apps that it makes available to the public. However, it is important to note that compliance with subpart H of this part will not relieve title II entities of their distinct employment-related obligations under title I of the ADA. The Department realizes that the regulations in subpart H are not going to meet the needs of and provide access to every individual with a disability, but believes that setting a consistent and enforceable web accessibility standard that meets the needs of a majority of individuals with disabilities will provide greater predictability for public entities, as well as added assurance of accessibility for individuals with disabilities. This approach is consistent with the approach the Department has taken in the context of physical accessibility under title II. In that context, a public entity is not required to exceed the applicable design requirements of the ADA Standards even if certain wheelchairs or other power-driven mobility devices require a greater degree of accessibility than the ADA Standards provide.[204] The entity may still be required, however, to make other modifications to how it provides a program, service, or activity, where necessary to provide access for a specific individual. For example, where an individual with a disability cannot physically access a program provided in a building that complies with the ADA Standards, the public entity does not need to make physical alterations to the building but may need to take other steps to ensure that the individual has an equal opportunity to participate in and benefit from that program.

Similarly, just because an entity is in compliance with the web content or mobile app accessibility standard in subpart H of this part does not mean it has met all of its obligations under the ADA or other applicable laws—it means only that it is not required to make further changes to the web content or content in mobile apps that it makes available. If an individual with a disability, on the basis of disability, cannot access or does not have equal access to a service, program, or activity through a public entity's web content or mobile app that conforms to WCAG 2.1 Level AA, the public entity is still obligated under § 35.200(a) to provide the individual an alternative method of access to that service, program, or activity unless the public entity can demonstrate that alternative methods of access would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.[205] The entity also must still satisfy its general obligations to provide effective communication, reasonable modifications, and an equal opportunity to participate in or benefit from the entity's services, programs, or activities.[206]

The public entity must determine on a case-by-case basis how best to meet the needs of those individuals who cannot access a service, program, or activity that the public entity provides through web content or mobile apps that comply with all of the requirements under WCAG 2.1 Level AA. A public entity should refer to § 35.130(b)(1)(ii) to determine its obligations to provide individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the public entity's services, programs, or activities. A public entity should refer to § 35.160 (effective communication) to determine its obligations to provide individuals with disabilities with the appropriate auxiliary aids and services necessary to afford them an equal opportunity to participate in, and enjoy the benefits of, the public entity's services, programs, or activities. A public entity should refer to § 35.130(b)(7) (reasonable modifications) to determine its obligations to provide reasonable modifications in policies, practices, or procedures to avoid discrimination on the basis of disability. It is helpful to provide individuals with disabilities with information about how to obtain the modifications or auxiliary aids and services they may need. For example, while not required in subpart H of this part, a public entity is encouraged to provide an email address, accessible link, accessible web page, or other accessible means of contacting the public entity to provide information about issues individuals with disabilities may encounter accessing web content or mobile apps or to request assistance.[207] Providing this information will help public entities ensure that they are satisfying their obligations to provide equal access, effective communication, and reasonable modifications.

The Department also clarifies that a public entity's requirement to comply with existing ADA obligations remains true for content that fits under one of the exceptions under § 35.201. For example, in the appropriate circumstances, an entity may be obligated to add captions to a video that falls within the archived content exception and provide the captioned video file to the individual with a disability who needs access to the video, or edit an individualized password-protected PDF to be usable with a screen reader and provide it via a secure method to the individual with a disability. Of course, an entity may also choose to further modify the web content or content in mobile apps it makes available to make that content more accessible or usable than subpart H of this part requires. In the context of the preceding examples, for instance, the Department believes it will often be most economical and logical for an entity to post the captioned video, once modified, as part of web content made available to the public, or to modify the individualized PDF template so that it is used for all members of the public going forward.

The Department received comments indicating that the fundamental alteration or undue burdens limitations as discussed in

[201] Section 35.150(a)(3) and 35.164.

[202] 28 CFR part 35, appendix B, at 708 (2022).

[203] *Id.*

[204] *See* 28 CFR part 35, appendix A, at 626 (2022).

[205] *See, e.g.,* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

[206] *See id.*

[207] *See* W3C, *Developing an Accessibility Statement, https://www.w3.org/WAI/planning/statements/* [*https://perma.cc/85WU-JTJ6*] (Mar. 11, 2021).

the ''Duties'' section of the NPRM [208] are appropriate and align with the framework of the ADA. The Department also received comments expressing concern that there are no objective standards to help public entities understand when the fundamental alteration and undue burdens limitations will apply. Accordingly, some commenters asked the Department to make clearer when public entities can and cannot raise these limitations. Some of these commenters said that the lack of clarity about these limitations could result in higher litigation costs or frivolous lawsuits. The Department acknowledges these concerns and notes that fundamental alteration and undue burdens are longstanding limitations under the ADA,[209] and therefore the public should already be familiar with these limitations in other contexts. The Department has provided guidance that addresses the fundamental alteration and undue burdens limitations and will consider providing additional guidance in the future.[210]

The Department received some comments suggesting that the Department should state whether certain examples amount to a fundamental alteration or undue burdens or amend the regulation to address the examples. For example, one commenter indicated that some digital content cannot be made accessible and therefore technical infeasibility should be considered an undue burden. Another commenter asserted that it may be an undue burden to require large documents that are 300 pages or more to be accessible under the final regulations; therefore, the final regulations should include a rebuttable presumption that public entities do not have to make these larger documents accessible. In addition, one commenter said they believe that testing the accessibility of web content and mobile apps imposes an undue burden. However, another commenter opined that improving web code is unlikely to pose a fundamental alteration in most cases.

Whether the undue burdens limitation applies is a fact-specific assessment that involves considering a variety of factors. For example, some small towns have minimal operating budgets measured in the thousands or tens of thousands of dollars. If such a town had an archive section of its website with a large volume of material gathered by the town's historical society (such as old photographs and handwritten journal entries from town elders), the town would have an obligation under the existing title II regulation to ensure that its services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities. However, it might be an undue burden for the town to make all those materials fully accessible in a short period of time in response to a request by an individual with a disability.[211] Whether the undue burdens limitation applies, however, would depend, among other things, on how large the town's operating budget is and how much it would cost to make the materials in question accessible. Whether the limitation applies will also vary over time. Increases in town budget, or changes in technology that reduce the cost of making the historical materials accessible, may make the limitation inapplicable. Lastly, even where it would impose an undue burden on the town to make its historical materials accessible within a certain time frame, the town would still need to take any other action that would not result in such a burden but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the town to the maximum extent possible.

Application of the fundamental alteration limitation is similarly fact specific. For example, a county library might hold an art contest in which elementary school students submit alternative covers for their favorite books and library goers view and vote on the submissions on the library website. It would likely be a fundamental alteration to require the library to modify each piece of artwork so that any text drawn on the alternative covers, such as the title of the book or the author's name, satisfies the color contrast requirements in the technical standard. Even so, the library would still be required to take any other action that would not result in such an alteration but would nevertheless ensure that individuals with disabilities could participate in the contest to the maximum extent possible.

Because each assessment of whether the fundamental alteration or undue burdens limitations applies will vary depending on the entity, the time of the assessment, and various other facts and circumstances, the Department declines to adopt any rebuttable presumptions about when the fundamental alteration or undue burdens limitations would apply.

One commenter proposed that the final regulations should specify factors that should be considered with respect to the undue burdens limitation, such as the number of website requirements that public entities must comply with and the budget, staff, and other resources needed to achieve compliance with these requirements. The Department declines to make changes to the regulatory text because the Department does not believe listing specific factors would be appropriate, particularly given that these limitations apply in other contexts in title II. Also, as noted earlier, the Department believes that generally, it would not constitute a fundamental alteration of a public entity's services, programs, or activities to modify web content or mobile apps to make them accessible in compliance with subpart H of this part.

The Department received a comment suggesting that the regulatory text should require a public entity claiming the undue burdens limitation to identify the inaccessible content at issue, set a reliable point of contact for people with disabilities seeking to access the inaccessible content, and develop a plan and timeline for remediating the inaccessible content. The Department declines to take this suggested approach because it would be a departure from how the limitation generally applies in other contexts covered by title II of the ADA.[212] In these other contexts, if an action would result in a fundamental alteration or undue burdens, a public entity must still take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.[213] The Department believes it is important to apply these longstanding limitations in the same way to web content and mobile apps to ensure clarity for public entities and consistent enforcement of the ADA. In addition, implementing the commenter's suggested approach would create additional costs for public entities. The Department nevertheless encourages public entities to engage in practices that would improve accessibility and ensure transparency when public entities seek to invoke the fundamental alteration or undue burdens limitations. For example, a public entity can provide an accessibility statement that informs the public how to bring web content or mobile app accessibility problems to the public entity's attention, and it can also develop and implement a procedure for reviewing and addressing any such issues raised.

Some commenters raised concerns about the requirement in § 35.204 that the decision that compliance with subpart H of this part would result in a fundamental alteration or in undue financial or administrative burdens must be made by the head of a public entity or their designee. These commenters wanted more clarity about who is the head of a public entity. They also expressed concern that this requirement may be onerous for public entities. The Department notes in response to these commenters that this approach is consistent with the existing title II framework in §§ 35.150(a)(3) (service, program, or activity accessibility) and 35.164 (effective communication). With respect to the commenters' concern about who is the head of a public entity or their designee, the Department recognizes the difficulty of identifying the official responsible for this determination given the variety of organizational forms of public entities and their components. The Department has made clear that ''the determination must be made by a high level official, no lower than a Department head, having budgetary authority and responsibility for making spending decisions.'' [214] The Department reiterates that this is an existing concept in title II of the ADA, so public entities should be familiar with this requirement. The appropriate relevant official may vary depending on the public entity.

Section 35.205 Effect of Noncompliance That Has a Minimal Impact on Access

Section 35.205 sets forth when a public entity will be deemed to have complied with

[208] 88 FR 51978–51980.

[209] *See* §§ 35.130(b)(7)(i), 35.150(a)(3), and 35.164. These regulatory provisions were also in the Department's 1991 regulations at 28 CFR 35.130(b)(7), 35.150(a)(3), and 35.164, respectively.

[210] *See, e.g.,* U.S. Dep't of Just., *ADA Update: A Primer for State and Local Governments, https://www.ada.gov/resources/title-ii-primer/* [*https://perma.cc/ZV66-EFWU*] (Feb. 28, 2020).

[211] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

[212] *See* §§ 35.150(a)(3) and 35.164.

[213] *See id.*

[214] 28 CFR part 35, appendix B, at 708 (2022).

§ 35.200 despite limited nonconformance to the technical standard. This provision adopts one of the possible approaches to compliance discussed in the NPRM.[215] As discussed in this section, public comments indicated that the final rule needed to account for the increased risk of instances of nonconformance to the technical standard, due to the unique and particular challenges to achieving perfect, uninterrupted conformance in the digital space. The Department believes that § 35.205 meets this need, ensuring the full and equal access to which individuals with disabilities are entitled while allowing some flexibility for public entities if nonconformance to WCAG 2.1 Level AA is so minimal as to not affect use of the public entity's web content or mobile app.

Discussion of Regulatory Text

Section 35.205 describes a particular, limited circumstance in which a public entity will be deemed to have met the requirements of § 35.200 even though the public entity's web content or mobile app does not perfectly conform to the technical standard set forth in § 35.200(b). Section 35.205 will apply if the entity can demonstrate that, although it was technically out of conformance to WCAG 2.1 Level AA (*i.e.,* fails to exactly satisfy a success criterion or conformance requirement), the nonconformance has a minimal impact on access for individuals with disabilities, as defined in the regulatory text. If a public entity can make this showing, it will be deemed to have met its obligations under § 35.200 despite its nonconformance to WCAG 2.1 Level AA.

Section 35.205 does not alter a public entity's general obligations under subpart H of this part nor is it intended as a blanket justification for a public entity to avoid conforming with WCAG 2.1 Level AA from the outset. Rather, § 35.205 is intended to apply in rare circumstances and will require a detailed analysis of the specific facts surrounding the impact of each alleged instance of nonconformance. The Department does not expect or intend that § 35.205 will excuse most nonconformance to the technical standard. Under § 35.200(b), a public entity must typically ensure that the web content and mobile apps it provides or makes available, directly or through contractual, licensing, or other arrangements, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1. This remains generally true. However, § 35.205 allows for some minor deviations from WCAG 2.1 Level AA if specific conditions are met. This will provide a public entity that discovers that it is out of compliance with the requirements of § 35.200(b) with another means to avoid the potential liability that could result. Public entities that maintain conformance to WCAG 2.1 Level AA will not have to rely on § 35.205 to be deemed compliant with § 35.200, and full conformance to WCAG 2.1 Level AA is the only definitive way to guarantee that outcome. However, if a public entity falls out of conformance in a minimal way or such nonconformance is alleged, a public entity may be able to use § 35.205 to demonstrate that it has satisfied its legal obligations. Section 35.205 also does not alter existing ADA enforcement mechanisms. Individuals can file complaints, and agencies can conduct investigations and compliance reviews, related to subpart H of this part the same way they would for any other requirement under title II.[216]

As the text of the provision indicates, the burden of demonstrating applicability of § 35.205 is on the public entity. The provision will only apply in the limited circumstance in which the public entity can demonstrate that all of the criteria described in § 35.205 are satisfied. This section requires the public entity to show that its nonconformance to WCAG 2.1 Level AA has such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app as defined in the remainder of the section. If the nonconformance has affected an individual in the ways outlined in § 35.205 (further described in the subsequent paragraphs), the public entity will not be able to rely on this provision. Further, as ''demonstrate'' indicates, the public entity must provide evidence that all of the criteria described in § 35.205 are satisfied in order to substantiate its reliance on this provision. While § 35.205 does not require a particular type of evidence, a public entity needs to show that, as the text states, its nonconformance ''would not affect'' the experience of individuals with disabilities as outlined in subsequent paragraphs. Therefore, it would not be sufficient for a public entity to show only that it has not received any complaints regarding the nonconformance; nor would it likely be enough if the public entity only pointed to a few particular individuals with disabilities who were unaffected by the nonconformance. The public entity must show that the nonconformance is of a nature that would not affect people whose disabilities are pertinent to the nonconformance at issue, just as the analysis under other parts of the title II regulation depends on the barrier at issue and the access needs of individuals with disabilities pertinent to that barrier.[217] For example, people with hearing or auditory processing disabilities, among others, have disabilities pertinent to captioning requirements.

With respect to the particular criteria that a public entity must satisfy, § 35.205 describes both what people with disabilities must be able to use the public entity's web content or mobile apps to do and the manner in which people with disabilities must be able to do it. As to manner of use, § 35.205 provides that nonconformance to WCAG 2.1 Level AA must not affect the ability of individuals with disabilities to use the public entity's web content or mobile app in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use compared to individuals without disabilities. Timeliness, privacy, and independence are underscored throughout the ADA framework as key components of ensuring equal opportunity for individuals with disabilities to participate in or benefit from a public entity's services, programs, and activities, as explained further later in the discussion of this provision, and ''ease of use'' is intended to broadly encompass other aspects of a user's experience with web content or mobile apps. To successfully rely on § 35.205, it would not be sufficient for a public entity to demonstrate merely that its nonconformance would not completely block people with disabilities from using web content or a mobile app as described in § 35.205(a) through (d). That is, the term ''would not affect'' should not be read in isolation from the rest of § 35.205 to suggest that a public entity only needs to show that a particular objective can be achieved. Rather, a public entity must also demonstrate that, even though the web content or mobile app does not conform to the technical standard, the user experience for individuals with disabilities is substantially equivalent to the experience of individuals without disabilities.

For example, if a State's online renewal form does not conform to WCAG 2.1 Level AA, a person with a manual dexterity disability may need to spend significantly more time to renew their professional license online than someone without a disability. This person might also need to seek assistance from someone who does not have a disability, provide personal information to someone else, or endure a much more cumbersome and frustrating process than a user without a disability. Even if this person with a disability was ultimately able to renew their license online, § 35.205 would not apply because, under these circumstances, their ability to use the web content in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use would be affected. Analysis under this provision is likely to be a fact-intensive analysis. Of course, a public entity is not responsible for every factor that might make a task more time-consuming or difficult for a person with a disability. However, a public entity is responsible for the impact of its nonconformance to the technical standard set forth in subpart H of this part. The public entity must show that its nonconformance would not affect the ability of individuals with pertinent disabilities to use the web content or mobile app in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use.

Paragraphs (a) through (d) of § 35.205 describe what people with disabilities must be able to use the public entity's web content or mobile apps to do in a manner that is substantially equivalent as to timeliness, privacy, independence, and ease of use. First, under § 35.205(a), individuals with disabilities must be able to access the same information as individuals without disabilities. This means that people with disabilities can access all the same information using the web content or mobile app that users without disabilities are able to access. For example, § 35.205(a) would not be

[215] 88 FR 51983.

[216] *See* §§ 35.170 through 35.190.

[217] *Cf., e.g.,* §§ 35.130(b)(1)(iv) and (b)(8) and 35.160.

satisfied if certain web content could not be accessed using a keyboard because the content was coded in a way that caused the keyboard to skip over some content. In this example, an individual who relies on a screen reader would not be able to access the same information as an individual without a disability because all of the information could not be selected with their keyboard so that it would be read aloud by their screen reader. However, § 35.205(a) might be satisfied if the color contrast ratio for some sections of text is 4.45:1 instead of 4.5:1 as required by WCAG 2.1 Success Criterion 1.4.3.[218] Similarly, this provision might apply if the spacing between words is only 0.15 times the font size instead of 0.16 times as required by WCAG 2.1 Success Criterion 1.4.12.[219] Such slight deviations from the specified requirements are unlikely to affect the ability of, for example, most people with vision disabilities to access information that they would be able to access if the content fully conformed with the technical standard. However, the entity must always demonstrate that this element is met with respect to the specific facts of the nonconformance at issue.

Second, § 35.205(b) states that individuals with disabilities must be able to engage in the same interactions as individuals without disabilities. This means that people with disabilities can interact with the web content or mobile app in all of the same ways that people without disabilities can. For example, § 35.205(b) would not be satisfied if people with disabilities could not interact with all of the different components of the web content or mobile app, such as chat functionality, messaging, calculators, calendars, and search functions. However, § 35.205(b) might be satisfied if the time limit for an interaction, such as a chat response, expires at exactly 20 hours, even though Success Criterion 2.2.1,[220] which generally requires certain safeguards to prevent time limits from expiring, has an exception that only applies if the time limit is longer than 20 hours. People with certain types of disabilities, such as cognitive disabilities, may need more time than people without disabilities to engage in interactions. A slight deviation in timing, especially when the time limit is long and the intended interaction is brief, is unlikely to affect the ability of people with these types of disabilities to engage in interactions. Still, the public entity must always demonstrate that this element is met with respect to the specific facts of the nonconformance at issue.

Third, pursuant to § 35.205(c), individuals with disabilities must be able to conduct the same transactions as individuals without disabilities. This means that people with disabilities can complete all of the same transactions on the web content or mobile app that people without disabilities can. For example, § 35.205(c) would not be satisfied if people with disabilities could not submit a form or process their payment. However, § 35.205(c) would likely be satisfied if web content does not conform to Success Criterion 4.1.1 about parsing. This Success Criterion requires that information is coded properly so that technology like browsers and screen readers can accurately interpret the content and, for instance, deliver that content to a user correctly so that they can complete a transaction, or avoid crashing in the middle of the transaction.[221] However, according to W3C, this Success Criterion is no longer needed to ensure accessibility because of improvements in browsers and assistive technology.[222] Thus, although conformance to this Success Criterion is required by WCAG 2.1 Level AA, a failure to conform to this Success Criterion is unlikely to affect the ability of people with disabilities to conduct transactions. However, the entity must always demonstrate that this element is met with respect to the specific facts of the nonconformance at issue.

Fourth, § 35.205(d) requires that individuals with disabilities must be able to otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities. Section 35.205(d) is intended to address anything else within the scope of title II (*i.e.,* any service, program, or activity that cannot fairly be characterized as accessing information, engaging in an interaction, or conducting a transaction) for which someone who does not have a disability could use the public entity's web content or mobile app. Section 35.205(d) should be construed broadly to ensure that the ability of individuals with disabilities to use any part of the public entity's web content or mobile app that individuals without disabilities are able to use is not affected by nonconformance to the technical standard.

Explanation of Changes From Language Discussed in the NPRM

The regulatory language codified in § 35.205 is very similar to language discussed in the NPRM's preamble.[223] However, the Department believes it is helpful to explain differences between that discussion in the NPRM and the final rule. The Department has only made three substantive changes to the NPRM's relevant language.

First, though the NPRM discussed excusing noncompliance that ''does not prevent'' equal access, § 35.205 excuses noncompliance that ''would not affect'' such access. The Department was concerned that the use of ''does not'' could have been incorrectly read to require a showing that a specific individual did not have substantially equivalent access to the web content or mobile app. In changing the language to ''would not,'' the Department clarifies that the threshold requirements for bringing a challenge to compliance under subpart H of this part are the same as under any other provision of the ADA. Except as otherwise required by existing law, a rebuttal of a public entity's invocation of this provision would not need to show that a specific individual did not have substantially equivalent access to the web content or mobile app. Rather, the issue would be whether the nonconformance is the type of barrier that would affect the ability of individuals with pertinent disabilities to access the web content or mobile app in a substantially equivalent manner. The same principles would apply to informal dispute resolution or agency investigations resolved outside of court, for example. Certainly, the revised standard would encompass a barrier that actually does affect a specific individual's access, so this revision does not narrow the provision.

Second, the Department originally proposed considering whether nonconformance ''prevent[s] a person with a disability'' from using the web content or mobile app, but § 35.205 instead considers whether nonconformance would ''affect the ability of individuals with disabilities'' to use the web content or mobile app. This revision is intended to clarify what a public entity seeking to invoke this provision needs to demonstrate. The Department explained in the NPRM that the purpose of this approach was to provide equal access to people with disabilities, and limit violations to those that affect access.[224] But even when not entirely prevented from using web content or mobile app, an individual with disabilities can still be denied equal access by impediments falling short of that standard. The language now used in this provision more accurately reflects this reality and achieves the objective proposed in the NPRM. As explained earlier in the discussion of § 35.205, under the language in this provision, it would not be sufficient for a public entity to show that nonconformance would not completely block people with disabilities from using the public entity's web content or a mobile app as described in § 35.205(a) through (d). In other words, someone would not need to be entirely prevented from using the web content or mobile app before an entity could be considered out of compliance. Instead, the effect of the nonconformance must be considered. This does not mean that any effect on usability, however slight, is sufficient to prove a violation. Only nonconformance that would affect the ability of individuals with disabilities to do the activities in § 35.205(a) through (d) in a way that provides substantially equivalent timeliness, privacy, independence, and ease of use would prevent a public entity from relying on this provision.

Third, the language proposed in the NPRM considered whether a person with a disability would have substantially

[218] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 1.4.3 Contrast (Minimum)* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#contrast-minimum* [*https://perma.cc/4XS3-AX7W*].

[219] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 1.4.12 Text Spacing* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#text-spacing* [*https://perma.cc/B4A5-843F*].

[220] *See* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 2.2.1 Timing Adjustable* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#timing-adjustable* [*https://perma.cc/V3XZ-KJDG*].

[221] W3C, *Understanding SC 4.1.1: Parsing (Level A), https://www.w3.org/WAI/WCAG21/Understanding/parsing.html* [*https://perma.cc/5Z8Q-GW5E*] (June 20, 2023).

[222] W3C, *WCAG 2 FAQ, How and why is success criteria 4.1.1 Parsing obsolete?, https://www.w3.org/WAI/standards-guidelines/wcag/faq/#parsing411* [*https://perma.cc/7Q9H-JVSZ*] (Oct. 5, 2023).

[223] 88 FR 51983.

[224] *Id.*

equivalent ''ease of use.'' The Department believed that timeliness, privacy, and independence were all components that affected whether ease of use was substantially equivalent. Because several commenters proposed explicitly specifying these factors in addition to ''ease of use,'' the Department is persuaded that these factors warrant separate inclusion and emphasis as aspects of user experience that must be substantially equivalent. This specificity ensures clarity for public entities, individuals with disabilities, Federal agencies, and courts about how to analyze an entity's invocation of this provision.

Therefore, the Department has added additional language to clarify that timeliness, privacy, and independence are all important concepts to consider when evaluating whether this provision applies. If a person with a disability would need to take significantly more time to successfully navigate web content or a mobile app that does not conform to the technical standard because of the content or app's nonconformance, that person is not being provided with a substantially equivalent experience to that of people without disabilities. Requiring a person with a disability to spend substantially more time to do something is placing an additional burden on them that is not imposed on others. Privacy and independence are also crucial components that can affect whether a person with a disability would be prevented from having a substantially equivalent experience. Adding this language to § 35.205 ensures consistency with the effective communication provision of the ADA.[225] The Department has included timeliness, privacy, and independence in this provision for clarity and to avoid unintentionally narrowing what should be a fact-intensive analysis. However, ''ease of use'' may also encompass other aspects of a user's experience that are not expressly specified in the regulatory text, such as safety risks incurred by people with disabilities as a result of nonconformance.[226] This language should be construed broadly to allow for consideration of other ways in which nonconformance would make the experience of users with disabilities more difficult or burdensome than the experience of users without disabilities in specific scenarios.

Justification for This Provision

After carefully considering the various public comments received, the Department believes that a tailored approach is needed for measuring compliance with a technical standard in the digital space. The Department also believes that the compliance framework adopted in § 35.205 is preferable to any available alternatives because it strikes the most appropriate balance between equal access for individuals with disabilities and feasibility for public entities.

[225] Section 35.160(b)(2).

[226] *See, e.g.,* W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 2.3.1. Three Flashes or Below Threshold* (June 5, 2018), *https://www.w3.org/TR/2018/REC-WCAG21-20180605/#three-flashes-or-below-threshold* [*https://perma.cc/A7P9-WCQY*] (addressing aspects of content design that could trigger seizures or other physical reactions).

The Need To Tailor a Compliance Approach for the Digital Space

Most of the commenters who addressed the question of what approach subpart H of this part should take to assessing compliance provided information that supported the Department's decision to tailor an approach for measuring compliance that is specific to the digital space (*i.e.,* an approach that differs from the approach that the Department has taken for physical access). Only a few commenters believed that the Department should require 100 percent conformance to WCAG 2.1 Level AA, as is generally required for newly constructed facilities.[227] Commenters generally discussed two reasons why a different approach was appropriate: differences between the physical and digital space and increased litigation risk.

First, many commenters, including commenters from State and local government entities and trade groups representing public accommodations, emphasized how the built environment differs from the digital environment. These commenters agreed with the Department's suggestion in the NPRM that the dynamic and interconnected nature of web content and mobile apps could present unique challenges for compliance.[228]

Digital content changes much more frequently than buildings do. Every modification to web content or a mobile app could lead to some risk of falling out of perfect conformance to WCAG 2.1 Level AA. Public entities will need to address this risk much more frequently under subpart H of this part than they do under the ADA's physical access requirements, because web content and mobile apps are updated much more often than buildings are. By their very nature, web content and mobile apps can easily be updated often, while most buildings are designed to last for years, if not decades, without extensive updates.

As such, State and local government entities trying to comply with their obligations under subpart H of this part will need to evaluate their compliance more frequently than they evaluate the accessibility of their buildings. But regular consideration of how any change that they make to their web content or mobile app will affect conformance to WCAG 2.1 Level AA and the resulting iterative updates may still allow minor nonconformances to escape notice. Given these realities attending web content and mobile apps, the Department believes that it is likely to be more difficult for State and local government entities to maintain perfect conformance to the technical standard set forth in subpart H than it is to comply with the ADA Standards. Commenters agreed that maintaining perfect conformance to the technical standard would be difficult.

Web content and content in mobile apps are also more likely to be interconnected, such that updates to some content may affect the conformance of other content in unexpected ways, including in ways that may lead to technical nonconformance without affecting the user experience for individuals with disabilities. Thus, to maintain perfect conformance, it would not necessarily be sufficient for public entities to confirm the conformance of their new content; they would also need to ensure that any updates do not affect the conformance of existing content. The same kind of challenge is unlikely to occur in physical spaces.

Second, many commenters raised concerns about the litigation risk that requiring perfect conformance to WCAG 2.1 Level AA would pose. Commenters feared being subjected to a flood of legal claims based on any failure to conform to the technical standard, however minor, and regardless of the impact—or lack thereof—the nonconformance has on accessibility. Commenters agreed with the Department's suggestion that due to the dynamic, complex, and interconnected nature of web content and mobile apps, a public entity's web content and mobile apps may be more likely to be out of conformance to WCAG 2.1 Level AA than its buildings are to be out of compliance with the ADA Standards, leading to increased legal risk. Some commenters even stated that 100 percent conformance to WCAG 2.1 Level AA would be unattainable or impossible to maintain. Commenters also agreed with the Department's understanding that the prevalence of automated web accessibility testing could enable any individual to find evidence of nonconformance to WCAG 2.1 Level AA even where that individual has not experienced any impact on access and the nonconformance would not affect others' access, with the result that identifying instances of merely technical nonconformance to WCAG 2.1 Level AA is likely much easier than identifying merely technical noncompliance with the ADA Standards.

Based on the comments it received, the Department believes that if it does not implement a tailored approach to compliance under subpart H of this part, the burden of litigation under subpart H could become particularly challenging for public entities, enforcement agencies, and the courts. Though many comments about litigation risk came from public entities, commenters from some disability advocacy organizations agreed that subpart H should not encourage litigation about issues that do not affect a person with a disability's ability to equally use and benefit from a website or mobile app, and that liability should be limited. After considering the information commenters provided, the Department is persuaded that measuring compliance as strictly 100 percent conformance to WCAG 2.1 Level AA would not be the most prudent approach, and that an entity's compliance obligations can be limited under some narrow circumstances without undermining the objective of ensuring equal access to web content and mobile apps in subpart H.

Reasons for Adopting This Compliance Approach

The Department has carefully considered many different approaches to defining when a State or local government entity has met its obligations under subpart H of this part. Of all the approaches considered—including those discussed in the NPRM as well as those

[227] Section 35.151(a) and (c).

[228] 88 FR 51981.

proposed by commenters—the Department believes the compliance approach set forth in § 35.205 strikes the most appropriate balance between providing equal access for people with disabilities and ensuring feasibility for public entities, courts, and Federal agencies. The Department believes that the approach set forth in subpart H is preferable to all other approaches because it emphasizes actual access, is consistent with existing legal frameworks, and was supported by a wide range of commenters.

Primarily, the Department has selected this approach because it appropriately focuses on the experience of individuals with disabilities who are trying to use public entities' web content or mobile apps. By looking at the effect of any nonconformance to the technical standard, this approach will most successfully implement the ADA's goals of ''equality of opportunity'' and ''full participation.'' [229] It will also be consistent with public entities' existing regulatory obligations to provide individuals with disabilities with an equal opportunity to participate in and benefit from their services, obtain the same result, and gain the same benefit.[230] This approach ensures that nonconformance to the technical standard can be addressed when it affects these core promises of equal access.

The Department heard strong support from the public for ensuring that people with disabilities have equal access to the same services, programs, and activities as people without disabilities, with equivalent timeliness, privacy, independence, and ease of use. Similarly, many commenters from disability advocacy organizations stated that the goal of subpart H of this part should be to provide access to people with disabilities that is functionally equivalent to the access experienced by people without disabilities. Other disability advocates stressed that technical compliance should not be prioritized over effective communication. Section 35.205 will help to achieve these goals.

The Department believes that this approach will not have a detrimental impact on the experience of people with disabilities who are trying to use web content or mobile apps. By its own terms, § 35.205 would require a public entity to demonstrate that any nonconformance would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use. As discussed earlier in the analysis of § 35.205, it is likely that this will be a high hurdle to clear. If nonconformance to the technical standard would affect people with disabilities' ability to use the web content or mobile app in this manner, this provision will not apply, and a public entity will not have met its obligations under subpart H of this part. As noted earlier in this discussion, full conformance to WCAG 2.1 Level AA is the only definitive way for a public entity to avoid reliance on § 35.205.

This provision would nonetheless provide public entities who have failed to conform to WCAG 2.1 Level AA with a way to avoid the prospect of liability for an error that is purely technical in nature and would not affect accessibility in practice. This will help to curtail the specter of potential liability for every minor technical error, no matter how insignificant. However, § 35.205 is intended to apply in rare circumstances and will require a detailed analysis of the specific facts surrounding the impact of each alleged instance of nonconformance. As noted earlier, the Department does not expect or intend that § 35.205 will excuse most nonconformance to the technical standard.

The Department also believes this approach is preferable to the other approaches considered because it is likely to be familiar to people with disabilities and public entities, and this general consistency with title II's regulatory framework (notwithstanding some necessary differences from the physical context as noted earlier in this discussion) has important benefits. The existing regulatory framework similarly requires public entities to provide equal opportunity to participate in or benefit from services, programs, or activities; [231] equal opportunity to obtain the same result; [232] full and equal enjoyment of services, programs, and activities; [233] and communications with people with disabilities that are as effective as communications with others, which includes consideration of timeliness, privacy, and independence.[234] The 1991 and 2010 ADA Standards also allow designs or technologies that result in substantially equivalent accessibility and usability.[235] Because of the consistency between § 35.205 and existing law, the Department does not anticipate that the requirements for bringing challenges to compliance with subpart H of this part will be radically different than the framework that currently exists. Subpart H adds certainty by establishing that conformance to WCAG 2.1 Level AA is generally sufficient for a public entity to meet its obligations to ensure accessibility of web content and mobile apps. However, in the absence of perfect conformance to WCAG 2.1 Level AA, the compliance approach established by § 35.205 keeps the focus on equal access, as it is under current law. Section 35.205 provides a limited degree of flexibility to public entities without displacing this part's guarantee of equal access for individuals with disabilities or upsetting the existing legal framework.

Finally, this approach to compliance is preferable to the other approaches the Department considered because there was a notable consensus among public commenters supporting it. A wide range of commenters, including disability advocacy organizations, trade groups representing public accommodations, accessibility experts, and State and local government entities submitted supportive comments. Even some of the commenters who opposed this approach noted that it would be helpful if it was combined with a clear technical standard, which the Department has done. Commenters representing a broad spectrum of interests seem to agree with this approach, with several commenters proposing very similar regulatory language. After considering the relative consensus among commenters, together with the other factors discussed herein, the Department has decided to adopt the approach to defining compliance that is set forth in § 35.205.

Alternative Approaches Considered

In addition to the approach set forth in § 35.205, the Department also considered compliance approaches that would have allowed isolated or temporary interruptions to conformance; required a numerical percentage of conformance to the technical standard; or allowed public entities to demonstrate compliance either by establishing and following certain specified accessibility policies and practices or by showing organizational maturity (*i.e.,* that the entity has a sufficiently robust accessibility program to consistently produce accessible web content and mobile apps). The Department also considered the approaches that other States, Federal agencies, and countries have taken, and other approaches suggested by commenters. After carefully weighing all of these alternatives, the Department believes the compliance approach adopted in § 35.205 is the most appropriate framework for determining whether a State or local government entity has met its obligations under § 35.200.

Isolated or Temporary Interruptions

As the Department noted in the NPRM,[236] the current title II regulation does not prohibit isolated or temporary interruptions in service or access to facilities due to maintenance or repairs.[237] In response to the Department's question about whether it should add a similar provision in subpart H of this part, commenters generally supported including an analogous provision in subpart H. They noted that some technical difficulties are inevitable, especially when updating web content or mobile apps. Some commenters elaborated that noncompliance with the technical standard should be excused if it is an isolated incident, as in one page out of many; temporary, as in an issue with an update that is promptly fixed; or through other approaches to measuring compliance addressed in this section. A few commenters stated that due to the continuously evolving nature of web content and mobile apps, there is even more need to include a provision regarding isolated or temporary interruptions than there is in the physical space. Another commenter suggested that entities should prioritize emergency-related information by making sure they have alternative methods of communication in place in anticipation of isolated or temporary interruptions that prevent access to this content.

The Department has considered all of the comments it received on this issue and,

[229] 42 U.S.C. 12101(a)(7).

[230] *See* § 35.130(b)(1)(ii) and (iii).

[231] *Id.* §§ 35.130(b)(1)(ii) and 35.160(b)(1).

[232] *Id.* § 35.130(b)(1)(iii).

[233] *Id.* § 35.130(b)(8).

[234] *Id.* § 35.160(a)(1) and (b).

[235] 28 CFR part 36, appendix D, at 1000 (2022) (1991 ADA Standards); 36 CFR part 1191, appendix B, at 329 (2022) (2010 ADA Standards).

[236] 88 FR 51981.

[237] *See* § 35.133(b).

based on those comments and its own independent assessment, decided not to separately excuse an entity's isolated or temporary noncompliance with § 35.200(b) due to maintenance or repairs in subpart H of this part. Rather, as stated in § 35.205, an entity's legal responsibility for an isolated or temporary instance of nonconformance to WCAG 2.1 Level AA will depend on whether the isolated or temporary instance of nonconformance—as with any other nonconformance—would affect the ability of individuals with disabilities to use the public entity's web content or mobile app in a substantially equivalent way.

The Department believes it is likely that the approach set forth in § 35.205 reduces the need for a provision that would explicitly allow for instances of isolated or temporary noncompliance due to maintenance or repairs, while simultaneously limiting the negative impact of such a provision on individuals with disabilities. The Department believes this is true for two reasons.

First, to the extent isolated or temporary noncompliance due to maintenance or repairs occur that affect web content or mobile apps, it logically follows from the requirements in subpart H of this part that these interruptions should generally result in the same impact on individuals with and without disabilities after the compliance date because, in most cases, all users would be relying on the same content, and so interruptions to that content would impact all users. From the compliance date onward, accessible web content and mobile apps and the web content and mobile apps used by people without disabilities should be one and the same (with the rare exception of conforming alternate versions provided for in § 35.202). Therefore, the Department expects that isolated or temporary noncompliance due to maintenance or repairs generally will affect the ability of people with disabilities to use web content or mobile apps to the same extent it will affect the experience of people without disabilities. For example, if a website is undergoing overnight maintenance and so an online form is temporarily unavailable, the form would already conform to WCAG 2.1 Level AA, and so there would be no separate feature or form for individuals with disabilities that would be affected while a form for people without disabilities is functioning. In such a scenario, individuals with and without disabilities would both be unable to access web content, such that there would be no violation of subpart H of this part.

Thus, the Department believes that a specific provision regarding isolated or temporary noncompliance due to maintenance or repairs is less necessary than it is for physical access. When there is maintenance to a feature that provides physical access, such as a broken elevator, access for people with disabilities is particularly impacted. In contrast, when there is maintenance to web content or mobile apps, people with and without disabilities will generally both be denied access, such that no one is denied access on the basis of disability.

Second, even to the extent isolated or temporary noncompliance due to maintenance or repairs affects only an accessibility feature, that noncompliance may fit the parameters laid out in § 35.205 such that an entity will be deemed to have complied with its obligations under § 35.200. Section 35.205 does not provide a blanket limitation that would excuse all isolated or temporary noncompliance due to maintenance or repairs, however. The provision's applicability would depend on the particular circumstances of the interruption and its impact on people with disabilities. It is possible that an interruption that only affects an accessibility feature will not satisfy the elements of § 35.205 and an entity will not be deemed in compliance with § 35.200. Even one temporary or isolated instance of nonconformance could affect the ability of individuals with disabilities to use the web content with substantially equivalent ease of use, depending on the circumstances. As discussed in this section, this will necessarily be a fact-specific analysis.

In addition to being less necessary than in the physical access context, the Department also believes a specific provision regarding isolated or temporary interruptions due to maintenance or repairs would have more detrimental incentives in the digital space by discouraging public entities from adopting practices that would reduce or avert the disruptions caused by maintenance and repair that affect accessibility. Isolated or temporary noncompliance due to maintenance or repairs of features that provide physical access would be necessary regardless of what practices public entities put in place,[238] and the repairs and maintenance to those features often cannot be done without interrupting access specifically for individuals with disabilities. For example, curb ramps will need to be repaved and elevators will need to be repaired because physical materials break down. In contrast, the Department believes that, despite the dynamic nature of web content and mobile apps, incorporating accessible design principles and best practices will generally enable public entities to anticipate and avoid many instances of isolated or temporary noncompliance due to maintenance or repairs—including many isolated or temporary instances of noncompliance that would have such a significant impact that they would affect people with disabilities' ability to use web content or mobile apps in a substantially equivalent way. Some of these best practices, such as regular accessibility testing and remediation, would likely be needed for public entities to comply with subpart H of this part regardless of whether the Department incorporated a provision regarding isolated or temporary interruptions. And practices like testing content before it is made available will frequently allow maintenance and repairs that affect accessibility to occur without interrupting access, in a way that is often impossible in physical spaces. The Department declines to adopt a limitation for isolated or temporary interruptions due to maintenance or repairs. Such a limitation may disincentivize public entities from implementing processes that could prevent many interruptions from affecting substantially equivalent access.

Numerical Approach

The Department considered requiring a certain numerical percentage of conformance to the technical standard. This percentage could be a simple numerical calculation based on the number of instances of nonconformance across the public entity's web content or mobile app, or the percentage could be calculated by weighting different instances of nonconformance differently. Weighted percentages of many different types, including giving greater weight to more important content, more frequently accessed content, or more severe access barriers, were considered.

When discussing a numerical approach in the NPRM, the Department noted that the approach seemed unlikely to ensure access.[239] Even if only a very small percentage of content does not conform to the technical standard, that could still block an individual with a disability from accessing a service, program, or activity. For example, even if there was only one instance of nonconformance, that single error could prevent an individual with a disability from submitting an application for public benefits. Commenters agreed with this concern. As such, the Department continues to believe that a percentage-based approach would not be sufficient to advance the objective of subpart H of this part to ensure equal access to State and local government entities' web content and mobile apps. Commenters also agreed with the Department that a percentage-based standard would be difficult to implement because percentages would be challenging to calculate.

Based on the public comments it received about this framework, which overwhelmingly agreed with the concerns the Department raised in the NPRM, the Department continues to believe that adopting a percentage-based approach is not feasible. The Department received a very small number of comments advocating for this approach, which were all from State and local government entities. Even fewer commenters suggested a framework for implementing this approach (*i.e.,* the percentage of conformance that should be adopted or how that percentage should be calculated). Based on the very limited information provided in support of a percentage-based approach submitted from commenters, as well as the Department's independent assessment, it would be challenging for the Department to articulate a sufficient rationale for choosing a particular percentage of conformance or creating a specific conformance formula. Nothing submitted in public comments meaningfully changed the Department's previous concerns about calculating a percentage or specifying a formula. For all of the reasons discussed, the Department declines to adopt this approach.

[238] *See* 28 CFR part 35, appendix B, at 705 (2022) (providing that it is impossible to guarantee that mechanical devices will never fail to operate).

[239] 88 FR 51982–51983.

Policy-Based Approach

The Department also considered allowing a public entity to demonstrate compliance with subpart H of this part by affirmatively establishing and following certain robust policies and practices for accessibility feedback, testing, and remediation. Under this approach, the Department would have specified that nonconformance to WCAG 2.1 Level AA does not constitute noncompliance with subpart H if a public entity has established certain policies for testing the accessibility of its web content and mobile apps and remediating inaccessible content, and the entity can demonstrate that it follows those policies. Potential policies could also address accessibility training.

As the Department stated in the NPRM, there were many ways to define the specific policies that would have been deemed sufficient under this approach.[240] Though many commenters supported the idea of a policy-based approach, they suggested a plethora of policies that should be required by subpart H of this part. Commenters disagreed about what type of testing should be required (*i.e.,* automated, manual, or both), who should conduct testing, how frequently testing should be conducted, and how promptly any nonconformance should be remediated. As just one example of the broad spectrum of policies proposed, the frequency of accessibility testing commenters suggested ranged from every 30 days to every five years. A few commenters suggested that no time frames for testing or remediation should be specified in subpart H; rather, they proposed that the nature of sufficient policies should depend on the covered entity's resources, the characteristics of the content, and the complexity of remediating the nonconformance. Commenters similarly disagreed about whether, when, and what kind of training should be required. Commenters also suggested requiring many additional policies and practices, including mechanisms for providing accessibility feedback; accessibility statements; third-party audits; certifications of conformance; documentation of contracting and procurement practices; adopting specific procurement practices; setting certain budgets or staffing requirements; developing statewide panels of accessibility experts; and making accessibility policies, feedback, reports, or scorecards publicly available.

The Department declines to adopt a policy-based approach because, based on the wide range of policies and practices proposed by commenters, there is not a sufficient rationale that would justify adopting any specific set of accessibility policies in the generally applicable regulation in subpart H of this part. Many of the policies commenters suggested would require the Department to dictate particular details of all public entities' day-to-day operations in a way the Department does not believe is appropriate or sufficiently justified to do in subpart H. There was no consensus among commenters about what policies would be sufficient, and most commenters did not articulate a specific basis supporting why their preferred policies were more appropriate than any other policies. In the absence of more specific rationales or a clearer consensus among commenters or experts in the field about what policies would be sufficient, the Department does not believe it is appropriate to prescribe what specific accessibility testing and remediation policies all State and local government entities must adopt to comply with their obligations under subpart H. Based on the information available to the Department at this time, the Department's adoption of any such specific policies would be unsupported by sufficient evidence that these policies will ensure accessibility, which could cause significant harm. It would allow public entities to comply with their legal obligations under subpart H based on policies alone, even though those policies may fail to provide equal access to online services, programs, or activities.

The Department also declines to adopt a policy-based approach that would rely on the type of general, flexible policies supported by some commenters, in which the sufficiency of public entities' policies would vary depending on the factual circumstances. The Department does not believe that such an approach would give individuals with disabilities sufficient certainty about what policies and access they could expect. Such an approach would also fail to give public entities sufficient certainty about how they should meet their legal obligations under subpart H of this part. If it adopted a flexible approach suggested by commenters, the Department might not advance the current state of the law, because every public entity could choose any accessibility testing and remediation policies it believed would be sufficient to meet its general obligations, without conforming to the technical standard or ensuring access. The Department has heard State and local government entities' desire for increased clarity about their legal obligations, and adopting a flexible standard would not address that need.

Organizational Maturity

Another compliance approach that the Department considered would have allowed an entity to demonstrate compliance with subpart H of this part by showing organizational maturity (*i.e.,* that the organization has a sufficiently robust program for web and mobile app accessibility). As the Department explained in the NPRM, while accessibility conformance testing evaluates the accessibility of a particular website or mobile app at a specific point in time, organizational maturity evaluates whether an entity has developed the infrastructure needed to produce accessible web content and mobile apps consistently.[241]

Commenters, including disability advocacy organizations, State and local government entities, trade groups representing public accommodations, and accessibility experts were largely opposed to using an organizational maturity approach to evaluate compliance. Notably, one of the companies that developed an organizational maturity model the Department discussed in the NPRM did not believe that an organizational maturity model was an appropriate way to assess compliance. Other commenters who stated that they supported the organizational maturity approach also seemed to be endorsing organizational maturity as a best practice rather than a legal framework, expressing that it was not an appropriate substitute for conformance to a technical standard.

Misunderstandings about what an organizational maturity framework is and how the Department was proposing to use it that were evident in several comments also demonstrated that the organizational maturity approach raised in the NPRM was not sufficiently clear to the public. For example, at least one commenter conflated organizational maturity with the approach the Department considered that would assess an organization's policies. Another commenter seemed to understand the Department's consideration of organizational maturity as only recommending a best practice, even though the Department was considering it as legal requirement. Comments like these indicate that the organizational maturity approach the Department considered to measure compliance would be confusing to the public if adopted.

Among commenters that supported the organizational maturity approach, there was no consensus about how organizational maturity should be defined or assessed, or what level of organizational maturity should be sufficient to demonstrate compliance with subpart H of this part. There are many ways to measure organizational maturity, and it is not clear to the Department that one organizational maturity model is more appropriate or more effective than any other. The Department therefore declines to adopt an organizational maturity approach in subpart H because any organizational maturity model for compliance with web accessibility that the Department could develop or incorporate would not have sufficient justification based on the facts available to the Department at this time. As with the policy-based approach discussed previously in this appendix, if the Department were to allow public entities to define their own organizational maturity approach instead of adopting one specific model, this would not provide sufficient predictability or certainty for people with disabilities or public entities.

The Department also declines to adopt this approach because commenters did not provide—and the Department is not aware of—information or data to suggest that increased organizational maturity reliably resulted in increased conformance to WCAG 2.1 Level AA. Like the policy-based approach discussed previously in this appendix, if the Department were to adopt an organizational maturity approach that was not sufficiently rigorous, public entities would be able to comply with subpart H of this part without providing equal access. This would undermine the purpose of the part.

[240] *Id.* at 51983–51984.

[241] *Id.* at 51984; *see also* W3C, *Accessibility Maturity Model: Group Draft Note, § 1.1: About the Accessibility Maturity Model* (Dec. 15, 2023), *https://www.w3.org/TR/maturity-model/* [*https://perma.cc/UX4X-J4MF*].

Other Federal, International, and State Approaches

The Department also considered approaches to measuring compliance that have been used by other agencies, other countries or international organizations, and States, as discussed in the NPRM.[242] As to other Federal agencies' approaches, the Department has decided not to adopt the Access Board's standards for section 508 compliance for the reasons discussed in § 35.200 of the section-by-section analysis regarding the technical standard. The Section 508 Standards require full conformance to WCAG 2.0 Level AA,[243] but the Department has determined that requiring perfect conformance to the technical standard set forth in subpart H of this part would not be appropriate for the reasons discussed elsewhere in this appendix. Perfect conformance is less appropriate in subpart H than under section 508 given the wide variety of public entities covered by title II of the ADA, many of which have varying levels of resources, compared to the relatively limited number of Federal agencies that must follow section 508. For the reasons stated in the section-by-section analysis of § 35.200 regarding compliance time frame alternatives, the Department also declines to adopt the tiered approach that the Department of Transportation took in its regulation on accessibility of air carrier websites, which required certain types of content to be remediated more quickly.[244]

The Department has also determined that none of the international approaches to evaluating compliance with web accessibility laws that were discussed in the NPRM are currently feasible to adopt in the United States.[245] The methodologies used by the European Union and Canada require reporting to government agencies. This would pose counterproductive logistical and administrative difficulties for regulated entities and the Department. The Department believes that the resources public entities would need to spend on data collection and reporting would detract from efforts to increase the accessibility of web content and mobile apps. Furthermore, reporting to Federal agencies is not required under other subparts of the ADA, and it is not clear to the Department why such reporting would be more appropriate under subpart H of this part than under others. New Zealand's approach, which requires testing and remediation, is similar to the policy-based approach already discussed in this section, and the Department declines to adopt that approach for the reasons stated in that discussion. The approach taken in the United Kingdom, where a government agency audits websites and mobile apps, sends a report to the public entity, and requires the entity to fix accessibility issues, is similar to one method the Department currently uses to enforce title II of the ADA, including title II web and mobile app accessibility.[246] Though the Department will continue to investigate complaints and enforce the ADA, given constraints on its resources and the large number of entities within its purview to investigate, the Department is unable to guarantee that it will conduct a specific amount of enforcement under subpart H of this part on a particular schedule.

The Department has considered many States' approaches to assessing compliance with their web accessibility laws[247] and declines to adopt these laws at the Federal level. State laws like those in Florida, Illinois, and Massachusetts, which do not specify how compliance will be measured or how entities can demonstrate compliance, are essentially requiring 100 percent compliance with a technical standard. This approach is not feasible for the reasons discussed earlier in this section. In addition, this approach is not feasible because of the large number and wide variety of public entities covered by the ADA, as compared with the relatively limited number of State agencies in a given State. Laws like California's, which require entities covered by California's law to certify or post evidence of compliance, would impose administrative burdens on public entities similar to those imposed by the international approaches discussed in the preceding paragraph. Some State agencies, including in California, Minnesota, and Texas, have developed assessment checklists, trainings, testing tools, and other resources. The Department will issue a small entity compliance guide,[248] which should help public entities better understand their obligations. As discussed elsewhere in this appendix, the Department may also provide further guidance about best practices for a public entity to meet its obligations under subpart H of this part. However, such resources are not substitutes for clear and achievable regulatory requirements. Some commenters stated that regulations should not be combined with best practices or guidance, and further stated that testing methodologies are more appropriate for guidance. The Department agrees and believes State and local government entities are best suited to determine how they will comply with the technical standard, depending on their needs and resources.

The Department also declines to adopt a model like the one used in Texas, which requires State agencies to, among other steps, conduct tests with one or more accessibility validation tools, establish an accessibility policy that includes criteria for compliance monitoring and a plan for remediation of noncompliant items, and establish goals and progress measurements for accessibility.[249] This approach is one way States and other public entities may choose to ensure that they comply with subpart H of this part. However, as noted in the discussion of the policy-based approach, the Department is unable to calibrate requirements that provide sufficient predictability and certainty for every public entity while maintaining sufficient flexibility. The Department declines to adopt an approach like Texas's for the same reasons it declined to adopt a policy-based approach.

Commenters suggested a few additional State and international approaches to compliance that were not discussed in the NPRM. Though the Department reviewed and considered each of these approaches, it finds that they are not appropriate to adopt in subpart H of this part. First, Washington's accessibility policy[250] and associated standard[251] require agencies to develop policies and processes to ensure compliance with the technical standard, including implementing and maintaining accessibility plans. As with Texas's law and a more general policy-based approach, which are both discussed elsewhere in this appendix, Washington's approach would not provide sufficient specificity and certainty to ensure conformance to a technical standard in the context of the title II regulatory framework that applies to a wide range of public entities; however, this is one approach to achieving conformance that entities could consider.

Additionally, one commenter suggested that the Department look to the Accessibility for Ontarians with Disabilities Act[252] and consider taking some of the steps to ensure compliance that the commenter states Ontario has taken. Specifically, the commenter suggested requiring training on how to create accessible content and creating an advisory council that makes suggestions on how to increase public education about the law's requirements. Though the Department will consider providing additional guidance to the public about how to comply with subpart H of this part, it declines to require State and local government entities to provide training to their employees. This would be part of a policy-based compliance approach, which the Department has decided not to adopt for the reasons discussed. However, the Department notes that public entities will likely find that some training is necessary and helpful to achieve compliance. The Department also declines to require State and local government entities to adopt accessibility advisory councils because, like training, this would be part of a policy-based compliance approach. However, public entities remain free to do so if they choose.

Finally, a coalition of State Attorneys General described how their States' agencies currently determine whether State websites and other technology are accessible, and suggested that the Department incorporate

[242] 88 FR 51980–51981.

[243] 36 CFR 1194.1; *id.* at part 1194, appendix A, section E205.4.

[244] *See* 14 CFR 382.43.

[245] 88 FR 51980.

[246] *See* § 35.172(b) and (c) (describing the process for compliance reviews). As noted, however, the Department is unable to guarantee that it will conduct a specific amount of enforcement under subpart H of this part on a particular schedule.

[247] 88 FR 51980–51981.

[248] *See* Public Law 104–121, sec. 212, 110 Stat. at 858.

[249] 1 Tex. Admin. Code secs. 206.50, 213.21 (West 2023).

[250] Wash. Tech. Sols., *Policy 188—Accessibility, https://watech.wa.gov/sites/default/files/2023-09/188_Accessibility_2019_AS%2520v3%2520Approved.docx.* A Perma archive link was unavailable for this citation.

[251] Wash. Tech. Sols., *Standard 188.10—Minimum Accessibility Standard, https://watech.wa.gov/sites/default/files/2023-09/188.10_Min_Std_2019_AS_Approved_03102020_1.docx.* A Perma archive link was unavailable for this citation.

[252] *Accessibility for Ontarians With Disabilities Act, 2005, S.O. 2005, c. 11* (Can.), *https://www.ontario.ca/laws/statute/05a11* [*https://perma.cc/V26B-2NSG*].

similar practices into its compliance framework. Some of these States have designated agencies that conduct automated testing, manual testing, or both, while others offer online tools or require agencies to conduct their own manual testing. Though some of these approaches come from States not already discussed, including Hawaii, New Jersey, and New York, the approaches commenters from these States discussed are similar to other approaches the Department has considered. These States have essentially adopted a policy-based approach. As noted elsewhere in this appendix, the Department believes that it is more appropriate for States and other regulated entities to develop their own policies to ensure compliance than it would be for the Department to establish one set of compliance policies for all public entities. Several State agencies conduct regular audits, but as noted previously in this appendix, the Department lacks the capacity to guarantee it will conduct a specific number of enforcement actions under subpart H of this part on a particular schedule. And as an agency whose primary responsibility is law enforcement, the Department is not currently equipped to develop and distribute accessibility testing software like some States have done. State and local government entities may wish to consider adopting practices similar to the ones commenters described even though subpart H does not require them to do so.

Other Approaches Suggested by Commenters

Commenters also suggested many other approaches the Department should take to assess and ensure compliance with subpart H of this part. The Department has considered all of the commenters' suggestions and declines to adopt them at this time.

First, commenters suggested that public entities should be permitted to provide what they called an ''accommodation'' or an ''equally effective alternative method of access'' when web content or mobile apps are not accessible. Under the approach these commenters envisioned, people with disabilities would need to pursue an interactive process where they discussed their access needs with the public entity and the public entity would determine how those needs would be met. The Department believes that adopting this approach would undermine a core premise of subpart H of this part, which is that web content and mobile apps will generally be accessible by default. That is, people with disabilities typically will not need to make a request to gain access to services, programs, or activities offered online, nor will they typically need to receive information in a different format. If the Department were to adopt the commenters' suggestion, the Department believes that subpart H would not address the gaps in accessibility highlighted in the need for the rulemaking discussed in section III.D.4 of the preamble to the final rule, as the current state of the law already requires public entities to provide reasonable modifications and effective communication to people with disabilities.[253] Under title II, individuals with disabilities cannot be, by reason of such disability, excluded from participation in or denied the benefits of the services, programs, or activities offered by State and local government entities, including those offered via the web and mobile apps.[254] One of the goals of the ADA also includes reducing segregation.[255] Accordingly, it is important for individuals with disabilities to have access to the same platforms as their neighbors and friends at the same time, and the commenters' proposal would not achieve that objective.

Second, commenters suggested a process, which is sometimes referred to as ''notice and cure,'' by which a person with a disability who cannot access web content or a mobile app would need to notify the public entity that their web content or mobile app was not accessible and give the public entity a certain period of time to remediate the inaccessibility before the entity could be considered out of compliance with subpart H of this part. The Department is not adopting this framework for reasons similar to those discussed in relation to the ''equally effective alternative'' approach rejected in the previous paragraph. With subpart H, the Department is ensuring that people with disabilities generally will not have to request access to public entities' web content and content in mobile apps, nor will they typically need to wait to obtain that access. Given the Department's longstanding position on the accessibility of online content, discussed in section III.B and C of the preamble to the final rule, public entities should already be on notice of their obligations. If they are not, the final rule unquestionably puts them on notice.

Third, commenters suggested a flexible approach to compliance that would only require substantial compliance, good faith effort, reasonable efforts, or some similar concept that would allow the meaning of compliance to vary too widely depending on the circumstances, and without a clear connection to whether those efforts result in actual improvements to accessibility for people with disabilities. The Department declines to adopt this approach because it does not believe such an approach would provide sufficient certainty or predictability to State and local government entities or individuals with disabilities. Such an approach would undermine the benefits of adopting a technical standard.

The Department has already built a series of mechanisms into subpart H of this part that are designed to make it feasible for public entities to comply, including the delayed compliance dates in § 35.200(b), the exceptions in § 35.201, the conforming alternate version provision in § 35.202, the fundamental alteration or undue burdens limitations in § 35.204, and the compliance approach discussed here. In doing so, the Department has allowed for several departures from the technical standard, but only under clearly defined and uniform criteria, well-established principles in the ADA or WCAG, or circumstances that would not affect substantially equivalent access. Many of the approaches that commenters proposed are not similarly cabined. Those approaches would often allow public entities' mere attempts to achieve compliance to substitute for access. The Department declines to adopt more flexibility than it already has because it finds that doing so would come at too great a cost to accessibility and to the clarity of the obligations in subpart H.

Fourth, several commenters proposed a multi-factor or tiered approach to compliance. For example, one commenter suggested a three-tiered system where after one failed accessibility test the public entity would investigate the problem, after multiple instances of nonconformance they would enter into a voluntary compliance agreement with the Department, and if there were widespread inaccessibility, the Department would issue a finding of noncompliance and impose a deadline for remediation. Similarly, another commenter proposed that enforcement occur only when two of three criteria are met: errors are inherent to the content itself, errors are high impact or widely prevalent, and the entity shows no evidence of measurable institutional development regarding accessibility policy or practice within a designated time frame. The Department believes that these and other similar multi-factor approaches to compliance would be too complex for public entities to understand and for the Department to administer. It would also be extremely challenging for the Department to define the parameters for such an approach with an appropriate level of precision and a sufficiently well-reasoned justification.

Finally, many commenters proposed approaches to compliance that would expand the Department's role. Commenters suggested that the Department grant exceptions to the requirements in subpart H of this part on a case-by-case basis; specify escalating penalties; conduct accessibility audits, testing, or monitoring; provide grant funding; develop accessibility advisory councils; provide accessibility testing tools; specify acceptable accessibility testing software, resources, or methodologies; provide a list of accessibility contractors; and provide guidance, technical assistance, or training.

With the exception of guidance and continuing to conduct accessibility testing as part of compliance reviews or other enforcement activities, the Department is not currently in a position to take any of the actions commenters requested. As described in this section, the Department has limited enforcement resources. It is not able to review requests for exceptions on a case-by-case basis, nor is it able to conduct accessibility testing or monitoring outside of compliance reviews, settlement agreements, or consent decrees. Civil penalties for noncompliance with the ADA are set by statute and are not permitted under title II.[256] Though the Department sometimes seeks monetary relief for individuals aggrieved under title II in its enforcement actions, the appropriate amount of relief is determined on a case-by-case basis and would be

[253] Section 35.130(b)(7) and 35.160.

[254] 42 U.S.C. 12132.

[255] 42 U.S.C. 12101(a)(2) and (5).

[256] *See* 42 U.S.C. 12188(b)(2)(C) (allowing civil penalties under title III); *see also* 28 CFR 36.504(a)(3) (updating the civil penalty amounts).

challenging to establish in a generally applicable rule. The Department does not currently operate a grant program to assist public entities in complying with the ADA, and, based on the availability and allocation of the Department's current resources, it does not believe that administering advisory committees would be the best use of its resources. The Department also lacks the resources and technical expertise to develop and distribute accessibility testing software.

The Department will issue a small entity compliance guide [257] and will continue to consider what additional guidance or training it can provide that will assist public entities in complying with their obligations. However, the Department believes that so long as public entities satisfy the requirements of subpart H of this part, it is appropriate to allow public entities flexibility to select accessibility tools and contractors that meet their individualized needs. Any specific list of tools or contractors that the Department could provide is unlikely to be helpful given the rapid pace at which software and contractor availability changes. Public entities may find it useful to consult other publicly available resources that can assist in selecting accessibility evaluation tools and experts.[258] Resources for training are also already available.[259] State and local government entities do not need to wait for the Department's guidance before consulting with technical experts and using resources that already exist.

Public Comments on Other Issues in Response to the NPRM

The Department received comments on a variety of other issues in response to the NPRM. The Department responds to the remaining issues not already addressed in this section-by-section analysis.

Scope

The Department received some comments that suggested that the Department should take actions outside the scope of the rulemaking to improve accessibility for people with disabilities. For example, the Department received comments suggesting that the rulemaking should: apply to all companies or entities covered under title III of the ADA; prohibit public entities from making information or communication available only via internet means; revise other portions of the title II regulation like subpart B of this part (general requirements); require accessibility of all documents behind any paywall regardless of whether title II applies; and address concerns about how the increased use of web and mobile app technologies may affect individuals with electromagnetic sensitivity. While the Department recognizes that these are important accessibility issues to people with disabilities across the country, they are outside of the scope of subpart H of this part, which focuses on web and mobile app accessibility under title II. Accordingly, these issues are not addressed in detail in subpart H.

The Department also received comments recommending that this part cover a broader range of technology in addition to web content and mobile apps, including technologies that may be developed in the future. The Department declines to broaden this part in this way. If, for example, the Department were to broaden the scope of the rulemaking to cover an open-ended range of technology, it would undermine one of the major goals of the rulemaking, which is to adopt a technical standard State and local government entities must adhere to and clearly specify which content must comply with that standard. In addition, the Department does not currently have sufficient information about how technology will develop in the future, and how WCAG 2.1 Level AA will (or will not) apply to that technology, to enable the Department to broaden the part to cover all future technological developments. Also, the Department has a long history of engaging with the public and stakeholders about web and mobile app accessibility and determined that it was appropriate to prioritize regulating in that area. However, State and local government entities have existing obligations under title II of the ADA with respect to services, programs, and activities offered through other types of technology.[260]

Another commenter suggested that the rulemaking should address operating systems. The commenter also suggested clarifying that public entities are required to ensure web content and mobile apps are accessible, usable, and interoperable with assistive technology. The Department understands this commenter to be requesting that the Department establish additional technical standards in this part beyond WCAG 2.1 Level AA, such as technical standards related to software. As discussed in this section and the section-by-section analysis of § 35.104, subpart H of this part focuses on web content and mobile apps. The Department also clarified in the section-by-section analysis of § 35.200 why it believes WCAG 2.1 Level AA is the appropriate technical standard for subpart H.

Coordination With Other Federal and State Entities

One commenter asked if the Department has coordinated with State governments and other Federal agencies that are working to address web and mobile app accessibility to ensure there is consistency with other government accessibility requirements. Subpart H of this part is being promulgated under part A of title II of the ADA. The Department's analysis and equities may differ from State and local government entities that may also interpret and enforce other laws addressing the rights of people with disabilities. However, through the NPRM process, the Department received feedback from the public, including public entities, through written comments and listening sessions. In addition, the final rule and associated NPRM were circulated to other Federal Government agencies as part of the Executive Order 12866 review process. In addition, under Executive Order 12250, the Department also coordinates with other Federal agencies to ensure the consistent and effective implementation of section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability, and to ensure that such implementation is consistent with title II of the ADA across the Federal Government.[261] Accordingly, the Department will continue to work with other Federal agencies to ensure consistency with its interpretations in the final rule, in accordance with Executive Order 12250.

Impact on State Law

Some commenters discussed how this part might impact State law, including one comment that asked how a public entity should proceed if it is subject to a State law that provides greater protections than this part. This part will preempt State laws affecting entities subject to title II of the ADA only to the extent that those laws provide less protection for the rights of individuals with disabilities.[262] This part does not invalidate or limit the remedies, rights, and procedures of any State laws that provide greater or equal protection for the rights of individuals with disabilities. Moreover, the Department's provision on equivalent facilitation at § 35.203 provides that nothing prevents a public entity from using designs, methods, or techniques as alternatives to those prescribed in subpart H of this part, provided that such alternatives result in substantially equivalent or greater accessibility and usability. Accordingly, for example, if a State law requires public entities in that State to conform to WCAG 2.2, nothing in subpart H would prevent a public entity from conforming with that standard.

Preexisting Technology

One public entity said that the Department should permit public entities to continue to use certain older technologies, because some public entities have systems that were developed several years ago with technologies that may not be able to comply with this part. The commenter also added that if a public entity is aware of the technical difficulties or need for remediation in relation to recent maintenance, updates, or repairs, more leniency should be given to the

[257] *See* Public Law 104–121, sec. 212, 110 Stat. at 858.

[258] *See, e.g.,* W3C, *Evaluating Web Accessibility Overview, https://www.w3.org/WAI/test-evaluate/* [*https://perma.cc/6RDS-X6AR*] (Aug. 1, 2023).

[259] *See, e.g.,* W3C, *Digital Accessibility Foundations Free Online Course, https://www.w3.org/WAI/courses/foundations-course/* [*https://perma.cc/KU9L-NU4H*] (Oct. 24, 2023).

[260] *See* §§ 35.130(b)(1)(ii) and (b)(7) and 35.160.

[261] Memorandum for Federal Agency Civil Rights Directors and General Counsels, from Kristen Clarke, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, *Re: Executive Order 12250 Enforcement and Coordination Updates* (Jan. 20, 2023), *https://www.justice.gov/media/1284016/dl?inline* [*https://perma.cc/AL6Q-QC57*]; Memorandum for Federal Agency Civil Rights Directors and General Counsels, from John M. Gore, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, *Re: Coordination of Federal Agencies' Implementation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act,* Civil Rights Division, U.S. Department of Justice (Apr. 24, 2018), *https://www.justice.gov/crt/page/file/1060321/download* [*https://perma.cc/9Q98-BVU2*].

[262] *See* 42 U.S.C. 12201.

public entity with respect to the compliance time frame.

The Department believes it has balanced the need to establish a workable standard for public entities with the need to ensure accessibility for people with disabilities in many ways, such as by establishing delayed compliance dates to give public entities time to ensure their technologies can comply with subpart H of this part. In addition, subpart H provides some exceptions addressing older content, such as the exceptions for archived web content, preexisting conventional electronic documents, and preexisting social media posts. The Department believes that these exceptions will assist covered entities in using their resources more efficiently. Also, the Department notes that public entities will be able to rely on the fundamental alteration or undue burdens and limitations in subpart H where they can satisfy the requirements of those provisions. Finally, the Department discussed isolated or temporary interruptions in § 35.205 of the section-by-section analysis, where it explained its decision not to separately excuse an entity's isolated or temporary noncompliance with § 35.200 due to maintenance or repairs.

Overlays

Several comments expressed concerns about public entities using accessibility overlays and automated checkers.[263] Subpart H of this part sets forth a technical standard for public entities' web content and mobile apps. Subpart H does not address the internal policies or procedures that public entities might implement to conform to the technical standard under subpart H.

[263] *See* W3C, *Overlay Capabilities Inventory: Draft Community Group Report* (Feb. 12, 2024), *https://a11yedge.github.io/capabilities/* [*https://perma.cc/2762-VJEV*]; *see also* W3C, Draft *Web Accessibility Evaluation Tools List, https://www.w3.org/WAI/ER/tools/* [*https://perma.cc/Q4ME-Q3VW*] (last visited Feb. 12, 2024).

ADA Coordinator

At least one commenter suggested that the Department should require public entities to hire an ADA Coordinator devoted specifically to web accessibility, similar to the requirement in the existing title II regulation at § 35.107(a). The Department believes it is important for public entities to have flexibility in deciding how to internally oversee their compliance with subpart H of this part. However, nothing in subpart H would prohibit a public entity from appointing an ADA coordinator for web content and mobile apps if the public entity believes taking such an action would help it comply with subpart H.

Dated: April 8, 2024.

Merrick B. Garland,

Attorney General.

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Part III

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Dishwashers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0039]

RIN 1904–AF60

Energy Conservation Program: Energy Conservation Standards for Dishwashers

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

ACTION: Direct final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including dishwashers. In this direct final rule, the U.S. Department of Energy (''DOE'') is adopting amended energy conservation standards for dishwashers. DOE 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 August 22, 2024. If adverse comment are received by August 12, 2024 and DOE determines that such comments may provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o), a timely withdrawal of this rule will be published in the **Federal Register**. The incorporation by reference of certain material listed in this rule was approved by the Director as of February 17, 2023. If no such adverse comments are received, compliance with the amended standards established for dishwashers in this direct final rule is required on and after April 23, 2027. Comments regarding the likely competitive impact of the standards contained in this direct final rule should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before May 24, 2024.

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-2019-BT-STD-0039.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the standards contained in this direct final rule. Interested persons may contact the Antitrust Division at *www.energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this direct final rule.

FOR FURTHER INFORMATION CONTACT:

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I. Synopsis of the Direct Final Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include dishwashers, the subject of this direct final rule. (42 U.S.C. 6292(a)(6))

Pursuant to EPCA, any new or amended energy conservation standard must, among other things, 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))

In light of the above and under the authority provided by 42 U.S.C. 6295(p)(4), DOE is issuing this direct final rule amending energy conservation standards for dishwashers.

The adopted standards in this direct final rule were proposed in a letter submitted to DOE jointly by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility. This letter, titled ''Energy Efficiency Agreement of 2023'' (hereafter, the ''Joint Agreement'' [3]), recommends specific energy conservation standards for dishwashers that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). DOE subsequently received letters of support for the Joint Agreement from States—including New York, California, and Massachusetts [4]—and utilities—including San Diego Gas and Electric (''SDG&E'') and Southern California Edison (''SCE'') [5]—advocating for the adoption of the recommended standards.

In accordance with the direct final rule provisions at 42 U.S.C. 6295(p)(4), DOE has determined that the recommendations contained in the Joint Agreement are compliant with 42 U.S.C. 6295(o). As required by 42 U.S.C. 6295(p)(4)(A)(i), DOE is also simultaneously publishing a notice of proposed rulemaking (''NOPR'') that contains identical standards to those adopted in this direct final rule. Consistent with the statute, DOE is providing a 110-day public comment period on the direct final rule. (42 U.S.C. 6295(p)(4)(B)) If DOE determines that any comments received provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o) or any other applicable law, DOE will publish the reasons for withdrawal and continue the rulemaking under the NOPR. (42 U.S.C. 6295(p)(4)(C)) *See* section II.A of this document for more details on DOE's statutory authority.

The amended standards that DOE is adopting in this direct final rule are the efficiency levels recommended in the Joint Agreement (shown in Table I.1) expressed in terms of maximum estimated annual energy use (''EAEU'') in kilowatt hours per year (''kWh/yr'') and maximum per cycle water consumption in gallons per cycle (''gal/cycle'') as measured according to DOE's dishwasher test procedure codified at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix C2 (''appendix C2'').

Table I.1 The amended standards recommended in the Joint Agreement are represented as trial standard level (''TSL'') 3 in this document (hereinafter the ''Recommended TSL'') and are described in section V.A of this document. The Joint Agreement's standards for dishwashers apply to all products listed in Table I.1 and manufactured in, or imported into, the United States starting 3 years after publication of a final rule in the **Federal Register**.

[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.

[3] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0055*.

[4] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0056*.

[5] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0057*.

Table I.1 Energy Conservation Standards for Dishwashers (Compliance Starting April 23, 2027)

Product Class	Maximum Estimated Annual Energy Use *(kWh/year)*	Maximum Per-Cycle Water Consumption *(gal/cycle)*
PC 1: Standard-Size Dishwasher*	223	3.3
PC 2: Compact-Size Dishwasher	174	3.1

* The energy conservation standards in this table do not apply to standard-size dishwashers with a cycle time for the normal cycle of 60 minutes or less.

A. Benefits and Costs to Consumers

Table I.2 summarizes DOE's evaluation of the economic impacts of the adopted standards on consumers of dishwashers, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[6] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of dishwashers, which is estimated to be 15.2 years (*see* section IV.F.6 of this document).

Table I.2 Impacts of Adopted Energy Conservation Standards on Consumers of Dishwashers (the Recommended TSL)

Product Class	Average LCC Savings *(2022$)*	Simple Payback Period *(years)*
Standard-Size	$17	3.9
Compact-Size	$32	0.0

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[7]

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 (2024–2056). Using a real discount rate of 8.5 percent, DOE estimates that the INPV for manufacturers of dishwashers in the case without amended standards is $735.8 million. Under the adopted standards, which align with the Recommended TSL for dishwashers, DOE estimates the change in INPV to range from –20.2 percent to –13.1 percent, which represents a change in INPV of approximately −$148.8 million to −$96.7 million. In order to bring products into compliance with amended standards, it is estimated that industry will incur total conversion costs of $126.9 million.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in section IV.J and section V.B.2 of this document.

C. National Benefits and Costs

DOE's analyses indicate that the adopted energy conservation standards for dishwashers would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for dishwashers purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2027–2056), amount to 0.31 quadrillion British thermal units (''Btu''), or quads.[8] This represents a savings of 2.6 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 dishwashers ranges from $1.23 billion (at a 7-percent discount rate) to $2.90 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for dishwashers purchased during the period 2027–2056.

In addition, the adopted standards for dishwashers 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 9.48 million metric tons (''Mt'')[9] of carbon dioxide (''CO_2''), 1.41 thousand tons of sulfur dioxide (''SO_2''), 22.37 thousand tons of nitrogen oxides (''NO_X''), 98.97 thousand tons of methane (''CH_4''), 0.06 thousand tons of nitrous oxide (''N_2O''), and 0.01 tons of mercury (''Hg'').[10]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (''GHG'') using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O'').[11] Together these represent the social cost of GHG (''SC–GHG''). DOE used interim SC–GHG

[6] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (*see* section IV.F.8 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (*see* section IV.F.9 of this document).

[7] All monetary values in this document are expressed in 2022 dollars and, where appropriate, are discounted to 2024 unless explicitly stated otherwise.

[8] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, *see* section IV.H.1 of this document.

[9] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[10] 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.

[11] Estimated climate-related benefits are provided in compliance with Executive Order 12866.

values (in terms of benefit per ton of GHG avoided) developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'').[12] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $0.54 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. DOE notes, however, that the adopted standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE estimated the monetary health benefits of SO_2 and NO_X emissions reductions using benefit per ton estimates from the U.S. Environmental Protection Agency (''EPA''),[13] as discussed in section IV.L of this document. DOE did not monetize the reduction in mercury emissions because the quantity is very small. DOE estimated the present value of the health benefits would be $0.37 billion using a 7-percent discount rate, and $0.94 billion using a 3-percent discount rate.[14] DOE is currently only monetizing health benefits from changes in ambient fine particulate matter (''$PM_{2.5}$'') concentrations from two precursors (SO_2 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.3 summarizes the monetized benefits and costs expected to result from the amended standards for dishwashers. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

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[12] To monetize the benefits of reducing GHG emissions this analysis uses values that are based on the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published February 2021 by the IWG. (''February 2021 SC–GHG TSD''). *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[13] 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.*

[14] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

Table I.3 Summary of Monetized Benefits and Costs of Adopted Energy Conservation Standards for Dishwashers (TSL 3 – the Recommended TSL)

	Billion $2022
3% discount rate	
Consumer Operating Cost Savings	3.16
Climate Benefits*	0.54
Health Benefits**	0.94
Total Benefits†	4.64
Consumer Incremental Product Costs‡	0.26
Net Monetized Benefits†	4.38
Change in Producer Cash Flow (INPV)‡‡	(0.15) – (0.10)
7% discount rate	
Consumer Operating Cost Savings	1.38
Climate Benefits* (3% discount rate)	0.54
Health Benefits**	0.37
Total Benefits†	2.29
Consumer Incremental Product Costs‡	0.15
Net Monetized Benefits†	2.13
Change in Producer Cash Flow (INPV)‡‡	(0.15) – (0.10)

Note: This table presents the costs and benefits associated with dishwashers shipped in 2027−2056. These results include consumer, climate, and health benefits that accrue after 2056 from the products shipped in 2027−2056.

* Climate benefits are calculated using four different estimates of the global SC-GHG (*see* section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

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

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate, but DOE does not have a single central

SC-GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates.

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

‡‡ Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. *See* sections IV.F and IV.H 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 8.5 percent that is estimated in the MIA (*see* chapter 12 of the direct final rule technical support document ("TSD") for a complete description of the industry weighted average cost of capital). For dishwashers, the change in INPV ranges from -$149 million to -$97 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 Tiered scenario, which models a reduction of manufacturer markups due to reduced product differentiation as a result of amended standards. DOE includes the range of estimated change in INPV in the previous 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 direct 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 for this direct final rule, the net benefits would range from $4.23 billion to $4.28 billion at 3-percent discount rate and would range from $1.98 billion to $2.03 billion at 7-percent discount rate. Parentheses () indicate negative values.

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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.[15]

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 dishwashers shipped in 2027–2056. The benefits associated with reduced emissions achieved as a result of the adopted standards are also calculated based on the lifetime of dishwashers shipped in 2027–2056. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate.[16] Estimates of total benefits are presented for all four SC–GHG discount rates in section V.B.8 of this document.

Table I.4 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 SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards adopted in this rule is $14.0 million per year in increased equipment costs, while the estimated annual benefits are $127.2 million in reduced equipment operating costs, $29.0 million in climate benefits, and $34.3 million in health benefits. In this case, the net benefit would amount to $176.4 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards is $14.0 million per year in increased equipment costs, while the estimated annual benefits are $171.2 million in reduced operating costs, $29.0 million in climate benefits, and $50.8 million in health benefits. In this case, the net benefit would amount to $237.0 million per year.

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[15] 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.

[16] As discussed in section IV.L.1 of this document, DOE agrees with the IWG that using consumption-based discount rates (*e.g.*, 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.4 Annualized Benefits and Costs of Adopted Standards for Dishwashers (the Recommended TSL) (2027-2056)

	Million 2022$/year		
	Primary Estimate	**Low-Net-Benefits Estimate**	**High-Net-Benefits Estimate**
3% discount rate			
Consumer Operating Cost Savings	171.2	164.1	175.8
Climate Benefits*	29.0	28.3	29.3
Health Benefits**	50.8	49.6	51.3
Total Benefits†	251.0	242.0	256.4
Consumer Incremental Product Costs‡	14.0	17.0	13.2
Net Benefits	237.0	224.9	243.1
Change in Producer Cashflow (INPV)‡‡	(14) – (9)	(14) – (9)	(14) – (9)
7% discount rate			
Consumer Operating Cost Savings	127.2	122.5	130.5
Climate Benefits* (3% discount rate)	29.0	28.3	29.3
Health Benefits**	34.3	33.5	34.5
Total Benefits†	190.5	184.3	194.3
Consumer Incremental Product Costs‡	14.0	16.7	13.3
Net Benefits	176.4	167.6	181.0
Change in Producer Cashflow (INPV)‡‡	(14) – (9)	(14) – (9)	(14) – (9)

Note: This table presents the costs and benefits associated with dishwashers shipped in 2027−2056. These results include consumer, climate, and health benefits that accrue after 2056 from the products shipped in 2027−2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *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 and IV.H of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.
* Climate benefits are calculated using four different estimates of the global SC-GHG (*see* section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC-GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.
** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. *See* section IV.L of this document for more details.
† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate, but DOE does not have a single central SC-GHG point estimate.
‡ Costs include incremental equipment costs as well as installation costs.
‡‡ Operating Cost Savings are calculated based on the life-cycle cost 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 8.5 percent that is estimated in the MIA (*see* chapter 12 of the direct final rule TSD for a complete description of the industry weighted-average cost of capital). For dishwashers, the change in INPV ranges from -$14 million to -$9 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 Tiered scenario, which models a reduction of manufacturer markups due to reduced product differentiation as a result of amended standards. DOE includes the range of estimated annualized change in INPV in the previous 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 direct 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 annualized the net benefit calculation for this direct final rule, the annualized net benefits would range from $223 million to $228 million at 3-percent discount rate and would range from $163 million to $168 million at 7-percent discount rate. Parentheses () indicate negative values.

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DOE's analysis of the national impacts of the adopted standards is described in sections IV.J.3 and IV.L of this document.

D. Conclusion

DOE has determined that the Joint Agreement was submitted jointly by interested persons that are fairly representative of relevant points of view, in accordance with 42 U.S.C. 6295(p)(4)(A). After considering the recommended standards and weighing the benefits and burdens, DOE has determined that the recommended standards are in accordance with 42 U.S.C. 6295(o), which contains the criteria for prescribing new or amended standards. Specifically, the Secretary of Energy (''Secretary'') has determined that the adoption of the recommended standards would result in the significant conservation of energy and is the maximum improvement in energy efficiency that is technologically feasible and economically justified. In determining whether the recommended standards are economically justified, the Secretary has determined that the benefits of the recommended standards exceed the burdens. The Secretary has further concluded that the recommended standards, when considering the benefits of energy savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings, would yield benefits that outweigh the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the standards for dishwashers is $14.0 million per year in increased dishwasher costs, while the estimated annual benefits are $127.2 million in reduced dishwasher operating costs, $29.0 million in climate benefits, and $34.3 million in health benefits. The net benefit amounts to $176.4 million per year. DOE notes that the net benefits are substantial even in the absence of the climate benefits [17] and 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.[18] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 0.31 quads FFC, the equivalent of the primary annual energy use of 2.1 million homes. In addition, they are projected to reduce cumulative CO_2 emissions by 9.48 Mt. Based on these findings, DOE has determined the energy savings from the standard levels adopted in this direct final rule are ''significant'' within the meaning of 42 U.S.C. 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.[19]

In accordance with these and other statutory provisions discussed in this document, DOE analyzed the benefits and burdens of four TSLs for dishwashers. 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.1 of this document, DOE has tentatively

[17] The information on climate benefits is provided in compliance with Executive Order 12866.

[18] 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).

[19] The TSD is available in the docket for this rulemaking at *www.regulations.gov/docket/EERE-2019-BT-STD-0039/document.*

determined that TSL 3 (the Recommended TSL) represents the maximum improvement in energy efficiency that is technologically feasible and economically justified.

II. Introduction

The following section briefly discusses the statutory authority underlying this direct final rule, as well as some of the relevant historical background related to the establishment of standards for dishwashers.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include dishwashers, the subject of this document. (42 U.S.C. 6292(a)(6)) EPCA prescribed energy conservation design standards for these products (42 U.S.C. 6295(g)(1) and (10)(A)), and directed DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (10)(B)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

In establishing energy conservation standards with both energy and water use performance standards for dishwashers manufactured after 2010, Congress also directed DOE to ''determin[e] whether to amend'' those standards. 42 U.S.C. 6295(g)(10)(B). Congress's directive, in section 6295(g)(10)(B), to consider whether ''to amend the standards for dishwashers'' refers to ''the standards'' established in the immediately preceding section, 6295(g)(10)(A). There, Congress established energy conservation standards with *both* energy and water use performance standards for dishwashers. Indeed, the energy and water use performance standards for dishwashers (both standard and compact) are each contained within a single subparagraph. *See Id.* Everything in section 6295(g)(10) suggests that Congress intended both of those twin standards to be evaluated when it came time, ''[n]ot later than January 1, 2015,'' to consider amending them. (*Id.* 6295(g)(10)(B)(i)) Accordingly, DOE understands its authority, under section 6295(g)(10)(B), to include consideration of amended energy and water use performance standards for dishwashers.

DOE similarly understands its obligation under 42 U.S.C. 6295(m) to amend ''standards'' for covered products to include amending both the energy and water use performance standards for dishwashers. Neither section 6295(g)(10)(B) nor section 6295(m) limit their application to ''energy use standards.'' Rather, they direct DOE to consider amending ''the standards,'' 42 U.S.C. 6295(g)(10)(B), or simply ''standards,'' *Id.* 6295(m)(1)(B), which may include both energy use standards and water use standards.

Finally, DOE is promulgating these standards as a direct final rule pursuant to section 42 U.S.C. 6295(p)(4). That section also extends broadly to any ''energy or water conservation standard'' without qualification. Thus, pursuant to section 6295(p)(4), DOE may, so long as the other relevant conditions are satisfied, promulgate a direct final rule that includes water use performance standards for a covered product like dishwashers, where Congress has already established energy and water use performance standards.

DOE is aware that the definition of ''energy conservation standard,'' in section 6291(6), expressly references water use only for four products specifically named: showerheads, faucets, water closets, and urinals. *See Id.* However, DOE does not read the language in 6291(6) as fully delineating the scope of DOE's authority under EPCA. Rather, as is required of agencies in applying a statute, individual provisions, including section 6291(6) of EPCA, must be read in the context of the statute as a whole.

The energy conservation program was initially limited to addressing the energy use, meaning electricity and fossil fuels, of 13 covered products (*See* sections 321 and 322 of the Energy and Policy Conservation Act, Public Law 94–163, 89 Stat 871 (December 22, 1975)) Since its inception, Congress has expanded the scope of the energy conservation program several times, including by adding covered products, prescribing energy conservation standards for various products, and by addressing water use for certain covered products. For example, in the Energy Policy Act of 1992, Congress amended the list of covered products in 42 U.S.C. 6292 to include showerheads, faucets, water closets and urinals and expanded DOE's authority to regulate water use for these products. (*See* Sec. 123, Energy Policy Act of 1992, Public Law 102–486, 106 Stat 2776 (Oct. 24, 1992)). When it did so, Congress also made corresponding changes to the definition of ''consumer product'' (42 U.S.C. 6291(1)), the definition of ''energy conservation standard'' (42 U.S.C. 6291(6)), the section governing the promulgation of test procedures (42 U.S.C. 6293), the criteria for prescribing new or amended energy conservation standards (42 U.S.C. 6295(o)), and elsewhere in EPCA.

Later, Congress further expanded the scope of the energy conservation program several times. For instance, Congress added products and energy conservation standards directly to 42 U.S.C. 6295, the section of EPCA that contains statutorily prescribed standards as well as DOE's standard-setting authorities. *See* 42 U.S.C. 6295(a) (stating that the ''purposes of this section are to—(1) provide Federal energy conservation standards applicable to covered products; and (2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.'')). When Congress added these new standards and standard-setting authorities to 42 U.S.C. 6295 after the Energy Policy Act of 1992, it often did so without making any conforming changes to other provisions in EPCA, *e.g.*, sections 6291 or 6292. For example, in the Energy Policy Act of 2005, Congress prescribed standards by statute, or gave DOE the authority to set standards for, battery chargers, external power supplies, ceiling fans, ceiling fan light kits, beverage vending machines, illuminated exit signs, torchieres, low voltage dry-type distribution transformers, traffic signal modules and pedestrian modules, certain lamps, dehumidifiers, and commercial prerinse spray valves in 42 U.S.C. 6295 without updating the list of covered products in 42 U.S.C. 6292. (*See* Sec. 135, Energy Policy Act of 2005, 119 Stat 594 (Aug. 8, 2005)).

Congress also expanded the scope of the energy conservation program by directly adding water use performance standards for certain products to 42 U.S.C. 6295. For example, in the Energy Policy Act of 2005, Congress added a water use performance standard (but no energy use performance standard) for commercial prerinse spray valves (''CPSVs'') and did so without updating the list of covered products in 42 U.S.C. 6292 to include CPSVs and without adding CPSVs to the list of enumerated products with water use performance standards in the ''energy conservation standard'' definition in 42 U.S.C. 6291(6). In the Energy Independence and Security Act of 2007 (''EISA 2007''), Congress amended 42 U.S.C. 6295 by prescribing energy conservation

standards for residential clothes washers and dishwashers that included both energy and water use performance standards. (*See* Sec. 301, EISA 2007, Public Law 110–140, 121 Stat 1492 (Dec. 19, 2007)). Again, when it did so, Congress did not add these products to the list of enumerated products with water use performance standards in the definition of ''energy conservation standard'' in 42 U.S.C. 6291(6).

In considering how to treat these products and standards that Congress has directly added to 42 U.S.C. 6295 without making conforming changes to the rest of the statute, including the list of covered products in 42 U.S.C. 6292, and the water-use products in the definition of an ''energy conservation standard,'' DOE construes the statute as a whole. When Congress added products and standards directly to 42 U.S.C. 6295 it must have meant those products to be covered products and those standards to be energy conservation standards, given that the purpose of 42 U.S.C. 6295 is to provide ''energy conservation standards applicable to covered products'' and to ''authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.'' Elsewhere in EPCA, the statute's references to covered products and energy conservation standards can only be read coherently as including the covered products and energy conservation standards Congress added directly to section 6295, even if Congress did not make conforming edits to 6291 or 6292. For example, manufacturers are prohibited from ''distribut[ing] in commerce any new *covered product* which is not in conformity with an applicable *energy conservation standard*.'' (42 U.S.C. 6302(a)(5) (emphasis added)) It would defeat congressional intent to allow a manufacturer to distribute a product, *e.g.*, a CPSV or ceiling fan, that violates an applicable energy conservation standard that Congress prescribed simply because Congress added the product directly to 42 U.S.C. 6295 without also updating the list of covered products in 42 U.S.C. 6292(a). In addition, preemption in EPCA is based on ''the effective date of an *energy conservation standard* established in or prescribed under section 6295 of this title for any *covered product*.'' (42 U.S.C. 6297(c) (emphasis added)) Nothing in EPCA suggests that standards Congress adopted in 6295 lack preemptive effect, merely because Congress did not make conforming amendments to 6291, 6292, or 6293.

It would similarly defeat congressional intent for a manufacturer to be permitted to distribute a covered product, *e.g.*, a residential clothes washer or dishwasher, that violates a water use performance standard because Congress added the standard to 42 U.S.C. 6295 without also updating the definition of energy conservation standard in 42 U.S.C. 6291(6). By prescribing directly, in 6295(g)(10), energy conservation standards for dishwashers that include both energy and water use performance standards, Congress intended that energy conservation standards for dishwashers include both energy use and water use.

DOE recognizes that some might argue that Congress's specific reference in section 6291(6) to water standards for showerheads, faucets, water closets, and urinals could ''create a negative implication'' that energy conservations standards for other covered products may not include water use standards. *See Marx* v. *Gen. Revenue Corp.,* 568 U.S. 371, 381 (2013). ''The force of any negative implication, however, depends on context.'' *Id.; see also NLRB* v. *SW Gen., Inc.,* 580 U.S. 288, 302 (2017) (''The *expressio unius* canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded.'' (alterations and quotation marks omitted)). In this context, the textual and structural cues discussed above show that Congress did not intend to exclude from the definition of energy conservation standard the water use performance standards that it specifically prescribed, and directed DOE to amend, in section 6295. To conclude otherwise would negate the plain text of 6295(g)(10). Furthermore, to the extent the definition of energy conservation standards in section 6291(6), which was last amended in the Energy Policy Act of 1992, could be read as in conflict with the energy and water use performance standards prescribed by Congress in EISA 2007, any such conflict should be resolved in favor of the more recently enacted statute. *See United States* v. *Estate of Romani,* 523 U.S. 517, 530–531 (1998) (''[A] specific policy embodied in a later federal statute should control our construction of the priority statute, even though it had not been expressly amended.''). Accordingly, based on a complete reading of the statute, DOE has determined that products and standards added directly to 42 U.S.C. 6295 are appropriately considered ''covered products'' and ''energy conservation standards'' for the purposes of applying the various provisions in EPCA.

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 the 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 instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for dishwashers appear at title 10 of the CFR part 430, subpart B, appendix C1 (''appendix C1'') and appendix C2.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including dishwashers. Any new or amended standards for a 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)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a proposed standard is

economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(3)(B)) 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'' 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))

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 must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Additionally, pursuant to the amendments contained in EISA 2007, final rules for new or amended energy conservation standards promulgated after July 1, 2010, are required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures and standards for dishwashers address standby mode and off mode energy use, as do the amended standards adopted in this direct final rule.

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

The direct final rule must be published simultaneously with a NOPR that proposes an energy or water conservation standard that is identical to the standard established in the direct final rule, and DOE must provide a public comment period of at least 110 days on this proposal. (42 U.S.C. 6295(p)(4)(A)–(B)) While DOE typically provides a comment period of 60 days on proposed standards, for a NOPR accompanying a direct final rule, DOE provides a comment period of the same length as the comment period on the direct final rule—*i.e.*, 110 days. Based on the comments received during this period, the direct final rule will either become effective, or DOE will withdraw it not later than 120 days after its issuance if: (1) one or more adverse comments is received, and (2) DOE determines that those comments, when viewed in light of the rulemaking record related to the direct final rule, may provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4)(C)) Receipt of an alternative joint recommendation may also trigger a DOE withdrawal of the direct final rule in the same manner. (*Id.*)

DOE has previously explained its interpretation of its direct final rule authority. In a final rule amending the Department's ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' at 10 CFR part 430, subpart C, appendix A, DOE noted that it may issue standards recommended by interested persons that are fairly representative of relative points of view as a direct final rule when the recommended standards are in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. 86 FR 70892, 70912 (Dec. 13, 2021). But the direct final rule provision in EPCA does not impose additional requirements applicable to other standards rulemakings, which is consistent with the unique circumstances of rules issued through consensus agreements under DOE's direct final rule authority. *Id.* DOE's discretion remains bounded by its statutory mandate to adopt a standard that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified—a requirement found in 42 U.S.C. 6295(o). *Id.* As such, DOE's review and analysis of the Joint Agreement is limited to whether the recommended standards satisfy the criteria in 42 U.S.C. 6295(o).

B. Background

1. Current Standards

In a direct final rule published on May 30, 2012 (''May 2012 Direct Final Rule''), DOE adopted the current energy conservation standards for dishwashers manufactured on or after May 30, 2013, consistent with the levels proposed in a letter submitted to DOE by groups representing manufacturers, energy and environmental advocates, and consumer groups on July 30, 2010. 77 FR 31918, 31918–31919. This collective set of comments, titled ''Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances'' (the ''July 2010 Joint Petition''),[20] recommended specific energy conservation standards for dishwashers that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). 77 FR 31918, 31919. The July 2010 Joint Petition proposed energy conservation standard levels for the standard-size and compact-size dishwasher product classes based on the same capacity definitions that existed at that time. 77 FR 31918, 31926. In the May 2012 Direct Final Rule, DOE analyzed the benefits and burdens of multiple standard levels for dishwashers, including a standard level that corresponded to the recommended levels in the July 2010 Joint Petition, and determined that the levels recommended in the Joint Petition satisfied the EPCA requirements set forth under 42 U.S.C. 6295(o). 77 FR 31918, 31921.

In a final determination published on December 13, 2016 (''December 2016 Final Determination''), DOE concluded that amended energy conservation standards would not be economically justified at any level above the standards established in the May 2012 Direct Final Rule, and therefore determined not to amend the standards. 81 FR 90072. The current energy and water conservation standards are set forth in DOE's regulations at 10 CFR part 430, § 430.32(f), and are repeated in Table II.1. The currently applicable DOE test procedure for dishwashers appears at appendix C1.

Table II.1 Federal Energy Conservation Standards for Dishwashers

Product Class	Maximum Estimated Annual Energy Use* *(kWh/year)*	Maximum Per-Cycle Water Consumption* *(gal/cycle)*
Standard-Size Dishwasher	307	5.0
Compact-Size Dishwasher	222	3.5

* Using appendix C1

The regulatory text at 10 CFR 430.32(f) references the Association of Home Appliance Manufacturers (''AHAM'') standard AHAM DW–1–2020[21] to define the items in the test load that comprise the serving pieces and each place setting. The number of serving pieces and place settings help determine the capacity of the dishwasher, which is used to determine the applicable product class.

2. Current Test Procedure

On December 22, 2021, DOE published a test procedure NOPR (''December 2021 TP NOPR'') proposing amendments to the dishwasher test procedure at appendix C1 and a new test procedure at appendix C2. 86 FR 72738. On January 18, 2023, DOE published a final rule amending the test procedure at appendix C1 and establishing a new test procedure at appendix C2 (''January 2023 TP Final Rule''). 88 FR 3234. The new appendix C2 specifies updated annual cycles and low-power mode hours, both of which are used to calculate the EAEU metric, and introduces a minimum cleaning performance threshold to validate the selected test cycle. 88 FR 3234, 3236.

Subsequently, on July 27, 2023, DOE published a final rule adding clarifying instructions to the dishwasher test procedure at appendix C1 regarding the allowable dosing options for each type of detergent; clarifying the existing detergent reporting requirements; and adding an enforcement provision for dishwashers to specify the detergent and dosing method that DOE would use for any enforcement testing of dishwasher models certified in accordance with the applicable dishwasher test procedure prior to July 17, 2023 (*i.e.,* the date by which the January 2023 TP Final Rule became mandatory for product testing). 88 FR 48351.

EPCA authorizes DOE to design test procedures that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) In general, a consumer-acceptable level of cleaning performance (*i.e.,* a representative average use cycle) can be easier to achieve through the use of higher amounts of energy and water use during the dishwasher cycle. Conversely, maintaining acceptable cleaning performance can be more difficult as energy and water levels are reduced. Improving one aspect of dishwasher performance, such as reducing energy and/or water use as a result of energy conservation standards, may require a trade-off with one or more other aspects of performance, such as cleaning performance. 88 FR 3234, 3250–3251. As discussed, the currently applicable energy conservation standards for dishwashers are based on appendix C1, which does not prescribe a method for testing dishwasher cleaning performance.

The January 2023 TP Final Rule established a new test procedure at appendix C2, which includes provisions for a minimum cleaning index threshold of 70 to validate the selected test cycle. 88 FR 3234, 3261. The cleaning index is calculated based on the number and size of particles remaining on each item of the test load at the completion of a dishwasher cycle as specified in AHAM DW–2–2020.[22] Items that do not have any soil particles are scored 0 (*i.e.,* completely clean). No single item in the test load can exceed a score of 9. Individual scores for each item in the test load are combined as a weighted average to calculate the per cycle cleaning index. A cleaning index of 100 indicates a completely clean test load. *Id.* at 88 FR 3255. In the January 2023 TP Final Rule, DOE specified that the

[20] DOE Docket No. EERE-2011-BT-STD-0060-0001.

[21] Uniform Test Method for Measuring the Energy Consumption of Dishwashers. AHAM DW–1–2020. Copyright 2020.

[22] Household Electric Dishwashers. AHAM DW–2–2020. Copyright 2020.

cleaning index is calculated by only scoring soil particles on all items in the test load and that spots, streaks, and rack contact marks on glassware are not included in the cleaning index calculation.[23] *Id.* at 88 FR 3248. Manufacturers must use the results of testing under the new appendix C2 to determine compliance with the energy conservation standards adopted in this direct final rule. Accordingly, DOE used appendix C2 as finalized in the January 2023 TP Final Rule as the basis for the analysis in this direct final rule. *Id.* at 88 FR 3234.

DOE adopted a minimum cleaning performance threshold in appendix C2 to determine if a dishwasher, when tested according to the DOE test procedure, ''completely washes a normally soiled load of dishes,'' so as to better represent consumer use of the product (*i.e.,* to produce test results that are more representative of an average consumer use cycle). 88 FR 3234, 3253, 3255. Based on the data available, DOE determined that the cleaning performance threshold provides a reasonable proxy for when consumers are likely to be satisfied with performance on the normal cycle. 88 FR 3234, 3261. The cleaning index threshold established as part of the new appendix C2 ensures that energy and water savings are being realized for products that comply with the amended energy conservation standards for dishwashers established by this direct final rule. 88 FR 3234, 3253, 3254.

The standards enacted by this direct final rule are expressed in terms of the EAEU and water consumption metrics as measured according to the newly established test procedure contained in appendix C2.

3. The Joint Agreement

On September 25, 2023, DOE received a joint statement (*i.e.,* the Joint Agreement) recommending standards for dishwashers, that was submitted by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility.[24] In addition to the recommended standards for dishwashers, the Joint Agreement also included separate recommendations for several other covered products.[25] And, while acknowledging that DOE may implement these recommendations in separate rulemakings, the Joint Agreement also stated that the recommendations were recommended as a complete package and each recommendation is contingent upon the other parts being implemented. DOE understands this to mean the Joint Agreement is contingent upon DOE initiating rulemaking processes to adopt all the recommended standards in the agreement. That is distinguished from an agreement where issuance of an amended energy conservation standard for a covered product is contingent on issuance of amended energy conservation standards for the other covered products. If the Joint Agreement were so construed, it would conflict with the anti-backsliding provision in 42 U.S.C. 6295(o)(1), because it would imply the possibility that, if DOE were unable to issue an amended standard for a certain product, it would have to withdraw a previously issued standard for one of the other products. The anti-backsliding provision, however, prevents DOE from withdrawing or amending an energy conservation standard to be less stringent. As a result, DOE will be proceeding with individual rulemakings that will evaluate each of the recommended standards separately under the applicable statutory criteria.

A court decision issued after DOE received the Joint Agreement is also relevant to this rule. On March 17, 2022, various States filed a petition seeking review of a final rule revoking two final rules that established product classes for dishwashers with a cycle time for the normal cycle of 60 minutes or less, top-loading residential clothes washers and certain classes of consumer clothes dryers with a cycle time of less than 30 minutes, and front-loading residential clothes washers with a cycle time of less than 45 minutes (collectively, ''short-cycle product classes''). The petitioners argued that the final rule revoking the short-cycle product classes violated EPCA and was arbitrary and capricious. On January 8, 2024, the United States Court of Appeals for the Fifth Circuit granted the petition for review and remanded the matter to DOE for further proceedings consistent with the Fifth Circuit's opinion. *See Louisiana* v. *United States Department of Energy,* 90 F.4th 461 (5th Cir. 2024).

On February 14, 2024, following the Fifth Circuit's decision in *Louisiana* v. *United States Department of Energy,* DOE received a second joint statement from this same group of stakeholders in which the signatories reaffirmed the Joint Agreement, stating that the recommended standards represent the maximum levels of efficiency that are technologically feasible and economically justified.[26] In the letter, the signatories clarified that ''short-cycle'' product classes for residential clothes washers, consumer clothes dryers, and dishwashers did not exist at the time that the signatories submitted their recommendations and it is their understanding that these classes also do not exist at the current time. Accordingly, the parties clarified that the Joint Agreement did not address short-cycle product classes. The signatories also stated that they did not anticipate that the recommended energy conservation standards in the Joint Agreement will negatively affect features or performance, including cycle time, for dishwashers.

The Joint Agreement recommends standard levels for dishwashers as presented in Table II.2. (Joint Agreement, No. 55 at p. 5) Details of the Joint Agreement recommendations for other products are provided in the Joint Agreement posted in the docket.[27]

[23] In the December 2021 TP NOPR, DOE proposed a cleaning index threshold of 65 calculated by scoring soil particles on all items as well as spots, streaks, and rack contact marks on glassware. 86 FR 72738, 72756, 72758. In the January 2023 TP Final Rule, DOE noted that the specified cleaning index threshold of 70 is equivalent to the cleaning index threshold of 65 that was proposed in the December 2021 TP NOPR. 88 FR 3234, 3261.

[24] The signatories to the Joint Agreement include the AHAM, American Council for an Energy Efficient Economy, Alliance for Water Efficiency, ASAP, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company. Members of AHAM's Major Appliance Division that make the affected products include: Alliance Laundry Systems, LLC; Asko Appliances AB; Beko US Inc.; Brown Stove Works, Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux; Elicamex S.A. de C.V.; Faber; Fotile America; GE Appliances, a Haier Company; L'Atelier Paris Haute Design LLG; LG Electronics; Liebherr USA, Co.; Midea America Corp.; Miele, Inc.; Panasonic Appliances Refrigeration Systems (PAPRSA) Corporation of America; Perlick Corporation; Samsung Electronics America, Inc.; Sharp Electronics Corporation; Smeg S.p.A; Sub-Zero Group, Inc.; The Middleby Corporation; U-Line Corporation; Viking Range, LLC; and Whirlpool Corporation.

[25] The Joint Agreement contained recommendations for 6 covered products: refrigerators, refrigerator-freezers, and freezers; clothes washers; clothes dryers; dishwashers; cooking products; and miscellaneous refrigeration products.

[26] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0059.*

[27] The Joint Agreement is available in the docket at *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0055.*

Table II.2 Recommended Amended Energy Conservation Standards for Dishwashers

Product Class	Standard Levels Using Test Procedure Appendix C2		Compliance Date
	Estimated Annual Energy Use *(kWh/year)*	Per-Cycle Water Consumption *(gal/cycle)*	
Standard-Size Dishwasher (≥ 8 place settings plus 6 serving pieces)	223	3.3	3 years after publication of this direct final rule
Compact-Size Dishwasher (< 8 place settings plus 6 serving pieces)	174	3.1	3 years after publication of this direct final rule

DOE notes that it was conducting a rulemaking to consider amending the standards for dishwashers when the Joint Agreement was submitted. As part of that process, on January 24, 2022, DOE published a notification of a webinar and availability of preliminary technical support document (''January 2022 Preliminary Analysis''). 87 FR 3450. Subsequently, on May 19, 2023, DOE published a NOPR and announced a public meeting (''May 2023 NOPR'') seeking comment on its proposed amended standard to inform its decision consistent with its obligations under EPCA and the Administrative Procedure Act (''APA''). 88 FR 32514. DOE held a public meeting on June 8, 2023, to discuss and receive comments on the NOPR and NOPR TSD. The NOPR TSD is available at: *www.regulations.gov/document/EERE-2019-BT-STD-0039-0032.*

Although DOE is adopting the Joint Agreement as a direct final rule and no longer proceeding with its own rulemaking, DOE did consider relevant comments, data, and information obtained during that rulemaking process in determining whether the recommended standards from the Joint Agreement are in accordance with 42 U.S.C. 6295(o). Any discussion of comments, data, or information in this direct final rule that were obtained during DOE's own prior rulemaking will include a parenthetical reference that provides the location of the item in the public record.[28]

III. General Discussion

DOE is issuing this direct final rule after determining that the recommended standards submitted in the Joint Agreement meet the requirements in 42 U.S.C. 6295(p)(4). More specifically, DOE has determined that the recommended standards were submitted by interested parties that are fairly representative of relevant points of view and the recommended standards satisfy the criteria in 42 U.S.C. 6295(o).

On March 17, 2022, various States filed a petition seeking review of the final rule revoking two final rules that established the short-cycle product classes. The petitioners argued that the final rule revoking the short-cycle product classes violated EPCA and was arbitrary and capricious. On January 8, 2024, the United States Court of Appeals for the Fifth Circuit granted the petition for review and remanded the matter to DOE for further proceedings consistent with the Fifth Circuit's opinion. *See Louisiana* v. *United States Department of Energy,* 90 F.4th 461 (5th Cir. 2024).

Following the Fifth Circuit's decision, the signatories to the Joint Agreement submitted a second letter to DOE, which stated that Joint Recommendation did not ''address'' ''short-cycle product classes.'' [29] That is because, as the letter explained, such product classes ''did not exist'' at the time of the Joint Agreement.

In a recently published request for information (''RFI''), DOE is commencing a rulemaking process on remand from the Fifth Circuit (the ''Remand Proceeding'') by soliciting further information, relevant to the issues identified by the Fifth Circuit, regarding any short-cycle product classes. 89 FR 17338 (March 11, 2024). In that Remand Proceeding, DOE will conduct the analysis required by 42 U.S.C. 6295(q)(1)(B) to determine whether any short-cycle products have a ''capacity or other performance-related feature [that] . . . justifies a higher or lower standard from that which applies (or will apply) to other products. . . .''

The current standards applicable to any products within the scope of that proceeding remain unchanged by this rule. *See* 10 CFR 430.32(f). Consistent with the Joint Parties' letter, short-cycle products are not subject to the amended standards adopted by this direct final rule. If the short-cycle products that DOE will consider in the Remand Proceeding were subject to these standards, that would have the practical effect of limiting the options available in the Remand Proceeding. That is because EPCA's anti-backsliding provision precludes DOE from prescribing any amended standard ''which increases the maximum allowable energy use'' of a covered product. 42 U.S.C. 6295(o)(1). Accordingly, were the products at issue in the Remand Proceeding also subject to the amended standards adopted here, the Department could only reaffirm the standards adopted in this direct final rule or adopt more stringent standards.

The Joint Agreement specifies the product classes for dishwashers: standard-size and compact-size. Although these product classes were not further divided by cycle time, DOE understands them to exclude standard-size dishwashers with an average cycle time of 60 minutes or less. As noted previously, any such ''short-cycle'' dishwashers will be considered in the Remand Proceeding; the current standards applicable to such ''short-cycle'' dishwashers are unchanged by this rule.

Under the direct final rule authority at 42 U.S.C. 6295(p)(4), DOE evaluates whether recommended standards are in accordance with criteria contained in 42 U.S.C. 6295(o). DOE does not have the authority to revise recommended standards submitted under the direct final rule provision in EPCA. Therefore, DOE did not analyze any additional product classes beyond those product classes included in the Joint Agreement.

[28] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for dishwashers. (Docket No. EERE–2019–BT–STD–0039, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[29] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0059.*

That is, DOE has not separately considered or established amended standards applicable to any short-cycle product classes. In the event that DOE establishes short-cycle product classes, pursuant to the rulemaking on remand from the Fifth Circuit, DOE will necessarily consider what amended standards ought to apply to any such product classes and will do so in conformance with EPCA.

DOE notes that the data and analysis used to support this direct final rule includes information for standard-size and compact-size dishwashers that is not distinguished by cycle time and is representative of all dishwashers currently on the market today. To the extent that any short-cycle products were included in this data and analysis, DOE believes the amount of such data is negligible.

A. Scope of Coverage

This direct final rule covers those consumer products that meet the definition of ''dishwasher'' as codified at 10 CFR 430.2.

Dishwasher means a cabinet-like appliance which with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means and discharges to the plumbing drainage system. 10 CFR 430.2.

See section IV.A.1 of this document for discussion of the product classes analyzed in this direct final rule.

B. Fairly Representative of Relevant Points of View

Under the direct final rule provision in EPCA, recommended energy conservation standards must be submitted by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by DOE. (42 U.S.C. 6295(p)(4)(A)) With respect to this requirement, DOE notes that the Joint Agreement included a trade association, AHAM, which represents 16 manufacturers of dishwashers.[30] The Joint Agreement also included environmental and energy-efficiency advocacy organizations, consumer advocacy organizations, and a gas and electric utility company. Additionally, DOE received a letter in support of the Joint Agreement from the States of New York, California, and Massachusetts (*See* comment No. 56). DOE also received a letter in support of the Joint Agreement from the gas and electric utility, SDG&E, and the electric utility, SCE (*See* comment No. 57). As a result, DOE has determined that the Joint Agreement was submitted by interested persons who are fairly representative of relevant points of view.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of appendix A.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety and (4) unique-pathway proprietary technologies. Section 7(b)(2) through (5) of appendix A. Section IV.B of this document discusses the results of the screening analysis for dishwashers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, *see* chapter 4 of the direct final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt a new or amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(o)(2)(A)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for dishwashers, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.b of this document and in chapter 5 of the direct final rule TSD.

D. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from application of the TSL to dishwashers purchased in the 30-year period that begins in the year of compliance with the amended standards (2027–2056).[31] The savings are measured over the entire lifetime of dishwashers purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet models to estimate national energy savings (''NES'') from potential amended standards for dishwashers. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of full-fuel-cycle (''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.[32] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or

[30] These companies include: Asko Appliances AB; Beko US Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux; Fotile America; GE Appliances, a Haier Company; LG Electronics; Midea America Corp.; Miele, Inc.; Samsung Electronics America, Inc.; Sharp Electronics Corporation; Smeg S.p.A; Sub-Zero Group, Inc.; The Middleby Corporation; and Whirlpool Corporation.

[31] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[32] 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).

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.[33] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

As stated, the standard levels adopted in this direct final rule are projected to result in national energy savings of 0.31 quads FFC, the equivalent of the primary annual energy use of 2.1 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 direct final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

E. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential new or amended standards on manufacturers, DOE conducts a manufacturing impact analysis (''MIA''), as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 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 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 of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted in this document would not reduce the utility or performance of the dishwashers 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

[33] 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).

standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this direct final rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will consider DOJ's comments on the rule in determining whether to withdraw the direct final rule. DOE will also publish and respond to the DOJ's comments in the **Federal Register** in a separate notice.

f. Need for National Energy and Water Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the 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 payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.9 of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to dishwashers. Separate subsections address each component of DOE's analyses, including relevant comments DOE received during its separate rulemaking to amend the energy conservation standards for dishwashers prior to receiving the Joint Agreement.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www.regulations.gov/docket?D=EERE-019-BT-STD-0039.* Additionally, DOE used output from the latest version of the 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 dishwashers. The key findings of DOE's market assessment are summarized in the following sections. *See* chapter 3 of the direct final rule TSD for further discussion of the market and technology assessment.

1. Product Classes

The Joint Agreement specifies two product classes for dishwashers. (Joint Agreement, No. 55 at p. 8) In this direct final rule, DOE is adopting the product classes from the Joint Agreement, as follows:

(1) Standard-size dishwashers (≥8 place settings plus 6 serving pieces); and

(2) Compact-size dishwashers (<8 place settings plus 6 serving pieces). *Id.*

Where the place settings are as specified in AHAM DW–1–2020 and the test load is as specified in section 2.4 of appendix C2. *Id.*

DOE further notes that product classes established through EPCA's direct final rule authority are not subject to the criteria specified at 42 U.S.C. 6295(q)(1) for establishing product classes. Nevertheless, in accordance with 42 U.S.C. 6295(o)(4)—which is applicable to direct final rules—DOE has concluded that the standards adopted in this direct final rule will not result in the unavailability in any covered product type (or class) of performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States

currently.[34] DOE's findings in this regard are discussed in detail in section V.B.4 of this document.

2. Technology Options

In this direct final rule, DOE considered 20 technology options, consistent with the table of technology options presented in the May 2023 NOPR. 88 FR 32514, 32527–32528. In general, technology options for dishwashers may reduce energy use alone, or reduce both energy and water use together. Most dishwashers in the United States use as their water source a hot water line that is typically tapped from the hot water line serving the adjacent kitchen faucet. Because the energy used to heat the water consumed by the dishwasher is included as part of the EAEU metric, technologies that decrease water use also inherently decrease energy use. Chapter 3 of the TSD for this direct final rule includes a detailed list and descriptions of all technology options identified for dishwashers, including a discussion of how each technology option reduces energy use only or both energy and water use together.

Among the technology options identified for dishwashers, the following reduce energy use only (*i.e.,* they reduce energy use without directly reducing water use): condensation drying, including use of a stainless steel tub; desiccant drying; fan/jet drying; improved motor efficiency; increased insulation; low-standby-loss electronic controls; reduced inlet-water temperature; thermoelectric heat pumps; ultrasonic washing; and variable-speed motors.

The following technology options reduce both energy and water use together (*i.e.,* they reduce water use, thereby also inherently reducing energy use): control strategies; flow-through heating; improved fill control; improved food filter; improved spray-arm geometry; microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls; modified sump geometry, with and without dual pumps; super-critical carbon dioxide washing; variable washing pressures and flow rates; and water re-use system.

In developing the list of technology options for this direct final rule, DOE considered comments it had received in response to the May 2023 NOPR. Samsung Electronics America, Inc. (''Samsung'') noted [35] that variable-speed pump motors reduce energy consumption by allowing the dishwasher to operate at the most suitable flow rate for each specific phase of the cleaning process. (Samsung, No. 52 at p. 2) Samsung agreed with DOE that enhancements in dishwasher components also contribute to energy efficiency, especially advanced technologies such as electronic and soil-sensing controls. Samsung commented that the technology options identified by DOE are achievable and can be implemented by manufacturers to significantly improve energy efficiency, reduce resource consumption, and promote sustainability while maintaining cleaning performance that consumers expect. (Samsung, No. 52 at pp. 2–3) As noted, DOE has maintained the technology options discussed in the May 2023 NOPR.

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(b)(3) and 7(b).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

The subsequent sections of this document discuss 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. The results of the screening analysis are discussed in greater detail in chapter 4 of the TSD for this direct final rule.

1. Screened-Out Technologies

The following sections detail the technology options that were screened out for this direct final rule, and the reasons why they were eliminated.

a. Desiccant Drying

Desiccant drying relies on a material such as zeolite [36] to adsorb moisture to aid in the drying process and reduce drying energy consumption. DOE is aware of dishwashers from one manufacturer on the market in the United States that use desiccant drying.[37]

DOE has screened out desiccant drying from further consideration because it is a unique-pathway proprietary technology. Desiccant drying is a patented technology, and although multiple manufacturers hold patents for dishwasher designs with desiccant drying features, DOE is concerned that this technology option is not available for all manufacturers.

b. Reduced Inlet-Water Temperature

Reduced inlet-water temperature requires that dishwashers tap the cold water line for their water supply. Because most dishwashers in the United States tap the hot water line, this technology option would require significant alteration of existing dishwasher installations in order to

[34] EPCA specifies that DOE may not prescribe an amended or new standard 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. (42 U.S.C. 6295(o)(4))

[35] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0052.*

[36] Zeolite is a highly porous aluminosilicate mineral that adsorbs moisture and releases heat to aid in the drying process.

[37] See chapter 4, section 4.2.1.1 of the January 2022 Preliminary TSD.

accommodate newly purchased units incorporating this technology option. Therefore, DOE has determined that it would not be practicable to install this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard.

c. Supercritical Carbon Dioxide Washing

Supercritical carbon dioxide washing, which uses supercritical carbon dioxide instead of conventional detergent and water to wash dishes, is currently being researched. Given that this technology is in the research stage, DOE has determined that it would not be practicable to manufacture, install and service this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. Furthermore, because this technology is in the research stage, it is not yet possible to assess whether it would have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety.

d. Ultrasonic Washing

A dishwasher using ultrasonic waves to generate a cleaning mist was produced for the Japanese market in 2002; however, this model is no longer available on the market. Available information indicates that the use of a mist with ion generation instead of water with detergent would decrease cleaning performance, impacting consumer utility.

Ultrasonic dishwashing based upon soiled-dish immersion in a fluid that is then excited by ultrasonic waves has not been demonstrated. In an immersion-based ultrasonic dishwasher, standing ultrasonic waves within the washing cavity and the force of bubble cavitation implosion can damage fragile dishware. Because no manufacturers currently produce consumer ultrasonic dishwashers, it is impossible to assess whether this technology option would have any impacts on consumers' health or safety, or product availability.

Based on this information, DOE has screened out both identified product types that incorporate the ultrasonic washing technology option.

e. Thermoelectric Heat Pumps

The thermoelectric heat pump system aims to extract waste heat from drain water and recover heat normally lost during the drying process, and apply it to the washing, rinsing, and drying phases, effectively saving energy. The technology is not commercially available yet as the technology is still in the research phase. Therefore, DOE has determined that it would not be practicable to manufacture, install and service this technology on the scale necessary to serve the relevant market at the time of the effective date of the amended standards. Furthermore, because this technology is in the research stage, it is not yet possible to assess whether it would have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety.

f. Water Re-Use System

This system saves water from the final rinse of a given dishwasher cycle for use in a subsequent dishwasher cycle. A water re-use system dishwasher also performs ''drain out'' and ''clean out'' cycles if the dishwasher is not operated for a certain period of time. Both ''drain out'' and ''clean out'' events consume additional water and energy during the subsequent cycle, even though such a system saves water and energy consumption overall.

DOE has screened out this technology option as it has determined that leaking and contamination from a water holding tank could potentially present negative health or safety impacts.

2. Remaining Technologies

Through a review of each technology, DOE concludes that all of the other identified technologies listed in section IV.A.2 of this document met all five screening criteria to be examined further as design options in DOE's direct final rule analysis. In summary, DOE did not screen out the following technology options:

Technology options that reduce energy use only: condensation drying, including use of a stainless steel tub; fan/jet drying; improved motor efficiency; increased insulation; low-standby-loss electronic controls; and variable-speed motors.

Technology options that reduce both energy and water use together: control strategies; flow-through heating; improved fill control; improved food filter; improved spray-arm geometry; microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls; modified sump geometry, with and without dual pumps; and variable washing pressures and flow rates.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, *see* chapter 4 of the direct final rule TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of dishwashers. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each dishwasher class, DOE estimates the baseline cost, as well as the incremental cost for the dishwasher at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design-option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design-option approach to interpolate to define ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (particularly in cases where the ''max-

tech'' level exceeds the maximum efficiency level currently available on the market).

For this analysis, DOE used a combination of the efficiency-level and design-option approach. This approach involved physically disassembling commercially available products, reviewing publicly available cost information, and modeling equipment cost. From this information, DOE estimated the manufacturer production costs (''MPCs'') for a range of products currently available on the market. DOE then considered the incremental steps manufacturers may take to reach higher efficiency levels. In its modeling, DOE started with the baseline MPC and added the expected design options at each higher efficiency level to estimate incremental MPCs. By doing this, the engineering analysis did not factor in the additional higher-cost features with no impact on efficiency that are included in some models. However, at efficiency levels where the product designs significantly deviated from the baseline product, DOE used the efficiency-level approach to determine an MPC estimate, while removing the costs associated with non-efficiency-related components or features. DOE also provides further discussion on the design options and efficiency improvements in chapter 5 of the direct final rule TSD.

a. Baseline Efficiency

For each dishwasher product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each dishwasher class represents the characteristics of a dishwasher typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

For dishwashers, DOE identified products available on the market rated at the current energy conservation standards levels for both standard-size and compact-size dishwasher product classes. Accordingly, DOE analyzed these products as baseline units. DOE uses the baseline unit for comparison in several phases of the direct final rule analyses, including the engineering analysis, LCC analysis, PBP analysis, and NIA. To determine energy and water savings that will result from an amended energy conservation standard, DOE compares energy and water consumption at each of the higher energy efficiency levels to the energy and water consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an amended energy conservation standard, DOE compares the price of a unit at each higher efficiency level to the price of a unit at the baseline. Additional details on the selection of baseline units may be found in chapter 5 of the direct final rule TSD. In the May 2023 NOPR, DOE updated the baseline efficiency level for the compact-size dishwasher product class, when using appendix C2, from 178 kWh/year estimated in the January 2022 Preliminary Analysis to 191 kWh/year. 88 FR 32514, 32530. In the January 2022 Preliminary Analysis, DOE translated the current compact-size product class standard level of 222 kWh/year, which is based on appendix C1, to an EAEU based on appendix C2 using the baseline standby power use estimate of 2.3 watts from the December 2016 Final Determination (*see* chapter 7 of the December 2016 Final Determination TSD).[38] *Id. at* 32531. However, based on more recent testing of compact-size dishwashers, DOE determined in its analysis for the May 2023 NOPR that current baseline compact-size dishwashers consume 0.5 watts in standby mode. Using this updated standby power value to translate 222 kWh/year from appendix C1 to appendix C2, DOE calculated an updated baseline EAEU value of 191 kWh/year for compact-size dishwashers. *Id.* Accordingly, in the May 2023 NOPR, DOE proposed the baseline compact-size dishwasher efficiency level to be 191 kWh/year and 3.5 gal/cycle. *Id.* Table IV.1 presents the baseline levels identified for each dishwasher product class in the May 2023 NOPR.

Table IV.1: Baseline Dishwasher Efficiency Levels Evaluated in the May 2023 NOPR

Product Class	Estimated Annual Energy Use *(kWh/year)**	Estimated Annual Energy Use *(kWh/year)***	Per-Cycle Water Consumption *(gal/cycle)*
Standard-size	307	263	5.0
Compact-size	222	191	3.5

* Using appendix C1
** Using appendix C2

DOE sought comment on the baseline efficiency levels analyzed in the May 2023 NOPR for each product class. 88 FR 32514, 32531. DOE did not receive any comments related to the selected baseline efficiency levels, including the updated baseline efficiency level for compact-size dishwashers in the May 2023 NOPR. DOE therefore used the baseline efficiency levels from the May 2023 NOPR in its analysis for this direct final rule.

b. Higher Efficiency Levels

Using the efficiency-level approach, the higher efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using this approach, DOE identified four efficiency levels beyond the baseline for standard-size dishwashers and two for the compact-size product class. At each higher efficiency level, both energy use and water use decrease through the implementation of combinations of design options that individually either reduce energy use alone, or reduce both energy and water use together, as

[38] To translate the current dishwasher EAEU standards from appendix C1 to appendix C2, DOE separated the EAEU into annual active mode energy use and annual standby mode energy use. DOE multiplied the annual active mode energy use by 184 cycles/year and divided by 215 cycles/year, then added back the annual standby energy use to determine updated EAEU values based on 184 annual cycles.

discussed previously in section IV.A.2 of this document. Chapter 5 of the direct final rule TSD provides a detailed discussion of the specific design changes that DOE believes manufacturers would typically use to meet each higher efficiency level considered in this engineering analysis, including a discussion of whether such design changes would reduce energy use only, or reduce both energy and water use together.

In defining the higher efficiency levels for this direct final rule, DOE considered comments it had received in response to the higher efficiency levels proposed in the May 2023 NOPR.

Table IV.2 and Table IV.3 show the efficiency levels DOE evaluated for standard-size and compact-size dishwashers in the May 2023 NOPR. 88 FR 32514, 32534–32535.

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Table IV.2: Efficiency Levels for Standard-Size Dishwashers Evaluated in the May 2023 NOPR

Efficiency Level	Estimated Annual Energy Use (*kWh/year*)*	Estimated Annual Energy Use *(kWh/year)***	Per-Cycle Water Consumption *(gal/cycle)*
Baseline	307	263	5.0
1	270	232	3.5
2	260	223	3.3
3	240	206	3.2
4 (Max-Tech)	225	193	2.4

* Using appendix C1

** Using appendix C2

Table IV.3: Efficiency Levels for Compact-Size Dishwashers Evaluated in the May 2023 NOPR

Efficiency Level	Estimated Annual Energy Use *(kWh/year)**	Estimated Annual Energy Use *(kWh/year)***	Per-Cycle Water Consumption *(gal/cycle)*
Baseline	220	191	3.5
1	203	174	3.1
2 (Max-Tech)	144	124	1.6

* Using appendix C1

** Using appendix C2

For standard-size dishwashers, EL 1 corresponded to the ENERGY STAR Version 6.0 [39] (''ENERGY STAR V. 6.0'') level, EL 2 corresponded to a gap-fill efficiency level between ENERGY STAR V. 6.0 and ENERGY STAR V. 7.0, and EL 3 corresponded to the ENERGY STAR V. 7.0 level (which was also the ENERGY STAR Most Efficient criteria in 2022 and 2023). For compact-size dishwashers, EL 1 corresponded to the ENERGY STAR V. 6.0 level. For both standard-size and compact-size dishwashers, the max-tech efficiency level corresponded to the highest efficiency unit available on the market at that time, excluding from consideration models that rely on technologies that were screened out previously. 88 FR 32514, 32534–32535. In the May 2023 NOPR, DOE requested feedback on the efficiency levels analyzed for each product class in this proposal. 88 FR 32514, 32335. DOE did not receive any comments related to the selected efficiency levels. DOE therefore used the baseline and incremental efficiency levels from the May 2023 NOPR in its analysis for this direct final rule.

For the reasons discussed, DOE analyzed for this direct final rule the efficiency levels for standard-size and compact-size dishwashers that were proposed in the May 2023 NOPR, as reproduced in Table IV.4 and Table IV.5, respectively.

[39] ENERGY STAR Version 6.0 Program Requirements available at: *www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Residential%20Dishwasher%20Version%206.0%20Final%20Program%20Requirements_0.pdf*

Table IV.4: Analyzed Efficiency Levels for Standard-Size Dishwashers

Efficiency Level	Estimated Annual Energy Use (*kWh/year*)*	Estimated Annual Energy Use *(kWh/year)***	Per-Cycle Water Consumption *(gal/cycle)*
Baseline	307	263	5.0
1	270	232	3.5
2	260	223	3.3
3	240	206	3.2
4 (Max-Tech)	225	193	2.4

* Using appendix C1
** Using appendix C2

Table IV.5: Analyzed Efficiency Levels for Compact-Size Dishwashers

Efficiency Level	Estimated Annual Energy Use *(kWh/year)**	Estimated Annual Energy Use *(kWh/year)***	Per-cycle water consumption *(gal/cycle)*
Baseline	220	191	3.5
1	203	174	3.1
2 (Max-Tech)	144	124	1.6

* Using appendix C1
** Using appendix C2

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DOE notes that the compact-size max-tech unit that was analyzed in the May 2023 NOPR was not included in DOE's Compliance Certification Database (''CCD'') as of September 2023. Models that are discontinued over the course of a DOE rulemaking timeline remain applicable in conducting the analysis in accordance with EPCA requirements because such models incorporate technologically feasible design options that manufacturers may use to achieve the corresponding efficiency levels in commercial products. The CCD included models that exceed the efficiency of the max-tech unit analyzed in the May 2023 NOPR; however, for these units, there is a discrepancy between the rated EAEU in DOE's CCD and the EAEU listed on the model's EnergyGuide label,[40] therefore, DOE did not consider these units for its max-tech analysis. Accordingly, DOE has retained the same compact-size max-tech unit analyzed in this direct final rule as that identified in the May 2023 NOPR.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the dishwasher on the market. The cost approaches are summarized as follows:

- Physical teardowns: Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.
- Catalog teardowns: In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.
- Price surveys: If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In this direct final rule, DOE conducted the analysis using the physical teardown approach. For each product class, DOE tore down a representative sample of models spanning the entire range of efficiency levels, as well as multiple manufacturers within each product class. DOE aggregated the results so that the cost-efficiency relationship developed for each product class reflects DOE's assessment of a market-representative ''path'' to achieve each higher efficiency level. The resulting bill of materials provides the basis for the MPC estimates.

To account for manufacturers' profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (''SEC'') 10–K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes dishwashers. *See* section IV.J.2.d of this document and chapter 12 of the direct final rule TSD for additional detail on the manufacturer markup.

3. Cost-Efficiency Results

To develop the incremental MPCs associated with improving product efficiency for each product class, DOE started with the baseline unit cost model and added the expected changes associated with improving efficiency at each higher efficiency level. By doing this, DOE excluded the costs of any non-efficiency related components from the more efficient units.

Table IV.6 shows the baseline MPCs for standard-size and compact-size dishwashers estimated for the May 2023 NOPR. 88 FR 32514, 32536. Table IV.7 and Table IV.8 show the incremental

[40] The CCD lists models with an EAEU of 114 kWh/year and water consumption of 1.6 gallons/cycle. However, the EnergyGuide label for these units lists the EAEU as 154 kWh/year and water consumption of 1.8 gallons/cycle. Accordingly, DOE did not consider this unit as the max-tech unit for this final rule analysis.

MPCs from the baseline developed in the May 2023 NOPR for standard-size and compact-size dishwashers, respectively, in 2022 dollars. *Id.* at 88 FR 32536–32537.

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Table IV.6: Baseline Manufacturer Production Costs in the May 2023 NOPR

Product Class	Estimated Annual Energy Use (*kWh/year*)*	Per-Cycle Water Consumption *(gal/cycle)*	Baseline MPC (*2022$*)
Standard-size	263	5.0	$184.35
Compact-size	191	3.5	$215.17

***** Using appendix C2

Table IV.7: Incremental Manufacturer Production Costs for Standard-Size Dishwashers in the May 2023 NOPR

Efficiency Level	Estimated Annual Energy Use (*kWh/year*)*	Per-Cycle Water Consumption *(gal/cycle)*	Incremental MPC (*2022$*)
Baseline	263	5.0	-
1	232	3.5	$10.17
2	223	3.3	$10.17
3	206	3.2	$61.50
4 (Max-Tech)	193	2.4	$91.25

* Using appendix C2

Table IV.8: Incremental Manufacturer Production Costs for Compact-Size Dishwashers in the May 2023 NOPR

Efficiency Level	Estimated Annual Energy Use (*kWh/year*)*	Per-Cycle Water Consumption *(gal/cycle)*	Incremental MPC (*2022$*)
Baseline	191	3.5	-
1	174	3.1	-
2 (Max-Tech)	124	1.6	$39.45

* Using appendix C2

For this direct final rule, DOE updated the underlying raw material and component prices used in its cost model to reflect raw material and component prices as of March 2023. Table IV.9 presents the baseline MPCs for each product class as determined for this final rule, in 2023 dollars. Table IV.10 and Table IV.11 provide the incremental MPCs for each efficiency level for both product classes as determined for this final rule.

Table IV.9: Baseline Manufacturer Production Costs

Product Class	Estimated Annual Energy Use (*kWh/year*)*	Per-Cycle Water Consumption *(gal/cycle)*	Baseline MPC (*2023$*)
Standard-size	263	5.0	$171.50
Compact-size	191	3.5	$192.27

* Using appendix C2

Table IV.10: Incremental Manufacturer Product Costs for Standard-Size Dishwashers

Efficiency Level	Estimated Annual Energy Use (*kWh/year*)*	Per-Cycle Water Consumption *(gal/cycle)*	Incremental MPC (*2023$*)
Baseline	263	5.0	-
1	232	3.5	$16.78
2	223	3.3	$16.78
3	206	3.2	$74.67
4 (Max-Tech)	193	2.4	$117.83

* Using appendix C2

Table IV.11: Incremental Manufacturer Product Costs for Compact-Size Dishwashers

Efficiency Level	Estimated Annual Energy Use (*kWh/year*)*	Per-Cycle Water Consumption *(gal/cycle)*	Incremental MPC (*2023$*)
Baseline	191	3.5	-
1	174	3.1	-
2 (Max-Tech)	124	1.6	$38.17

* Using appendix C2

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The detailed description of DOE's determination of costs for baseline and higher efficiency levels is provided in chapter 5 of the direct final rule TSD.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

DOE considered two distribution channels through which dishwashers move from manufacturers to consumers. The majority of dishwasher sales go through the direct retailer channel, in which manufacturers sell the products directly to retailers, who then sell to consumers. This direct retailer channel accounts for 85 percent of the dishwasher market. The rest of the market goes through a separate distribution channel, in which manufacturers sell the products to wholesalers, who in turn sell the products to general contractors, then to consumers. The main parties in the post-manufacturer distribution channels are retailers, wholesalers, and general contractors.

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.[41]

DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups. Specifically, DOE used the 2017 Annual Retail Trade Survey for the ''electronics and appliance stores'' sector to develop retailer markups.[42]

For this direct final rule, DOE considered comments it had received regarding the markups analysis conducted for the May 2023 NOPR. The approach for determining markups in this direct final rule was the same approach DOE had used for the May 2023 NOPR analysis.

In response to the March 2023 NOPR, AHAM commented [43] that it, along with AHRI and other stakeholders, disputes DOE's distinction between markups from manufacturers to end customers for the base case, those for costs added to meet proposed standards, and the use of incremental versus average markups. (AHAM, No. 51 at p. 18) AHAM stated that in its comments on the 2015 NOPR contained quotes from actual retailers about their actual practices and they contradict the DOE process. (*Id.*)

DOE's incremental markup approach assumes that an increase in operating profits, which is implied by keeping a fixed average markup when the product price goes up, is unlikely to be viable over time in a reasonably competitive market like household appliance retailers. The Herfindahl-Hirschman Index reported by the 2017 Economic Census indicates that the household appliance stores sector (NAICS 443141) is a competitive marketplace.[44] DOE recognizes that actors in the distribution chains are likely to seek to maintain the same markup on appliances in response to changes in MSPs after an amendment to energy conservation standards. However, DOE believes that retail

[41] 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.

[42] US Census Bureau, Annual Retail Trade Survey. 2017. *www.census.gov/programs-surveys/arts.html*

[43] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0051.*

[44] 2017 Economic Census, Selected sectors: Concentration of largest firms for the U.S. Available at *www.census.gov/data/tables/2017/econ/economic-census/naics-sector-44-45.html.* The Herfindahl-Hirschman Index value can be found by navigating to the ''Concentration of largest firms for the U.S.'' table and then filtering the industry code to NAICS 443141.The Herfindahl-Hirschman Index reported for the largest 50 firms in household appliance stores sector, is 123.8. Generally, a market with an HHI value of under 1,000 is considered to be competitive.

pricing is likely to adjust over time as those actors are forced to readjust their markups to reach a medium-term equilibrium in which per-unit profit is relatively unchanged before and after standards are implemented.[45] According to economic theory, firms in a perfectly competitive market are expected to achieve only normal profits in the long run, and any short-term economic profit would be eroded by entry and increased competition over time. While it is acknowledged that no real-world market perfectly fits the conditions of perfect competition, the theory provides insights into industries and sectors that share certain characteristics. As indicated by industry data,[46] the appliance retail sector is a competitive marketplace; thus, DOE contends that an increase in profitability, which is implied by keeping a fixed average markup when the production cost goes up, is not likely viable in the long run.

DOE acknowledges that markup practices in response to amended standards are complex and varying with business conditions. However, DOE's analysis necessarily only considers changes in appliance offerings that occur in response to amended standards and isolates the effect of amended standards from other factors. DOE agrees that empirical data on markup practices would be desirable, but such information is closely held and difficult to obtain. Consequently, DOE relies to economic theory as the foundation for developing the markup analysis. Hence, DOE continues to maintain that its assumption that standards do not facilitate a sustainable increase in profitability is reasonable.

The comments submitted by AHAM during the 2015 NOPR contain quotes from their interviews with retailers, but do not provide the details and the interview questions used by their consultant based on data confidentiality reasons. However, without knowing what questions were posed to the contractors and retailers, it is challenging for DOE to evaluate the applicability of those quotes. As noted, DOE's analysis necessarily considers a situation in which nothing changes except for those changes in appliance offerings that occur in response to amended standards, and this needs to be addressed clearly in the framing of the questions.

Chapter 6 of the direct final rule TSD provides details on DOE's development of markups for dishwashers.

E. Energy and Water Use Analysis

The purpose of the energy and water use analysis is to determine the annual energy and water consumption of dishwashers at different efficiencies in representative U.S. single-family homes, and multi-family residences, and to assess the energy and water savings potential of increased dishwasher efficiency. In order to determine representative life-cycle costs (as discussed in IV.F), both annual energy and water consumption are considered at each efficiency level because the technologies to improve energy efficiency may also reduce water usage (as discussed in IV.C.1.b). The energy and water use analysis estimates the range of energy and water use of dishwashers in the field (*i.e.,* as they are actually used by consumers). The energy and water use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy and water savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

For this direct final rule, DOE considered comments it had received regarding the energy and water use analysis conducted for the May 2023 NOPR. The approach used to estimate the energy and water consumption for this direct final rule is largely the same as the approach DOE had used for the May 2023 NOPR analysis.

In the May 2023 NOPR, DOE determined the average annual energy and water consumption of dishwashers by multiplying the per-cycle energy and water consumption by the number of cycles per year. 88 FR 32514, 32537. DOE used the EIA's 2020 *Residential Energy Consumption Survey* (''RECS'') data to calculate an estimate of annual number of cycles.[47] *Id.* Having determined number of cycles of dishwasher use per year for each RECS household, DOE determined the corresponding annual energy and water consumption. *Id.* In the May 2023 NOPR, DOE determined the average annual cycles of operation for dishwashers to be 197 cycles per year based on *RECS 2020.* (*Id.* 88 FR 32538)

In response to the May 2023 NOPR, Alliance for Water Efficiency (''AWE'') recommended[48] that DOE consider using actual data for its assumptions about cycles per year. (AWE, No. 44 at p. 2) AWE commented that a significant difference exists between the 197 cycles per year that DOE is using and the 95 cycles per year the water industry typically uses. (*Id.*) AWE stated that the water industry frequently relies on residential end use data from Residential End Uses of Water, Version 2 Water Research Foundation Report #4309b (''*REUW 2016*''). (*Id.*) AWE also stated that its experience and academic research suggest there are often large gaps between consumer survey responses and actual behavior when it comes to fixture and appliance usage. (*Id.* at p. 3) AWE commented that DOE could explore acquiring data from companies using smart devices, sub-meters, or sensors installed on water meters and supply lines in thousands of homes across the United States that collect real-time end use data, which could then be disaggregated. (*Id.*)

DOE has reviewed the *REUW 2016* report published by the Water Research Foundation, which analyzed dishwasher end-use data from detailed log data from 762 households. DOE acknowledges that RECS is based on household reported frequency of average dishwasher usage per week, rather than on contemporaneous logs taken by households or meters installed on household dishwashers, which could be more reliable on an individual basis. However, unlike the *REUW 2016,* which is based on households in the service areas of 21 U.S. utilities, the *RECS 2020* consists of a nationally representative sample of housing units including more than 10,000 households that report dishwasher usage. DOE also acknowledges AWE's concern that survey data can be different from field metered data. For a comparison between survey data and field metered data, DOE referred to a report from Sun *et al.* that showed that the average annual dishwasher cycle counts obtained from Pecan Street field metered data based on a limited household sample size and limited geographic locations were comparable with the average cycle counts reported by *RECS 2020* with a difference of three percent.[49] Therefore,

[45] A recent retrospective study by LBNL compared ex-ante projections of the 2011 Direct Final Rule for Room ACs with ex-post data across various analytical inputs. While the observed product price data remain sparse, the available market data suggests that for some product classes, prices did not significantly increase after the standard change, and for others, the prices aligned with DOE's projections. Ganeshalingam, M., Ni, C., and Yang, H–C. 2021. A Retrospective Analysis of the 2011 Direct Final Rule for Room Air Conditioners. Lawrence Berkeley National Laboratory. LBNL–2001413.

[46] IBISWorld, US Industry Reports (NAICS): *https://my.ibisworld.com/us/en/industry/home.*

[47] U.S. Department of Energy-Energy Information Administration, Residential Energy Consumption Survey, 2015 Public Use Microdata Files, 2020. Washington, DC. Available at *www.eia.doe.gov/emeu/recs/recspubuse20/pubuse20.html.*

[48] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0044.*

[49] Sun, Q., *et al.* 2022. Using Field-Metered Data to Characterize Consumer Usage Patterns of Residential Dishwashers. Lawrence Berkeley National Laboratory, Berkeley, CA.

DOE considers RECS to be the most nationally representative dataset to approximate consumer dishwasher usage in the U.S. and uses it in the analysis for this direct final rule.

AHAM commented that DOE eliminated the numerical threshold for the significant conservation of energy savings determination that was in the prior Process Rule, reverting to its earlier approach of determining whether energy savings are significant on a case-by-case basis. AHAM noted that the amended standards for dishwasher would result in 0.31 quads, but DOE could achieve far greater savings through other means such as public education. AHAM stated that on a monthly basis, savings are so minuscule as to render them meaningless relative to the potential increase in up-front purchase costs, particularly for dishwashers on the lower end of the price scale. AHAM recommended that DOE use median savings as a way to partially overcome the bias in the RECS data where a few outlier high usage RECS data points distort the results. (AHAM, No. 51 at p. 6) AHAM stated using the median LCC savings, the savings are approximately $0.72 cents per year, which is an amount so small as not to even be noticed by consumers on their monthly balance sheets. (*Id.* at pp. 6–7) AHAM further stated that proposed standards that are not cost effective are not economically justified under EPCA because the savings do not justify the manufacturer and consumer burdens that result from the amended standards and DOE should issue a determination not to amend standards beyond EL 1 for dishwashers. (*Id.*)

As described in section IV.E of this document, DOE's energy and water use analysis for this direct final rule is derived based on *RECS 2020,* which provides household's dishwasher loads information ranging from 1 cycle to 21 cycles per week, once after every meal. The household survey-based annual energy and water use for each household then feed into the LCC analysis. Excluding minimum and maximum values from the RECS households samples would result in a less accurate representation of the actual national dishwasher usage patterns and consumption distribution exhibited by the household sample. However, as a standardized approach, DOE presents the distributions of LCC savings for each product class and efficiency level as histograms and boxplots in chapter 8 of the direct final rule TSD, which can also be generated via the published LCC spreadsheet tool. This approach allows stakeholders to observe the full range of LCC savings over the relevant time scale, which accounts for the total costs and savings to a consumer over the lifetime of a new unit purchased in the compliance year, enabling a more informed evaluation of the potential impacts of the proposed standards. In addition, DOE's decision on amended standards is not solely determined by the average LCC savings. While LCC savings play a role, they are considered alongside other critical factors, including the percentage of negatively impacted consumers, the simple payback period, and the overall impact on manufacturers. DOE further notes, that while AHAM submitted these comments in response to the May 2023 NOPR, since then AHAM became a party to the Joint Agreement and is supportive of the recommended standard adopted in this direct final rule

The California Inventor-Owned Utilities (''CA IOUs'') [50] recommended [51] that DOE conduct a representative consumer survey to review the assumption that consumers turn off the power-dry feature 50 percent of the time if such options exists, and in the absence of such information, amend the test procedure to test the default cycle with all manufacturer recommended settings for everyday use enabled. The CA IOUs expressed concern that DOE lacked solid supportive data and defaulted to the Department of Commerce Voluntary Labeling Program's position that for ''any feature requiring a consumer interaction and for which actual usage is unknown,'' a ''50 percent frequency'' was assumed. (CA IOUs, No. 50 at p. 6) The CA IOUs commented that in practice, it is unclear how often consumers actually choose to disable power-dry and that DOE is reducing the annual energy consumption of 15 units by an average of 6 percent without proof of the expected consumer behavior. The CA IOUs cited to a 2007 Proctor & Gamble study that indicated 66 percent of households use the power-dry feature regularly. The CA IOUs suggested that DOE collect data to update this conclusion based on consumer use of power-dry, its relation to the ability to disable the feature, and its presence in default operation or recommendation for everyday use. (*Id.* at p. 7)

DOE updates its analyses with the most current, nationally representative data. As pointed out by the CA IOU, the 2007 Proctor & Gamble study did not specify if the dishwashers of the participants had the option to turn off heated dry, or if the heated dry option was by default on or off, and it was unclear how the consumer samples were selected. DOE is unaware of any nationally representative consumer data showing consumer selection of drying options. Conducting a survey as suggested is not viable within the context of this rulemaking, but DOE may consider doing so for a future rulemaking. The calculation of EAEU at 10 CFR 430.23 assumes dishwashers with the power dry feature use it 50 percent of the time. In the absence of any other nationally representative data set, DOE is using the same assumption in this direct final rule analysis. DOE did not include drying option selections in this direct final rule analysis, but may consider other assumptions regarding use of drying features in future dishwasher test procedure rulemakings.

AWE commented that DOE should more thoroughly consider and evaluate the energy embedded in the water that will be saved from the proposed standard, in addition to end-user energy use. (AWE, No. 44 at p. 4) AWE has developed a water conservation tracking tool for evaluating the water savings, costs, and benefits of urban water conservation programs and for projecting future water demands. (*Id.*) AWE further stated that DOE could also adjust this based on the assumptions it is currently using for private wells and DOE can calculate the emissions-related benefits in the same way it has calculated them for direct energy savings. (*Id.* at p. 5)

DOE has previously determined that EPCA does not direct DOE to consider the energy used for utility water treatment and delivery. In a May 2012 Final Rule on Residential Clothes Washers, DOE noted that EPCA directs DOE to consider ''the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard.'' 77 FR 32308, 32346 (quoting 42 U.S.C. 6295(o)(2)(B)(i)(III)). In the May 2012 Final Rule on Residential Clothes Washers, DOE interpreted ''directly from the imposition of the standard'' to include energy used in the generation, transmission, and distribution of fuels used by appliances. Unlike the energy used for water treatment and delivery, primary energy savings and the full-fuel-cycle measure are in a distribution chain that is directly linked to the energy used by appliances. (*Id.*)

Chapter 7 of the direct final rule TSD provides details on DOE's energy and water use analysis for dishwashers.

[50] The ''CA IOUs'' includes Pacific Gas and Electric Company, SDG&E, and SCE; collectively, the California Investor-Owned Utilities.

[51] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0050.*

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for dishwashers. Because the technologies to improve energy efficiency may also reduce water usage (as discussed in IV.C.1.b), the economic impacts in the LCC and PBP include both energy consumption and water consumption. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy and water use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of dishwashers in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from the *RECS 2020*. For each sample household, DOE determined the energy and water consumption for the dishwashers and the appropriate energy and water prices. By developing a representative sample of households, the analysis captured the variability in energy and water consumption and energy and water prices associated with the use of dishwashers.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy and water consumption, energy and water prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and dishwasher user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[52] The model calculated the LCC for products at each efficiency level for 10,000 housing units per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for consumers of dishwashers as if each were to purchase a new product in the first year of required compliance with amended standards. Amended standards apply to dishwashers manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(m)(4)(B)) Therefore, DOE used 2027 as the first year of compliance with any amended standards for dishwashers.

Table IV.12 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the direct final rule TSD and its appendices.

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[52] Crystal Ball™ is a commercially available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel. Available at *www.oracle.com/middleware/technologies/crystalball.html* (last accessed Oct. 19, 2023).

Table IV.12 Summary of Inputs and Methods for the LCC and PBP Analysis*

Inputs	Source/Method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.
Installation Costs	Baseline installation cost based on manufacturers' inputs. Assumed no change in installation costs with efficiency level.
Annual Energy and Water Use	Per cycle energy and water use multiplied by the number of cycles per year. Variability: Based on the *RECS 2020*.
Energy and Water Prices	Electricity: Based on Edison Electric Institute data for 2022. Natural Gas: Based on EIA's Natural Gas Navigator for 2022. LPG and Fuel Oil: Based on EIA's State Energy Consumption, Price, and Expenditures Estimates data for 2022. Variability: Regional energy prices determined by Census Division. Water: Based on 2022 AWWA/Raftelis Survey. AHS 2021,** CDC 2023,† NGWA 2020.‡ Variability: Regional water prices determined by Census Region.
Energy and Water Price Trends	Based on *AEO 2023* price projections. Water: Forecasted using BLS historic water price index information.
Repair and Maintenance Costs	Repair costs vary by product class and by efficiency level based on manufacturers' inputs.
Product Lifetime	Average: 15.2 years
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2027

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the direct final rule TSD.

** American Housing Survey, *www.census.gov/programs-surveys/ahs.html*

† Center for Disease Control, www.cdc.gov/healthywater/drinking/private/wells/maintenance.html#print

‡ National Ground Water Association, *www.ngwa.org/docs/default-source/default-document-library/groundwater/usa-groundwater-use-fact-sheet.pdf?sfvrsn=5c7a0db8_4*

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For this direct final rule, DOE considered comments it had received regarding the LCC analysis conducted for the May 2023 NOPR. The LCC approach used for this direct final rule is largely the same as the approach DOE had used for the May 2023 NOPR analysis.

In response to the May 2023 NOPR, AHAM commented that DOE should focus on conducting a purchase decision analysis instead of relying on outcomes and long-term cost analyses. (AHAM, No. 51 at p. 18) AHAM commented that the logical basis for regulation lies in identifying consumer and systemic market failures, where consumer failure refers to making ''incorrect'' decisions due to a lack of information. (*Id.*) AHAM stated that systemic market failure relates to mispricing of inputs (such as underpricing of the environmental impacts in energy prices) or other similar conditions. AHAM commented that while there are many critiques of how accurate a rational choice model is for true consumer behavior, including the recent insights of behavioral economics, all of these discussions start from the premise of a purchase decision choice model. AHAM commented on the importance of considering the actual conditions and expectations of purchasers in DOE's LCC model, separate from the broader economic impact analysis, which should be in the National Impact Analysis. (*Id.*) AHAM suggested that the LCC model should assess the extent of market failure by comparing the actual rate of energy-efficient product purchases with the rate that rational consumers would choose. (*Id.*)

The LCC analysis currently relies on market data on the distribution of efficiency of products to assign products with varying efficiency performance to each household when compliance with the standard becomes required. This approach is intended to simulate the range of individual outcomes resulting from the hypothetical setting of a revised energy conservation standard at various levels of efficiency when the data needed to develop a product-specific consumer choice model are currently unavailable. This is a methodological decision made by DOE after considering the existence of various systematic market failures (*e.g.,* information asymmetries, bounded rationality, etc.) and their implication in rational versus actual purchase behavior. Considering that individual consumer decisions may be driven by multiple factors and may vary based on demographic features as well as available information to consumers at the time of purchase, the data required to develop a product specific complex consumer choice model were unavailable in the case of dishwashers. In the LCC analysis, DOE aims to simulate the range of individual outcomes resulting from a hypothetical setting of revised energy efficiency standards. Both the distribution and the national average values were considered. Moreover, the outcome of the LCC is not considered in isolation, but in the context of the broader set of analyses, including the NIA. DOE further notes, that AHAM is a party to the Joint Agreement and is supportive of the recommended standard adopted in this direct final rule.

AHAM stated that there have been changes in DOE's analysis for standard-size dishwashers between the January 2022 Preliminary Analysis and the May 2023 NOPR including the percentage of consumers experiencing a net cost decreased from 43 percent to 3 percent and the payback period decreased from 7 to 2.4 years and it is unclear how DOE arrived at the new conclusions that have a significant impact on overall energy savings estimates and economic analysis. (AHAM, No. 51 at p. 26) Whirlpool Corporation (''Whirlpool'') questioned [53] why there is such a big departure in consumer cost-effectiveness for EL 2 between the January 2022 Preliminary Analysis and the May 2023 NOPR. (Whirlpool, No. 45 at pp. 3–4) Whirlpool commented that compared to the 43 percent of consumers who were estimated to experience a net cost from EL 2 in the January 2022 Preliminary Analysis, only 3 percent of consumers are now estimated to experience a net cost from this level in the May 2023 NOPR. (*Id.*) Whirlpool further commented that given this very large apparent change in the data and the impact that this has on DOE's overall selection of TSLs, DOE should provide stakeholders with supporting information/data that led to this drastic change in the analysis. (*Id.*)

DOE updates its analytical inputs with the most recent available data sources, in response to stakeholder comment, and based on information obtained through testing, teardowns, manufacturer interviews, and any additional research and analysis. Input updates include MPCs, energy and water prices and price trends, dollar year, price learning trends, product efficiency distributions, discount rate, sales tax, and shipments. For this final rule, the LCC inputs are summarized in Table IV.12. Because of those input changes, the LCC results were changed in the May 2023 NOPR analysis, and again in the direct final rule analysis compared to those from the January 2022 Preliminary Analysis. In this case, the primary driver of the decrease in percent of consumers with a net cost is based on a change in MPC between the January 2022 Preliminary Analysis and the May 2023 NOPR, driven by DOE's updated engineering analysis. Specifically, based on manufacturer feedback, DOE revisited its teardown analysis and observed that the same technology options exist at both EL 1 and EL 2, with EL 2 units having improved control started and design tolerances. For these reasons, the MPC at EL 2 is the same as that at EL 1, which decreases the percent of consumers with a net cost at EL 2. DOE notes that AHAM (of which Whirlpool is a member) supported the Recommended TSL, which includes the same EL as the standards proposed in the May 2023 NOPR for standard-size dishwashers.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. An experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level. To derive the learning rate parameter for dishwashers, DOE obtained historical Producer Price Index (''PPI'') data for appliances from the Bureau of Labor Statistics (''BLS''). A PPI for ''all-other-miscellaneous-household-appliances'' was available for the time period between 1988 and 2014.[54] However, the all-other-miscellaneous-household-appliances PPI was discontinued beyond 2014 due to insufficient sample size. To extend the price index beyond 2014, DOE assumed that the price index of primary products of major household appliance manufacturing would trend similarly to all other miscellaneous household appliances. This is because, based on communications with BLS researchers, discontinued series are often grouped into the primary products under the more aggregated PPI series. Examining the PPI of all other miscellaneous household appliances and primary products of major household appliances shows that the magnitudes of both price trends align with each other. Inflation-adjusted price indices were calculated by dividing the PPI series by the gross domestic product index from Bureau of Economic Analysis for the same years. Using data from 1988–2021, the estimated learning rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is 24.2 percent, which results in an average annual price decline of 0.96 percent. *See* chapter 8 of the direct final rule TSD for further details on this topic.

For this direct final rule, DOE considered comments it had received regarding the methodology for calculating consumer product costs that was presented in the May 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the May 2023 NOPR analysis.

In response to the May 2023 NOPR, Northwest Energy Efficiency Alliance (''NEEA'') encouraged [55] DOE to consider a specific learning curve for variable-speed drives when conducting future dishwasher standards analyses similar to its approach in the recent refrigerator standards rulemaking. (NEEA, No. 53 at p. 2)

DOE did not consider a specific price learning curve for variable-speed drives due to the lack of data regarding the data regarding the relevant market share of products. DOE will consider all available technology options and their related learning curves when conducting future dishwasher standards analyses for standards rulemakings.

AHAM commented that DOE's application of a ''learning or experience curve'' to reduce expected extra manufacturing costs required to meet proposed standard levels lacks a solid theoretical foundation for why an experience or learning curve should exist, what functional form it should take and whether it should be a continuous function. (AHAM, No. 51 at p. 19) AHAM commented that the approach, based solely on empirical relationships, demands clear alignment with the actual products in question and the data used to develop the relationship. AHAM stated that when the data takes a new shape, DOE must adjust its equations to reflect that change as continuing to use old data and equations simply to create a longer time series is not acceptable. (*Id.*) AHAM commented that DOE's justification that continued use of learning rates is justified by past price declines is DOE confusing past correlation with future causation and the very severe limitations of forward projection without a sound theoretical basis for assuming that the correlation will continue. (*Id.*) AHAM further stated that there is no particularly strong reason to expect that any future trends will be modeled with a continuous

[53] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0045.*

[54] U.S. Bureau of Labor Statistics, PPI Industry Data, Major household appliance manufacturers, Product series ID: PCU 33522033522011. Data series available at *www.bls.gov/ppi/.*

[55] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0053.*

function of the form DOE is proposing and that there is an apparent ''flattening'' of the data in DOE's learning curve equation. Additionally, AHAM stated that all recent data is above the line drawn by the equation should give DOE significant pause to consider whether it is modeling a relationship that no longer holds, no matter what the regressions statistics from past data show. (*Id.* at pp. 19–20) AHAM commented that such ''learning'' should not be projected beyond labor and materials costs, given it does not logically apply to overheads, sales, marketing, general and administrative costs, or depreciation and financing costs. (*Id.* at p. 20)

DOE notes that there is considerable empirical evidence of consistent price declines for appliances in the past few decades. Several studies examined retail prices of various household appliances, including dishwashers, during different periods of time and showed that prices had been steadily falling while efficiency had been increasing, for example Dale, *et al.* (2009) and Taylor, *et al.* (2015). Given the limited data availability on historical manufacturing costs broken out by different components, DOE utilized the PPI published by the BLS as a proxy for manufacturing costs to represent the analyzed product as a whole. While products may experience varying degrees of price learning during different product stages, DOE modeled the average learning rate based on the full historical PPI series to capture the overall price evolution in relation to the cumulative shipments. When fitting the historical PPI and cumulative annual shipments to the experience curve, which takes the form of a power function, the resulting R-square value is 91 percent. Despite that the observed data could deviate above or below the fitted curve during certain periods, the high value of R-square indicates a reasonable fit overall, although DOE recognizes the difficulty when projecting regression results out of sample. In addition, DOE also conducted sensitivity analyses that are based on a particular segment of the PPI data for ''all other miscellaneous household appliances and primary products of major household appliances'' to investigate the impact of alternative product price projections (low price learning and constant price) in the NIA of this rulemaking. In all scenarios that DOE considered, the impact of the price projection on the Net Present Value estimates is limited to negative three percent to one percent for the adopted TSL. Overall, the impact would not affect the policy decision. For details of the sensitivity results, *see* appendix 10C of the direct final rule TSD. DOE further notes, that AHAM is a party to the Joint Agreement and is supportive of the recommended standard adopted in this direct final rule.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. Based on inputs provided by manufacturers, DOE concluded that installation costs would not be impacted by increased efficiency levels. DOE received no stakeholder comments on this issue.

3. Annual Energy and Water Consumption

For each sampled household, DOE determined the energy and water consumption for dishwashers at different efficiency levels using the approach described previously in section IV.E of this document. Both energy and water consumption are considered in the LCC analysis because the technologies to improve energy efficiency may also reduce water usage (as discussed in section IV.C.1.b of this document).

4. Energy and Water Prices

a. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2022 using data from EEI Typical Bills and Average Rates reports. Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. For the residential sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2018).[56]

To estimate energy prices in future years, DOE multiplied the 2020 energy prices by the projection of annual average price changes for each of the nine Census Divisions from the Reference case in *AEO2023,* which has an end year of 2050.[57] To estimate price trends after 2050, the 2046–2050 average was used for all years.

DOE's methodology allows electricity prices to vary by sector, region, and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis.

DOE obtained data for calculating regional prices of natural gas from the EIA publication, *Natural Gas Navigator.*[58] This publication presents monthly volumes of natural gas deliveries and average prices by State for residential, commercial, and industrial customers. DOE used the complete annual data for 2022 to calculate an average annual price for each Census Division. Residential natural gas prices were adjusted by applying seasonal marginal price factors to reflect a change in a consumer's bill associated with a change in energy consumed.

DOE assigned average prices to each household in the LCC sample based on its location and its baseline electricity and gas consumption. For sampled households who were assigned a product efficiency greater than or equal to the considered level for a standard in the no-new-standards case, DOE assigned marginal prices to each household based on its location and the decremented electricity and gas consumption. In the LCC sample, households could be assigned to one of nine Census Divisions. *See* chapter 8 of the direct final rule TSD for details.

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 nine Census Divisions from the Reference case in *AEO2023,* which has an end year of 2050.[59] To estimate price trends after 2050, the 2046–2050 average was used for all years.

b. Water and Wastewater Prices

DOE obtained residential water and wastewater price data from the Water

[56] Coughlin, K. and B. Beraki. 2018. Residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001169. Available at *ees.lbl.gov/publications/residential-electricity-prices-review.*

[57] EIA. *Annual Energy Outlook 2023.* Available at *www.eia.gov/outlooks/aeo/* (last accessed Oct. 19, 2023).

[58] U.S. Department of Energy—Energy Information Administration. *Natural Gas Navigator* 2022. Available at *www.eia.gov/naturalgas/data.php.*

[59] EIA. Annual Energy Outlook 2023. Available at *www.eia.gov/outlooks/aeo/* (last accessed June 20, 2023).

and Wastewater Rate Survey conducted by Raftelis Financial Consultants and the American Water Works Association.[60] The survey covers approximately 445 water utilities and 334 wastewater utilities analyzing each industry (water and wastewater) separately. For each water or wastewater utility, DOE calculated the average-price-per-unit volume by dividing the total volumetric cost by the volume delivered. DOE also calculated the marginal price by dividing the incremental cost by the increased volume charged at each consumption level.

The samples that DOE obtained of the water and wastewater utilities is too small to calculate regional public sector prices for all U.S. Census Divisions. Therefore, DOE calculated regional costs for water and wastewater service at the Census Region level (Northeast, South, Midwest, and West) by weighting each State in a region by its population.

For this direct final rule analysis, DOE has updated its methodology for developing water prices for consumers who rely on a private well-water system, instead of the public supply system in consideration of stakeholder comments. DOE primarily considered well maintenance costs and pump operating costs when developing the average water price. Conversely, DOE only considered pump operating costs when developing the marginal price for well users. As a result, the estimated average and marginal water prices for well users are $1.24 and $0.39 per thousand gallons, respectively. For septic tank users, DOE considered only the septic tank maintenance cost when determining the average price and excluded the marginal cost component, as any marginal costs are likely to be negligible. DOE is unable to develop Census-region-level well-water and septic tank prices due to the limitation of available data; consequently, the same values were used for each Census Region.

To determine the current percentage of the U.S. population served by private wells and septic tanks, DOE used historical American Housing Survey (''AHS'') data from 1970 to 2021 to develop a projection for 2027, the effective year of potential new standards for dishwashers.[61]

DOE then conducted random simulations to determine the percentage of households in rural areas served by private wells and septic tanks. Based on the estimated percentages, well-water prices and septic tank prices were assigned to sampled households accordingly. Furthermore, DOE estimated the septic tank user population and assigned corresponding septic tank prices to households relying on public water systems.

To estimate the future trend for public water and wastewater prices, DOE used data on the historic trend in the national water price index (U.S. city average) from 1988 through 2022 provided by the Labor Department's BLS.[62] DOE extrapolated the future trends based on the linear growth from 1988 to 2022. DOE used the extrapolated trend to forecast prices through 2050. To estimate the price trend after 2050, DOE used a constant value derived from the average values from 2046 through 2050.

To estimate the future trend for the average well-water and septic tank prices, DOE used data on the historic trend in the overall national consumer price index from 1988 through 2022 provided by the Labor Department's BLS.[63] DOE extrapolated the future trends based on the linear growth from 1988 to 2022. DOE used the extrapolated trend to forecast prices through 2050. To estimate the price trend after 2050, DOE used a constant value derived from the average values from 2046 through 2050. In addition, to estimate the future trend for the marginal well-water price, the electricity trend was used, as described previously in section IV.F.4.a of this document.

In response to the May 2023 NOPR, AHAM commented that it previously suggested DOE should consider the actual water costs for households on well systems. (AHAM, No. 51 at p. 12)

AHAM commented that DOE's May 2023 NOPR approach to septic system costs is incorrect and stated that DOE should acknowledge that there are no incremental costs for consumers using septic systems and treat these both well water users and septic tank users as a separate subgroup instead of averaging them into composite water and sewer costs. (AHAM, No. 51 at pp. 12–14)

As described in section IV.I.3 of this document, for this direct final rule, DOE updated its method for estimating well-water and septic costs. The updated average well-water and septic tank prices are 17.1 percent of the combined cost of public water and sewer costs. In addition, DOE assigned either septic tank or public sewer prices to well-water households based on the probability distributions obtained from the AHS 2021 data.

AHAM commented that the economic value of water is undefined and an inappropriate measure in the life cycle cost analysis. AHAM stated that if DOE is relying, even implicitly, on the AWWA/RFC study for its definition of economic value, as matter of administrative law, it must make the underlying reference available for public comment before it can use it as a source. According to AHAM, private well users pay the actual marginal cost of water, primarily the electricity for pumping, not an ''economic value.'' While there are embedded costs for drilling a well, these costs are sunk and the marginal cost is only the electricity. (AHAM, No. 51, at p. 13) AHAM suggested that if DOE insists on the ''economic value,'' DOE should define it, demonstrate how well-water use reduces water availability, and quantify the actual ''economic value'' of lost well water. (*Id.*) AHAM further stated that even if there is an ''economic value'' of well water, it should be considered in the NIA, not the LCC. (*Id.* at 16.)

DOE concurs that ''economic value of water'' is not the actual price that well users would pay. Hence, for this direct final rule, DOE has adjusted its methodology regarding water price for well users and septic tank price. To derive well-water price, DOE conducted a literature review and took into consideration the inputs provided by AHAM. As a result, DOE estimated the average water price for well users to be $1.24 per thousand gallons, with a marginal price of $0.39 per thousand gallons representing the electricity cost for pumping. Regarding septic tank price, DOE estimated the average cost to be $1.30 per thousand gallons and excluded the marginal cost component, as it may be negligible or close to $0 per thousand gallons. For references and details of the well-water and septic tank prices, *see* chapter 8 of the direct final rule TSD. In addition, in the LCC, DOE has explicitly assigned water and wastewater sources, along with corresponding specific prices, to RECS households randomly using different probability distributions for urban and rural households by Census Region based on AHS 2021 data. Similarly, both the public and private water and wastewater costs were accounted for in

[60] Raftelis Financial Consultants, Inc. 2020 RFC/AWWA Water and Wastewater Rate Survey. 2021. Charlotte, NC, Kansas City, MO, and Pasadena, CA.

[61] The U.S. Census Bureau. The American Housing Survey. Years 1970–2021. Available at *www.census.gov/programs-surveys/ahs.html* (last accessed June 12, 2023).

[62] U.S. Department of Labor-Bureau of Labor Statistics, Consumer Price Indexes, Item: Water and sewerage maintenance, Series Id: CUSR0000SEHG01, U.S. city average, 2022. Washington, DC. Available at *www.bls.gov/cpi/home.htm#data.*

[63] U.S. Department of Labor-Bureau of Labor Statistics, Consumer Price Indexes, All Items, Series Id: CUUR0000SA0, U.S. city average, 2022. Washington, DC. Available at *www.bls.gov/cpi/home.htm#data.*

the NIA. The term ''economic value'' of water refers to the National Groundwater Association's use of the term.[64] The AWWA/Raftelis data used to develop the public water and wastewater costs are available from an online subscription.[65]

AWE commented that DOE should extrapolate from the annualized rate increases for 1998 to 2020 from the AWWA/Raftelis Water and Wastewater Rate Survey. (AWE, No. 44 at p. 1) AWE stated that instead of using AWWA/Raftelis for historic and current pricing and a CPI-based approach for future price trends, AWE supports the use of data from the AWWA/Raftelis Survey as the basis for DOE's calculation for both the historic and current water and wastewater prices and for price trends. (*Id.* at p. 2) AWE commented that it is confident that the price trend data in the AWWA/Raftelis Survey are more accurate and representative because it is based on a review of the actual rates from a large sample set of utilities from nearly all U.S. states on a biennial basis and that it is better to use rate data when performing calculations based on specific volumes of water saved rather than data on average customer bills, which is what the water and sewerage maintenance item from CPI is based on. (*Id.*)

AWWA/Raftelis conducts water and wastewater rates survey, which used to be every two years and now every six months, for U.S. water and wastewater utilities. For each of the AWWA/Raftelis surveys, utilities in the sample respond voluntarily to the survey questions, with a limited number of overlapping utilities in each survey year. For this reason, it is possible that the annual change in rates may be affected by which utilities respond to the survey, which is also known as sample bias. In addition, the rate data are reported in usage tiers set by each utility and not on actual household water consumption.

The BLS Water and Sewer CPI sample represents 600 to 700 quotes for water or sewer service, and the sample is consistent for four years, which reduces the possible year over year bias as compared to AWWA/Raftelis. Additionally, the Water and Sewer CPI was estimated based on consumer water bills that reflect household water consumption. Therefore, DOE concludes that the BLS' CPI water and sewer data better reflect the nationally representative price trends than the AWWA/Raftelis data. DOE therefore used the CPI for water and sewer for its public utilities' water and wastewater price trend forecast for this final rule.

DOE used a similar methodology to develop future water and wastewater prices in its clothes washer standard rulemaking as it used in the March 2024 final rule analysis. DOE used a constant value derived from the average values from 2046 through 2050 to estimate the price trend after 2050, whereas in the May 2023 NOPR, published May 19, 2023 (88 FR 32514), DOE used the 2050 value for the price trend after 2050.[66]

AHAM stated DOE should recognize that not all households directly pay for water and sewer. (AHAM, No. 51 at p. 16) As such, AHAM asserted that DOE is overestimating the actual annual operating cost savings that these consumers would receive from reduced water use in dishwashers. (*Id.*) AHAM commented that in many circumstances the costs for water and sewer are either borne by landlords or are combined into generalized common charges. (*Id.*)

AHAM identified two subgroups of consumers who might not see monetary savings from a reduction in water use as a result of an amended standard: (1) condominium owners in multi-family buildings where water and sewer costs are included in common charges and (2) low-income renters in multi-family housing where water is not sub-metered and/or costs are covered by landlords. (AHAM, No. 51 at p. 16) As it applies to multi-family housing, AHAM stated that installing sub-metering equipment may cost thousands of dollars per unit including plumbing charges and many landlords do not find it attractive or practical to sub-meter. (*Id.*) Additionally, for condominium properties, the owner owns the dishwasher, leading to a reverse split-incentive such that the household will not see the benefit directly and will have a negative LCC savings. Further, raising the price of a dishwasher will also encourage the household to continue repairing the dishwasher rather than purchasing a more expensive new one, reducing or eliminating the project national savings. As such, AHAM recommend that DOE recognize this sub-group and address the relevant financial situation. (*Id.* at pp. 16–17)

DOE notes that while RECS does identify multi-family housing, it does not provide information on whether a household's water bill is included in the rent, included in the common charges, or paid directly to the utility. For the first group of multi-family unit owners (such as apartments, condominiums, and co-ops) identified in RECS and reporting that energy bills are not paid directly to the utilities, DOE posits that those households also do not directly pay their water bills, considering that some multi-family units may have a shared water meters, which is more common than shared electricity or gas meters. It is, therefore, likely that households that do not directly pay their energy bills to the utilities, also do not directly pay for their water bill. This group represents less than 1.2 percent of the national sample, indicating a relatively small group. For the second group of low-income renters in multi-family buildings, DOE adopted a conservative approach assuming that those households that reported as not paying their energy bill would also not pay their water bill and, therefore, do not accrue any operating cost savings from the considered standards. This issue is accounted for in the low-income subgroup analysis. Based on DOE's assessment, the low-income subgroup has comparable LCC savings and fraction of consumers experiencing a net cost as the national sample. *See* section IV.I.1 and section V.B.1.b of this document for the detailed methodology and the results of the low-income subgroup analysis.

With regards to the split-incentive issue, the existence of a split incentive across a substantial number of U.S. households, in which a tenant pays for the cost of electricity while the landlord furnishes appliances, has been identified through a number of studies of residential appliance use broadly, and for dishwashers in low-income settings in specific. Building from early work including Jaffe and Stavins (1994),[67] Murtishaw and Sathaye (2006)[68] discussed the presence of landlord–tenant split-incentives (*i.e.,* the ''principal-agent problem'') in the context of refrigeration, water heating, space heating, and lighting in rental housing. While the study did not solely focus on the low-income household,

[64] Groundwater Use in the United States of America. National Ground Water Association, *www.ngwa.org/docs/default-source/default-document-library/groundwater/usa-groundwater-use-fact-sheet.pdf?sfvrsn=5c7a0db8_4.*

[65] The American Water Works Association & Raftelis Financial Consultants, Inc., *2022 RFC/AWWA Water and Wastewater Rate Survey.* 2023. Charlotte, NC. The latest report is available at *https://engage.awwa.org/PersonifyEbusiness/Bookstore/Product-Details/productId/194150460.*

[66] Additional details regarding the dishwasher analysis are provided in the May 2023 NOPR TSD, available at *www.regulations.gov/document/EERE-2019-BT-STD-0039-0032.*

[67] A.B. Jaffe and R.N. Stavins (1994) The energy-efficiency gap What does it mean? Energy Policy, 22 (10) 804–810, Available at *doi.org/10.1016/0301-4215(94)90138-4.*

[68] Murtishaw, S., & Sathaye, J. (2006). Quantifying the Effect of the Principal-Agent Problem on US Residential Energy Use. Lawrence Berkeley National Laboratory. Available at *escholarship.org/uc/item/6f14t11t.*

they estimated that 35 percent of total residential site energy use is subject to split-incentives based on these four products alone. In the specific context of dishwashers, based on RECS 2020, 88 percent of low-income individuals who rented their homes and owned a dishwasher were found to pay the electricity bill resulting from their energy use, such that they were likely subject to a scenario in which their landlord purchased the appliance, but they paid the operating costs. Spurlock and Fujita (2022),[69] Houde and Spurlock (2016),[70] and citations therein (*e.g.,* Davis 2012) [71] also further elaborated on split-incentives in rental housing and their association with generally lower efficiency among the appliances used by renters. As a result, DOE's analysis concludes that there is a substantial fraction of split-incentive issue among low-income households. Therefore, DOE divide the low-income subgroup into renters and non-renters categories, for which different assumptions were applied. For low-income households who are home-owners and do pay for the product and energy costs, DOE considers that those households will experience an impact from any proposed standard and DOE then uses the same methodology applied to the national LCC analysis. For low-income households who are renters and do not pay for energy bills, DOE considers the amended standards will have no impact on those households. In the split-incentive case in which the low-income households who are renters and pay for energy bills, the landlord would bear the cost of the appliance, and the household would pay the operating costs and therefore accrue the operating cost savings from the considered standards. Although paid by different individuals, the difference between the incremental equipment cost and the life cycle operating cost savings would still be characterized as the LCC savings associated with the dishwasher in question in the national LCC analysis. Therefore, the split-incentives cases would not affect the methodology of the national LCC savings estimates. More details can be found in section IV.I.1 of this document as well as in chapter 11 of the direct final rule TSD.

As in the case when some consumers may delay or forgo their purchase due to the increased first cost caused by the standards, DOE assumed that those consumers would hand wash their dishes and accounted for the possible increase in energy and water use as an additional cost to the standards case in the National Impact Analysis. DOE considered this as a conservative approach since there are alternatives to handwashing dishes such as extended repair, or purchasing a second-hand unit.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. However, products having significantly higher efficiencies compared to baseline products are more likely to incur higher repair and maintenance costs, because their increased complexity and higher part count typically increases the cumulative probability of failure.

In this direct final rule analysis, DOE derived repair costs for dishwashers for each efficiency level based on manufacturers' inputs on the repair frequency and costs. DOE did not include routine maintenance costs as no evidence or data shows that the routine maintenance costs or frequency would vary with increased efficiency. *See* chapter 8 of the direct final rule TSD for further details.

6. Product Lifetime

For dishwashers, DOE developed a distribution of lifetimes from which specific values are assigned to the appliances in the samples. DOE conducted an analysis of actual lifetime in the field using a combination of historical shipments data, the stock of the considered appliances in the *American Housing Survey,* and responses in *RECS* on the age of the appliances in the homes. The data allowed DOE to estimate a survival function, which provides an average appliance lifetime. This analysis yielded a lifetime probability distribution with an average lifetime for dishwashers of approximately 15.2 years. DOE has found no evidence or information related to variation in dishwasher lifetime by product class or efficiency level. *See* chapter 8 of the direct final rule TSD for further details.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for dishwashers based on the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[72] 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, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's triennial Survey of Consumer Finances [73] (''SCF'') starting in 1995 and ending in 2019 and multiple sources for asset interest rates from 1993–2022. Using the SCF and other sources, DOE

[69] C.A. Spurlock and K.S. Fujita (2022) Equity implications of market structure and appliance energy efficiency regulation, Energy Policy, 165 (112943), Available at *doi.org/10.1016/j.enpol.2022.112943.*

[70] S. Houde, C.A. Spurlock (2016) Minimum Energy Efficiency Standards for Appliances: Old and New Economic Rationales. Economics of Energy & Environmental Policy, 5(2), 65–84. Available at *www.jstor.org/stable/26189506.*

[71] L.W. Davis (2012) Evaluating the slow adoption of energy efficient investments: are renters less likely to have energy efficient appliances? The Design and Implementation of US Climate Policy, University of Chicago Press (2012), pp. 301–316.

[72] 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.

[73] U.S. Board of Governors of the Federal Reserve System. Survey of Consumer Finances. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. Available at *www.federalreserve.gov/econresdata/scf/scfindex.htm* (last accessed Oct. 19, 2023).

developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.2 percent. *See* chapter 8 of the direct final rule TSD for further details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution of dishwashers for 2027, DOE used data from the engineering analysis, the manufacturer interviews, and DOE's Compliance Certification Database. DOE assumed no annual efficiency improvement for the no-new-standards case based on the current market evaluation and the observation that there was no shift in efficiency distributions compared to those used in the December 2016 Final Determination. DOE received no comments from stakeholders related to this assumption. The estimated market shares for the no-new-standards case for dishwashers are shown in Table IV.13. *See* chapter 8 of the direct final rule TSD for further information on the derivation of the efficiency distributions.

In response to the May 2023 NOPR, Appliance Standards Awareness Project *et al.*[74] (''ASAP *et al.*'') commented [75] that DOE's assignment of efficiency levels in the no-new-standards case reasonably reflects actual consumer behavior. (ASAP *et al.,* No. 46 at p. 3) For the final rule, DOE maintained the approach used in the May 2023 NOPR to derive efficiency distributions in the no-new-standards case.

Table IV.13 No-New-Standards Case Efficiency Distribution for Dishwashers in 2027

TSL	Product Class 1 Standard-Size Dishwashers:			Product Class 2 Compact-Size Dishwashers:		
	Annual Energy Use* (k*Wh/year*)	Water Use *(gal/cycle)*	Market Share (%)	Annual Energy Use* (k*Wh/year*)	Water Use *(gal/cycle)*	Market Share (%)
Baseline	263	5.0	7	191	3.5	2
1	232	3.5	84	174	3.1	84
2	223	3.3	6	124	1.6	14
3	206	3.2	3			
4	193	2.4	0			

* Based on appendix C2

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency level to the dishwasher purchased by each sample household in the no-new-standards case. The resulting percentage shares within the sample match the market shares in the efficiency distributions.

In response to the May 2023 NOPR, ASAP *et al.* stated that they agree with DOE's determination that assigning dishwasher efficiencies for the LCC analysis, which is in part random, is more representative of actual consumer behavior than assigning efficiencies based solely on cost-effectiveness. (ASAP *et al.,* No. 46 at p. 3)

ASAP *et al.* commented that consumer purchasing decisions for an infrequent purchase such as a dishwasher can be based on a variety of complex issues such as the timing of the purchase, competing demands for funds, and the information available to the consumer. (ASAP *et al.,* No. 46 at p. 3)

ASAP *et al.* additionally noted the split-incentive or principal-agent problem in which there are misaligned incentives in rental properties because the landlord purchases and installs the dishwasher while the renter is responsible for paying the utility bill. (*Id.*)

While DOE acknowledges that economic factors play a role when consumers decide on what type of dishwasher to install, assignment of dishwasher efficiency for a given installation, based solely on economic measures such as life-cycle cost or simple payback period, most likely would not 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. DOE finds that the method of assignment, which is in part random, simulates behavior in the dishwasher market, where market failures result in purchasing decisions not being perfectly aligned with economic interests. DOE further emphasizes that its approach does not assume that all purchasers of dishwasher products make economically irrational decisions (*i.e.,* the lack of a correlation is not the same as a negative correlation). By using this approach, DOE acknowledges the uncertainty inherent in the data and does not assume certain market conditions that are unsupported given the available evidence.

The following discussion provides more detail about the various market failures that affect dishwasher purchases. First, consumers are motivated by more than simple financial trade-offs. There are consumers who are willing to pay a premium for more

[74] The ASAP *et al.* includes Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, Elevate, National Consumer Law Center, Natural Resources Defense Council, and Southwest Energy Efficiency Project.

[75] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0046.*

energy-efficient products because they are environmentally conscious.[76] There are also several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as dishwashers. For example, consumers (or decision makers in an organization) are highly influenced by choice architecture, defined as the framing of the decision, the surrounding circumstances of the purchase, the alternatives available, and how they are presented for any given choice scenario.[77] 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.[78] 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.[79] These characteristics describe almost all purchasing situations of appliances and equipment, including dishwashers. The installation of a new or replacement dishwashers is done very infrequently, as evidenced by the mean lifetime of 15.2 years. Further, if the purchaser of the dishwasher 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 significantly affect dishwashers. The principal-agent problem is a market failure that results when the consumer that purchases the equipment does not internalize all of the costs associated with operating the equipment. Instead, the user of the product, who has no control over the purchase decision, pays the operating costs. There is a high likelihood of split-incentive problems in the case of rental properties where the landlord makes the choice of what dishwasher to install, whereas the renter is responsible for paying energy bills.

In addition to the split-incentive problem, there are other market failures that are likely to affect the choice of dishwasher efficiency made by consumers. For example, unplanned replacements due to unexpected failure of equipment such as dishwashers 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 unplanned replacements, and consumers may not consider the full range of available options on the market, despite their availability. The consideration of alternative product options is far more likely for planned replacements and installations in new construction.

Additionally, Davis and Metcalf[80] conducted an experiment demonstrating that, even when consumers are presented with energy consumption information, the nature of the information available to consumers (*e.g.,* from EnergyGuide labels) results in an inefficient allocation of energy efficiency across households with different usage levels. Their findings indicate that households are likely to make decisions regarding the efficiency of the air conditioning 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). Also, most consumers did not properly understand the labels (specifically whether energy consumption and cost estimates were national averages or specific to their State). As such, consumers did not make the most informed decisions.

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.*[81] show that consumers tend to underestimate the energy use of large energy-intensive appliances (such as air conditioners, dishwashers, and clothes dryers), but overestimate the energy use of small appliances (such as light bulbs). Therefore, it is possible that consumers systematically underestimate the energy use associated with dishwashers, resulting in less cost-effective purchases.

These market failures affect a sizeable share of the consumer population. A study by Houde[82] 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.

The existence of market failures in the residential sector is well supported by the economics literature and by a number of case studies. If DOE developed an efficiency distribution that assigned dishwasher efficiency in the no-new-standards case solely according to energy and water use or economic considerations, such as life-cycle cost or payback period, the resulting distribution of efficiencies within the consumer sample would not reflect any of the market failures or behavioral factors above. Thus, DOE concludes such a distribution would not be representative of the dishwasher market. Further, even if a specific household is not subject to the market failures above, the purchasing decision of dishwasher efficiency can be highly complex and influenced by a number of factors (*e.g.,* aesthetics, brand, lifestyle, etc.) not captured by the building characteristics available in the RECS sample. These factors can lead to households or building owners choosing a dishwasher efficiency that deviates from the efficiency predicted using only energy use or economic considerations

[76] 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 August 1, 2023).

[77] Thaler, R.H., Sunstein, C.R., and Balz, J.P. (2014). ''Choice Architecture'' in *The Behavioral Foundations of Public Policy,* Eldar Shafir (ed).

[78] 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).

[79] Thaler, R.H., and Sunstein, C.R. (2008). Nudge: Improving Decisions on Health, Wealth, and Happiness. New Haven, CT: Yale University Press.

[80] 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 August 1, 2023).

[81] 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 August 1, 2023).

[82] 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 August 1, 2023).

such as life-cycle cost or payback period.

There is a complex set of behavioral factors, with sometimes opposing effects, affecting the dishwasher 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 suspects the resulting distribution of such a model, if it were possible, would be very scattered with high variability. It is for this reason DOE utilizes a random distribution (after accounting for efficiency market share constraints) to approximate these effects. The methodology is not an assertion of economic irrationality, but instead, it is a methodological approximation of complex consumer behavior. The analysis is neither biased toward high or low energy savings. The methodology does not preferentially assign lower-efficiency dishwashers to households in the no-new-standards case where savings from the rule would be greatest, nor does it preferentially assign lower-efficiency dishwashers to households in the no-new-standards case where savings from the rule would be smallest. Some consumers were assigned the dishwashers that they would have chosen if they had engaged in perfect economic considerations when purchasing the products. Others were assigned less-efficient dishwashers even where a more-efficient product 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 dishwashers 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.

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 and water savings by calculating the energy and water savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy and water price projection for the year in which compliance with the amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy and water use, NPV, and future manufacturer cash flows.[83] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

Total shipments for dishwashers are developed by considering the demand from replacements for units in stock that fail and the demand from first-time owners (''FTOs''), which are the households without existing dishwashers. DOE calculated shipments due to replacements using the retirement function developed for the LCC analysis and historical data from AHAM. DOE estimated the ratio of households that would become FTOs each year based on the historical housing stock data, the estimated shipments of replacement units and the estimated shipment to FTOs. DOE calculated shipments of FTOs by multiplying the forecasted housing stock by the annualized ratio of existing households without a dishwasher that would purchase this product over the period 2027–2056, based on the housing stocks from *AEO2023. See* chapter 9 of the direct final rule TSD for details.

H. National Impact Analysis

The NIA assesses the national energy savings (''NES''), national water savings (NWS), 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.[84] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES, NWS, and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy and water consumption and total installed cost data from the energy and water use and LCC analyses. For the present analysis, DOE projected the energy and water savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of dishwashers sold from 2027 through 2056.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy and water 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 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 and water 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.14 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods follows the

[83] 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.

[84] The NIA accounts for impacts in the United States and U.S. territories.

table. *See* chapter 10 of the direct final rule TSD for further details.

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Table IV.14 Summary of Inputs and Methods for the National Impact Analysis

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2027
Efficiency Trends	No-new-standards case: fixed efficiency distribution with no annual improvements. Standards cases: "Roll up" equipment to meet potential efficiency level.
Annual Energy and Water Consumption per Unit	Annual weighted-average values are a function of energy and water use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data.
Annual Energy and Water Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices; and as a function of the annual water consumption per unit and water prices.
Repair and Maintenance Cost per Unit	Varies with efficiency level and product class.
Energy and Water Price Trends	*AEO2023* projections (to 2050) and extrapolation thereafter. Historical Water CPI extrapolated projection to 2050 and constant value thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2023*.
Discount Rate	3 and 7 percent.
Present Year	2024

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1. Product Efficiency Trends

A key component of the NIA is the trend in 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 efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard. DOE assumed that the shipment-weighted efficiency would not increase annually for the dishwasher product classes.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2027). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged. More details can be found in chapter 10 of the direct final rule TSD.

2. National Energy and Water Savings

The national energy and water savings analysis involves a comparison of national energy consumption of the considered products between each potential standards case (''TSL'') and the case with no new or amended energy conservation standards. DOE calculated the national energy and water consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy and water consumption (also by vintage). DOE calculated annual NES and NWS based on the difference in national energy and water consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2023*. Cumulative energy and water savings are the sum of the NES and NWS 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.

As discussed in section V.B.4 of this document, DOE has concluded that the standards adopted in this direct final rule will not lessen the utility or performance of the dishwashers under consideration in this rulemaking. Specifically, the amended standards adopted in this direct final rule require the use of the test procedure at appendix C2, which includes a minimum cleaning performance threshold to determine if a dishwasher ''completely washes a normally soiled load of dishes,'' so as to better represent consumer use of the product. Dishwashers that comply with the amended standards will provide consumer-acceptable level of cleaning performance and the rated energy and water consumption will be representative of consumer-acceptable cleaning performance. In the NES and NWS analysis, therefore, DOE assumed that the adopted standards would not result in a direct rebound effect purportedly arising from consumers resorting to handwashing, increased pre-rinsing, or other consumer behaviors that increase the energy and water consumption of dishwashing as a

result of reduced dishwasher cleaning performance. Use of the new test appendix C2 test procedure may instead improve dishwasher cleaning performance because dishwashers will meet a minimum cleaning performance index, thereby reducing consumer handwashing, pre-rinsing, and other less efficient behaviors. DOE has nevertheless taken a conservative approach and assumed no *reduction* in handwashing or other inefficient behavior (*e.g.,* running a ''heavy'' cycle) as a result of this rulemaking.

However, in the NES and NWS analysis, DOE did account for the possible increase in energy and water use from handwashing dishes for households that would not purchase a new dishwasher purportedly due to the higher purchase costs under the amended standards. DOE adopted a conservative approach to these situations when households opt not to purchase a new dishwasher since there are alternatives to handwashing dishes: some households may keep their dishwasher longer than they might otherwise (*i.e.,* extending the lifetime by repairing their unit); may use disposable plates and utensils; or may purchase a second-hand unit. Furthermore, for those households that still would forgo a new dishwasher, DOE did not account for the additional time or value of time required for handwashing.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [85] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the direct final rule TSD.

For this direct final rule, DOE considered comments it had received in response to the May 2023 NOPR regarding national energy and water savings, including potential rebound effects.

The CA IOUs stated DOE is underestimating the water and energy savings from dishwasher use compared to hand washing, noting DOE estimates that hand washing consumes 140 percent more energy and 200 percent more water than a dishwasher, based on two European studies from 2005–2006 and an article from the U.S. Geological Survey. The CA IOUs reviewed these data sources and identified limitations in their applicability or determined they were outdated in their estimates of energy and water used for handwashing dishes because the studies suggest cultural differences may dictate handwashing practices and the international studies may not accurately represent practices of American consumers. Additionally, the CA IOUs noted that the USGS article does not cite specific references and that the underlying data that the USGS uses significantly overestimates the dishwashers' water consumption. (CA IOUs, No. 50 at pp. 2–3) The CA IOUs recommend incorporating a more extensive data set with more countries to mitigate bias when applying international studies and that DOE should reduce a dishwasher's low-end water consumption to align with current regulations and market information. (*Id.* at pp. 3–4)

Regarding hand washing water consumption, DOE used the weighted average dishwasher water consumption in the no-new-standards case and assumed that hand washing would consume 200 percent of the water used in machine washing for the same load based on literature review data. A 2005 study conducted at Bonn University in Germany found that, on average, hand washing used 67 percent more energy and more than 450 percent more water than machine washing.[86] A United Kingdom (UK) study in 2006 quantified the energy and water consumption of washing by hand as a function of place settings.[87] The study demonstrated that, on average, washing eight place settings by hand used approximately 210 percent more energy and 250 percent more water than washing by machine. The U.S. Geological Service (USGS) provided estimates for water consumption from dishwashers as compared to water consumption from doing dishes by hand.[88] The USGS reported that dishwashers typically use between 6 and 16 gallons per cycle, and that dishwashing by hand uses between 9 and 27 gallons per cycle. Using these sources, DOE estimated that hand washing consumed 200 percent of the water used in machine washing.

Excluding minimum or maximum values, as the CA IOUs suggest, would result in a less accurate representation of the actual water consumption patterns exhibited by dishwashers as well as by households' hand washing. Further, DOE notes that the majority of studies cited by the CA IOUs occur in laboratory settings or span brief time periods (from a couple of hours to two weeks), so may not be representative of typical householder behaviors. Additionally, the sole field-metered study (Richter, 2011) found that relative to machine washing, handwashing used 200 percent more water,[89] which is consistent with the current DOE estimates for energy and water use with hand washing.

AHAM and Whirlpool commented that energy conservation standards beyond EL 1 will cause rebound consumer behavior, such as running the dishwasher more than once to reach the desired cleanliness, re-rinsing dishes before placing them in the dishwasher, or handwashing, all of which undercut projected energy and water savings. (AHAM, No. 51 at pp. 5–6; Whirlpool, No. 45 at p. 5) AHAM stated that consumers are already hesitant to use their dishwashers for reasons not yet known and DOE should not adopt energy conservation standards—which because of the anti-backsliding rule cannot be undone if the results are as AHAM predicts—that could make it less likely consumers will purchase or use their efficient dishwashers. (AHAM, No.

[85] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/forecasts/aeo/index.cfm* (last accessed Oct. 19, 2023).

[86] Stamminger, R., R. Badura, G. Broil, S. Dorr, and A. Elschenbroich. A European Comparison of Cleaning Dishes by Hand. 2003. *Proceedings of EEDAL conference.* University of Bonn: Germany. (Last accessed February, 8, 2024.) *https://silo.tips/download/a-european-comparison-of-cleaning-dishes-by-hand.*

[87] Market Transformation Programme–Briefing Note. *BNW16: A comparison of washing up by hand with a domestic dishwasher.* February 13, 2006. Market Transformation Programme, United Kingdom.

[88] U.S. Geological Service (USGS). How Much Water Do You Use at Home? (Last accessed January 18, 2024.) *https://water.usgs.gov/edu/activity-percapita.php.*

[89] Richter, Christian Paul, 2011. Use of dishwashers: observation of consumer habits in the domestic environment. (Last accessed January 23, 2024.) *https://pubag.nal.usda.gov/catalog/547534.*

51 at pp. 5–6) Whirlpool commented that negative rebound effects, such as consumer compensatory behavior, would reduce much of the expected gains from amended standards. (Whirlpool, No. 45 at pp. 3, 5) Whirlpool further stated that DOE needs to perform a detailed analysis of these possible rebound effects, and include this analysis in this rulemaking docket, make the analysis available to stakeholders for review, and DOE should account for this in their determination in selecting an appropriate EL. (Whirlpool, No. 45 at p. 5) Competitive Enterprise Institute (''CEI *et al.*'') [90] asserted [91] that the proposed rulemaking violates EPCA's mandate that DOE cannot set an efficiency standard that compromises appliance quality or fails to save consumers a significant amount of energy and/or water. (CEI *et al.,* No. 48 at pp. 1–2) CEI *et al.* also asserted that the proposed rule saves so little energy and water that it fails any interpretation of this provision. CEI *et al.* commented that the proposed rule would save consumers $17 over the life of a standard-size dishwasher, which works out to $1.12 per year, but the savings are undercut if the proposed rule increases the need to hand wash dishes instead of running them in the dishwasher or to run the load twice. (CEI *et al.,* No. 48 at p. 5) CEI *et al.* stated that the insignificant direct energy savings for consumers cannot be salvaged by adding in the agency's claims of environmental and public health benefits, including climate benefits. CEI *et al.* further asserted that the inclusion of ''the need to confront the global climate crisis'' as a factor in determining the significance of the energy savings is not appropriate and cannot rescue the proposed rule from significance. (*Id.*)

AWE encouraged DOE to carefully consider product performance in setting standards. (AWE, No. 44 at p. 6) AWE stated that there are many examples of high-performing products that are also water-efficient and noted that products must meet standards for both parameters to earn EPA's WaterSense label. (*Id.*) AWE commented that poor product performance can potentially undercut water and energy savings if it leads to a backlash of public opinion or contributes to the ''hacking'' of products. (*Id.*) Accordingly, AWE recommended DOE consider comments about product performance from manufacturers and other stakeholders. (*Id.*)

Sub-Zero Group, Inc. (''Sub-Zero'') asserted [92] that these design changes will cause consumers to compensate for performance degradation by pre-rinsing dishes or using wash cycle options that consume more energy. (Sub-Zero, No. 47 at pp. 1–2)

DOE has considered the evidence and arguments put forward by these commenters, reviewed available literature, and has concluded that the adopted standards are not likely to cause the types of consumer behavior suggested by commenters, such as increased handwashing, prewashing, and changes in dishwasher use. In a 2020 rulemaking, DOE considered similar comments and determined that a ''short-cycle'' product class for dishwashers was warranted. In part, DOE based that determination on its view that existing standards failed to account for pre-washing or consumers washing the same load multiple times. DOE determined that a short-cycle ''could'' prevent handwashing or re-washing. 85 FR 68723. DOE recognizes that the conclusion reached here is a departure from that in the 2020 rule. For the reasons that follow, DOE no longer agrees with the 2020 Rule's assumption that diminished performance resulting from standards will result, in handwashing and rewashing. Whatever effect prior standards may have had on handwashing, pre-washing, and re-washing, DOE concludes that the standards adopted here are unlikely to have such an effect. Furthermore, as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement in which the signatories corroborate this conclusion stating that dishwashers can provide cleaning performance at levels consistent with those on the market today when they meet the recommended standard levels.[93]

DOE disagrees with the comments asserting that the standards adopted here will decrease dishwasher performance, thereby inducing consumers to increase pre-washing, handwashing, or changes to dishwasher use. As an initial matter, the academic literature does not support the assertion that dishwasher efficiency is correlated with consumer dishwashing behavior.[94] [95] [96] More importantly, as discussed in section IV.B of this document, DOE has determined that the technology options likely to be used to meet the standards would not have a significant adverse impact on the utility of the product to subgroups of consumers. Furthermore, as discussed in section V.B.4 of this document, DOE has determined that the adopted standards *cannot* compromise the utility that consumers expect from dishwashers because the test procedure at appendix C2 requires that a test cycle achieve a minimum cleaning performance threshold to determine if a dishwasher, when tested according to the DOE test procedure, completely washes a normally soiled load of dishes. Accordingly, the test procedure ensures that any dishwasher tested for certification will only have a valid energy and water representation if such dishwashers also meet or exceed a minimum level of cleaning performance. Thus, even if a diminishment in performance could lead to increased pre-washing or handwashing, there is no evidence to believe that the standards adopted here will result in any diminishment in performance. Therefore, DOE does not expect any rebound effect due to a theoretical compromised cleaning performance in the standards case. Additionally, DOE assumes that the consumer's pre-clean behavior would not change in the standards case compared to the no-new standards case due to the cleaning performance issue, and therefore, has no impact on the savings estimates.

By contrast, DOE *does* recognize that a small portion of consumers possibly might forgo the purchase of a new dishwasher due to the increased purchase price, may use disposable plates and utensils, keep their current dishwasher longer than they otherwise would and handwash their dishes.

[90] The CEI *et al.* includes comments of the Competitive Enterprise Institute, AMAC Action, America First Policy Institute, American Consumer Institute, Americans for Prosperity, Caesar Rodney Institute, Center of the American Experiment, Consumers' Research, Energy & Environment Legal Institute, Foundation Supporting Climate Science, Free Enterprise Project, Heartland Institute, Heritage Foundation, Independent Women's Forum, Independent Women's Voice, Institute for Energy Research, John Locke Foundation, Project 21, Rio Grande Foundation, and Roughrider Policy Center.

[91] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0048.*

[92] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0047.*

[93] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0059.*

[94] Richter, Christian Paul, 2011. Use of dishwashers: observation of consumer habits in the domestic environment. (Last accessed January 23, 2024.) *https://pubag.nal.usda.gov/catalog/547534.*

[95] Stamminger, et al., 2017. A European Comparison of Cleaning Dishes by Hand. (Last accessed January 23, 2024.) *https://silo.tips/download/a-european-comparison-of-cleaning-dishes-by-hand.*

[96] Lotta Theresa Florianne Schencking and Rainer Stamminger, 2022. What science knows about our daily dishwashing routine. (last accessed January 23, 2024.) *www.degruyter.com/document/doi/10.1515/tsd-2022-2423/html?lang=en.*

Accordingly, DOE's national impact analysis accounts for consumer behaviors, such as handwashing, due to the price elasticity considered in the standards case.

Regarding EPA's WaterSense label, DOE notes that dishwashers are not products eligible for EPA's WaterSense label; additionally, WaterSense is a voluntary program, similar to EPA's ENERGY STAR Program, which includes voluntary energy and water use standards for dishwashers.

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 and water costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed dishwashers price trends based on historical PPI data. DOE applied the same trends to project prices for each product class at each considered efficiency level. By 2056, which is the end date of the projection period, the average dishwasher price is projected to drop 29.2 percent relative to 2020. DOE's projection of product prices is described in appendix 10C of the direct final rule TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for dishwashers. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a constant price scenario; and (2) a high price decline scenario based on the combined PPI series of ''all other miscellaneous household appliances'' and ''primary products of major household appliance manufacturing'' between the years of 1988–2008, which shows a faster price decline than the full time series between the years of 1988–2022. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the direct final rule TSD.

The energy cost savings are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference case from *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 direct final rule TSD.

The water cost savings are calculated using the estimated water savings in each year and the projected water and wastewater prices. To estimate water and wastewater prices in future years, DOE multiplied the weighted average marginal national water and wastewater prices by the weighted average of water price projections of both public and private water and wastewater sources. For the public water and wastewater sources, the water price projection was developed as a linear regression based on historical 1986–2022 water and sewerage maintenance CPI data to forecast prices through 2050. For years after 2050, DOE adopted a flat price trend based on average price from 2046 through 2050. For the private well marginal water cost, the cost is only related to the additional pumping energy use; therefore, DOE used the projection of annual national average residential electricity price changes in the Reference case from AEO2023. The Reference case has an end year of 2050. The 2046–2050 average was used for all years after 2050. For septic tank users, the marginal wastewater costs were considered as zero and no price trends were required.

DOE forecasted an initial drop in dishwasher shipments in response to an increase in purchase price attributable to potential standards-related efficiency increases. For the selected TSL (TSL3) and the max-tech TSL (TSL5), a 0.03 percent and a 2.29 percent of the shipments drop were projected during the 30-year analysis period compared to the No-New-Standards case, respectively. DOE assumed that those consumers who forgo buying a dishwasher because of the higher purchase price would then wash their dishes by hand, and DOE estimated the energy and water use of washing dishes by hand (*see* chapter 10 of the direct final rule TSD for details). As discussed in section V.B.4 of this document, DOE has determined that the adopted standards are achievable without impacting consumer utility. Therefore, DOE does not expect consumers to behave differently in handwashing and pre-rinsing dishes among the considered efficiency levels.

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.[97] 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.

ASAP et al. commented that DOE's analysis shows that the consumer benefits, even at the more conservative discount rate, outweigh the maximum costs to manufacturers by over seven times. (ASAP, No. 46 at p. 1)

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) well-water-using households. The analysis used subsets of the *RECS 2020* sample composed of

[97] U.S. Office of Management and Budget. Circular A–4: Regulatory Analysis. Available at *www.whitehouse.gov/omb/information-for-agencies/circulars* (last accessed April 10, 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 March 11, 2024).

households that meet the criteria for the considered 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 direct final rule TSD describes the consumer subgroup analysis.

1. Low-Income Households

The identification of low-income households depends on family size and income level. Low-income households are significantly more likely to be renters or to live in subsidized housing units, compared to households that are not low-income. In these cases, the landlord purchases the equipment and may pay the energy bill as well.

For this direct final rule analysis, DOE used *RECS* data to divide low-income households into three sub-subgroups: (1) renters who pay the energy bill, (2) renters who do not pay the energy bill, and (3) homeowners.[98] For large appliance such as dishwashers, renters are unlikely to be purchasers. Instead, the landlord would bear the cost, and some or none of the cost could get passed on to the renter. Renters who pay the energy bill would receive the energy cost savings from higher-efficiency appliances. This disaggregation allows DOE to determine whether low-income households are disproportionately affected by an amended energy conservation standard in a more accurate manner.

Table IV.15 shows the distribution of low-income household dishwasher users with respect to whether they rent or own and whether they pay the energy bill.

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Table IV.15 Characterization of Low-Income Households in the Sample for Dishwashers

Type of Household*	Percentage of Low-Income Sample	Impact of Higher Efficiency on Energy and Water Bills	Impact of First Cost
Renters – Pay for Energy Bill**	48%	Full/Partial savings	None
Renters – Do Not Pay for Energy Bill**	6%	None	None
Owners	46%	Full/Partial savings†	Full

* *RECS* lists three categories: (1) Owned or being bought by someone in your household (classified as "Owners" in this table); (2) Rented (classified as "Renters" in this table); (3) Occupied without payment of rent (also classified as "Renters" in this table). Renters include occupants in subsidized housing including public housing, subsidized housing in private properties, and other households that do not pay rent. *RECS* does not distinguish homes in subsidized or public housing.

** *RECS* lists four categories for each of the fuels used by a household: (1) Household is responsible for paying for all used in this home; (2) All used in this home is included in the rent or condo fee; (3) Some is paid by the household, some is included in the rent or condo fee; and 4) Paid for some other way. "Do Not Pay for Energy Bill" includes only category (2). Partial energy bill savings would occur in cases of category (3).

*** It is assumed that incremental costs usually are not included in rent increases, but some portion of the incremental cost could be passed on in the rent over time.

† It is assumed that in the cases where buildings share electricity bills, owners would receive only partial benefit from savings.

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In response to the May 2023 NOPR, Samsung stated its appreciation for DOE's analysis of the proposed standards levels on low-income households. Samsung commented that DOE's analysis shows that it is unlikely that renters purchase large appliances like dishwashers. Samsung noted that landlords typically bear the cost while renters directly benefit from higher-efficiency appliances through reduced energy costs. Samsung commented that considering the small percentage of low-income consumers in DOE's analysis experiencing a net LCC cost at TSL 3 (2 percent for standard-size dishwashers and 0 percent for compact-size dishwashers) and the positive average LCC impact, TSL 3 offers equitable outcomes for different consumer groups. Samsung added that the simple payback periods indicate that the initial investment in more efficient dishwashers can be recouped within a short timeframe. (Samsung, No. 52 at p. 3)

DOE agrees that TSL 3 provides equitable outcomes for different consumer groups.

AHAM commented that it commissioned Bellomy Research to conduct a study focusing on low-income households. (AHAM, No. 51 at p. 4)

[98] The energy bill includes fuel types of electricity, natural gas, or propane consumed by a household.

AHAM commented that this research does not constitute a full marketplace analysis, but does provide additional information on the effects of higher appliance prices on low-income households and is helpful in understanding the real-world impact DOE's proposed standards may have. (*Id.*) AHAM stated 75 percent of U.S. households own a dishwasher and that fewer than 40 percent of households with gross incomes of under $40,000 own a dishwasher and that costs are the primary consideration when considering a dishwasher purchase. AHAM noted that dishwashers may be seen as discretionary because handwashing is an option, and that this means that a significant portion of lower income populations are spending more than other consumers on their water and electricity bills due to handwashing. (*Id.* at p. 3) AHAM asserted that amended standards beyond EL 1 are unnecessary given these successes and unjustified under EPCA given the limited opportunity for energy savings and the disproportionate impacts amended standards will have on low-income consumers, noting that most standard-size dishwashers are certified to ENERGY STAR V. 6.0 (*i.e.,* EL 1). (*Id.* at pp. 1–2) AHAM commented that standards beyond EL 1 are likely to disproportionately, negatively impact low-income consumers and drive negative, unintended consumer behaviors that negate predicted savings. (AHAM, No. 51 at pp. 2–3) AHAM urged DOE to exercise restraint and consider energy conservation standards for dishwashers that do not exceed EL 1, as outlined in the January 2022 Preliminary TSD, and investigate other approaches to achieve additional energy and water savings without creating this undue burden on low-income and underserved communities. (*Id.* at p. 5)

DOE welcomes the opportunity to review the Bellomy report, but has not received a copy of the Bellomy research; nor is the report available online. DOE notes that, while unable to review the specific survey instrument and resulting dataset, this summary of AHAM survey findings implies that the framing does not reflect the context of a revised minimum energy conservation standard. Specifically, these are impacts AHAM is claiming would occur based on the full cost of a new dishwasher and are not specifically relevant to the potential increased incremental cost of purchasing a new dishwasher in a standards case (which is substantially less than the full cost of a dishwasher). Additionally, based on DOE's estimates, the installed price of EL1 is the same as EL2 which is the selected level for the standard size dishwashers. Therefore, all consumers, including low-income consumers, would not experience additional incremental cost at EL2 compared to EL1. Moreover, DOE's low-income LCC subgroup analysis uses inputs specific to low-income consumers to estimate the impact of adopted standards. The results indicate that only two percent of the low-income consumers would experience a net cost. DOE further notes, that AHAM is a party to the Joint Agreement and is supportive of the recommended standard adopted in this direct final rule.

2. Senior-Only Households

DOE defined a senior-only household as having all occupants with ages of 65 years or greater. Using *RECS 2020* data, senior-only households represent 23 percent of households that have and use dishwashers.

3. Well-Water Households

AHAM recommended that DOE consider well-water users as a distinct sub-group given the differences in costs between publicly supplied and household-supplied water and the resulting impacts on operating cost savings. (AHAM at No. 51 at p. 16) AHAM further commented that at EL2 for standard dishwashers, using the appropriate cash costs for water and sewer, the mean LCC savings decline by nearly 50 percent. AHAM asserted that this makes it glaringly obvious that this group is worth direct consideration and DOE must acknowledge that its proposed standards create significant burden for them and adjust its proposal accordingly. (*Id.*)

DOE defined a well-water household as (1) having a dedicated water well for that particular household; (2) distributing water to no other households from its water well; and (3) having no connection to a public water utility water line. *RECS 2020* data do not indicate whether a household uses a water well, so DOE used AHS data to estimate the percentage of households with dedicated water wells. Additionally, DOE used AHS data from 1970 to 2021 to develop a projection by U.S. Census Region. Use of septic tanks for wastewater effluent was also noted.

Given that the majority of wells and septic tanks are located in rural areas, the probability of a household owning a well and/or a septic tank is significantly higher in rural areas than in urban areas. Therefore, DOE distinguishes rural and urban households when assigning the water and wastewater sources to the RECS household samples, and using different probability distributions of owning a well and a septic tank by Census Region based on AHS 2021 data.

Chapter 11 of the direct final rule TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of dishwashers 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 and domestic manufacturing employment between a no-new-standards case and the various standards cases. To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other

DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the direct final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the dishwasher manufacturing industry based on the market and technology assessment, and publicly available information. This included a top-down analysis of dishwasher manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (''SG&A''); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the dishwasher manufacturing industry, including company filings of form 10–K from the SEC,[99] corporate annual reports, the U.S. Census Bureau's *Annual Survey of Manufactures* (''*ASM*''),[100] and reports from Dun & Bradstreet.[101]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of dishwashers in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. 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 chapter 12 of the direct final rule TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new 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, 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 2056. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of dishwashers, DOE used a real discount rate of 8.5 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the 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 and shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews conducted in support of the May 2023 NOPR. 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 direct 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.

For this analysis, DOE used a combination of design and efficiency engineering approaches. This approach involved physically disassembling commercially available products, reviewing publicly available cost information, and modeling equipment cost. From this information, DOE estimated the MPCs for a range of products currently available on the market. DOE then considered the incremental steps manufacturers may take to reach higher efficiency levels. In its modeling, DOE started with the baseline MPC and added the expected design options at each higher efficiency level to estimate incremental MPCs. For a complete description of the MPCs, *see* section IV.C of this document and chapter 5 of the direct final rule TSD.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2024 (the base year) to 2056 (the end year of the analysis period). *See* section IV.G of this document and chapter 9 of the direct 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 dishwasher designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency

[99] U.S. Securities and Exchange Commission, Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. Available at *www.sec.gov/edgar/search/* (last accessed Nov. 18, 2023).

[100] U.S. Census Bureau, Annual Survey of Manufactures. ''Statistics for Industry Groups and Industries in the U.S (2021).'' Available at *www.census.gov/programs-surveys/asm/data/tables.html* (last accessed Nov. 14, 2023).

[101] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com* (last accessed Nov. 14, 2023).

level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) capital conversion costs; and (2) product conversion costs. Capital conversion costs are investments in property, plant, and 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.

DOE relied on information derived from manufacturer interviews, the engineering analysis, and product teardowns to evaluate the level of capital and product conversion costs manufacturers would likely incur at the various efficiency levels. During interviews, DOE asked manufacturers to estimate the capital conversion costs to meet the various efficiency levels. This feedback was compared to findings from the engineering analysis to determine the validity of investment levels. DOE also asked manufacturers to estimate the redesign effort, engineering resources, and marketing expenses required at various efficiency levels to quantify the product conversion costs. Based on manufacturer feedback, DOE also estimated ''re-flooring'' costs associated with replacing obsolete display models in big-box stores (*e.g.,* Lowe's, Home Depot, Best Buy) due to more stringent standards. Some manufacturers stated that with a new product release, big-box retailers discount outdated display models and manufacturers share any losses associated with discounting the retail price. The estimated re-flooring costs for each efficiency level were incorporated into the product conversion cost estimates, as DOE modeled the re-flooring costs as a marketing expense. DOE also estimated industry costs associated with the new appendix C2, as finalized in the January 2023 TP Final Rule. Among other updates, appendix C2 contains provisions for a minimum cleaning index threshold to validate the regulated test cycle. *See* 88 FR 3234, 3271–3272, 3281. At each efficiency level, DOE included the costs associated with re-rating compliant basic models in accordance with appendix C2. 88 FR 3234, 3271–3272. Based on manufacturer feedback, DOE expects some manufacturers may incur one-time costs if their current testing laboratories are at capacity and additional laboratory space or test stations are required. DOE includes these one-time costs in its capital conversion cost estimates. DOE interviewed manufacturers representing approximately 90 percent of industry shipments. In interviews, multiple manufacturers provided estimates for the expected upfront capital costs associated with implementing the cleaning performance test (*e.g.,* additional test stations, equipment upgrades for existing stations, building modifications, *etc.*). DOE considered these costs in its conversion cost estimates, as appendix C2 would go into effect at the time when compliance is required for any amended energy conservation standards.

Manufacturer feedback on conversion costs was aggregated to protect confidential information. DOE then scaled up the aggregate capital and product conversion cost feedback from interviews to estimate total industry conversion costs. DOE adjusted the conversion cost estimates developed in support of the May 2023 NOPR to 2022$ for this direct final rule.

In general, DOE assumes all conversion-related investments occur between the year of publication of the direct final rule and the year by which manufacturers must comply with the new or amended standard. The conversion cost figures at each analyzed TSL can be found in section V.B.2.a of this document. For additional information on the estimated capital and product conversion costs, *see* chapter 12 of the direct final rule TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. 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 tiered 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 production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. Based on publicly available financial information, as well as comments from manufacturer interviews, DOE assumed average gross margin percentages of 19.4 percent for both standard-size and compact-size product classes.[102] Manufacturers noted that this scenario represents the upper bound of the dishwasher industry's profitability in the standards case because manufacturers can fully pass on additional product costs due to standards to consumers.

The tiered scenario starts with the three tiers of manufacturer markups wherein higher efficiency products have a higher markup than low efficiency products. In the no-new-standards case, the three tiers are baseline efficiency, ENERGY STAR V. 6.0, and ENERGY STAR V. 7.0 (which corresponds to the ENERGY STAR Most Efficient qualification criteria in 2022). In the standards case, DOE models the breadth of manufacturers' portfolio of products shrinking and amended standards, resulting in higher-tier products moving to lower tiers. As a result, higher efficiency products that previously commanded the ENERGY STAR V. 6.0 and 2022 ENERGY STAR Most Efficient manufacturer markups are assigned the baseline and ENERGY STAR V. 6.0 manufacturer markups, respectively. This scenario reflects a concern about product commoditization at higher efficiency levels as efficiency differentiators are eliminated.

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

For this direct final rule, DOE considered comments it had received regarding its MIA presented in the May 2023 NOPR. The approach used for this direct final rule is largely the same approach DOE had used for the May 2023 NOPR analysis.

In response to the May 2023 NOPR, AHAM stated that it cannot comment on the accuracy of DOE's approach for including how manufacturers might or might not recover potential investments (*i.e.,* the accuracy of DOE's manufacturer markup scenarios), but that AHAM supports DOE's intent in the

[102] The gross margin percentage of 19.4 percent is based on a manufacturer markup of 1.24.

microwave ovens SNOPR (''August 2022 SNOPR'') energy conservation standards rulemaking to include those costs and investments in the actual costs of products and retail prices. AHAM urged DOE to apply the same conceptual approach used in the August 2022 SNOPR in this dishwashers rulemaking and all future rulemakings. (AHAM, No. 51 at p. 21)

DOE models different standards-case manufacturer markup scenarios to represent the uncertainty surrounding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards (*see* section IV.J.2.d of this document). The analyzed manufacturer markup scenarios vary by rulemaking as they are meant to reflect the potential range of financial impacts for manufacturers of the specific covered product or equipment. For the May 2023 NOPR, DOE applied the preservation of gross margin percentage scenario to reflect an upper bound of industry profitability and a tiered scenario to reflect a lower bound of industry profitability under amended standards. 88 FR 32514, 32549. DOE used these scenarios to reflect the range of realistic profitability impacts under more stringent standards. Under the preservation of gross margin scenario for dishwashers, the incremental increase in MPCs—at most analyzed efficiency levels—result in an increase in per-unit dollar profit per unit sold. In interviews, multiple manufacturers emphasized the competitive nature of the dishwasher industry and the importance of offering dishwashers at competitive price points. Some manufacturers expressed concern that they would not be able to maintain their current manufacturer markups under more stringent standards. Thus, while manufacturers will likely continue to differentiate products and garner higher manufacturer markups based on consumer features (*e.g.,* Wi-Fi enablement), brand recognition, energy efficiency, *etc.,* DOE believes that maintaining the industry average manufacturer markup, reflected by the preservation of gross margin percentage scenario, represents an appropriate upper bound to industry pricing and profitability. Applying the approach used in the microwave ovens rulemaking (*i.e.,* a conversion-cost-recovery scenario) would reflect a scenario where dishwasher manufacturers would increase manufacturer markups under more stringent standards. Based on information gathered during confidential interviews in support of the May 2023 NOPR and a review of financial statements of six companies engaged in manufacturing dishwashers, DOE does not expect that the dishwasher industry would increase manufacturer markups under an amended standard. Furthermore, in response to the May 2023 NOPR, DOE did not receive any public or confidential data indicating that industry would increase manufacturer markups in response to more stringent standards. Therefore, DOE maintained the two manufacturer markup scenarios from the May 2023 NOPR for this direct final rule analysis. DOE further notes, that AHAM is a party to the Joint Agreement and is supportive of the recommended standard adopted in this direct final rule.

AHAM urged DOE to consider cumulative regulatory burden in its analysis and decision-making process. AHAM commented that the nature of EPCA's requirements that energy conservation standards be reviewed every 6 years creates a never-ending cycle in which manufacturers need to constantly update or redesign products to meet new or amended standards. AHAM commented the cumulative regulatory burden is significant for home appliance manufacturers when redesigning products and product lines for consumer clothes dryers, residential clothes washers, conventional cooking products, dishwashers, refrigerators, refrigerator-freezers, and freezers, miscellaneous refrigeration products, room air conditioners, and microwave ovens. AHAM noted that many of these rulemakings are expected to have compliance dates in 2027. (AHAM, No. 51 at p. 22) AHAM asserted that engineers would need to spend all their time redesigning products to meet more stringent energy efficiency standards, pulling resources from other development efforts and business priorities. AHAM asserted that DOE's analysis does not adequately account for cumulative regulatory burden. AHAM encouraged DOE to acknowledge the cumulative regulatory burden its proposals place on industry and suggested that DOE could reduce cumulative regulatory burden by prioritizing rulemakings, spacing out the timing of final rules, allowing more lead time by delaying the publication of final rules in the **Federal Register** after they have been issued, and reducing the stringency of standards such that fewer products would require redesign. (*Id.* at p. 23) AHAM encouraged DOE to incorporate combined conversion costs across rulemakings into the GRIM in order to quantify cumulative regulatory burden, and to consider the potential impact of these rulemakings more broadly on the economy and on inflation. AHAM stated that the appropriate approach is to include costs of manufacturers needing to comply with multiple regulations across product categories as well as the same product, noting that the manufacturer impact analysis does not adequately analyze this issue. (*Id.* at p. 24)

Whirlpool commented that manufacturers are facing unprecedented cumulative regulatory burden due to DOE energy conservation standards, citing more stringent proposed standards and tight compliance deadlines for over 10 DOE-covered product categories manufactured and sold by Whirlpool. Whirlpool commented that many of these proposed rules, if finalized, would have compliance dates in 2026 or 2027. Whirlpool, a member of AHAM and party to the Joint Agreement, asserted that manufacturers may be forced to make difficult tradeoffs and potentially stop many projects over a multi-year period focused on cost reduction, quality improvement, or innovation; and instead focus their resources mainly on compliance to these amended standards. (Whirlpool, No. 45, at p. 4)

DOE analyzes cumulative regulatory burden in accordance with section 13(g) of appendix A. As such, DOE details the rulemakings and expected conversion expenses of Federal energy conservation standards that could impact dishwasher original equipment manufacturers (''OEMs'') that take effect approximately 3 years before or after the 2027 compliance date in section V.B.2.e of this document. As shown in Table V.11, DOE considers the rulemakings referenced by AHAM and Whirlpool as potentially contributing to cumulative regulatory burden in this direct final rule analysis. DOE notes that regulations that are not finalized are not considered in its cumulative regulatory burden analysis, 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 in Table V.11 that have proposed rules, which have tentative compliance dates, compliance levels, and compliance cost estimates. Regarding AHAM's suggestion about spacing out the timing of final rules for home appliance rulemakings, DOE has statutory requirements under EPCA on the timing of rulemakings. For dishwashers, refrigerators, refrigerator-freezers, and freezers, consumer cooking products, residential clothes washers, consumer clothes dryers, and room air conditioners, amended standards apply

to covered products manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(m)(4)(A)(i)) For miscellaneous refrigeration products, amended standards apply 5 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(l)(2)) However, DOE notes that the multi-product Joint Agreement recommends alternative compliance dates for refrigerators, refrigerator-freezers, and freezers; consumer conventional cooking products; residential clothes washers; consumer clothes dryers; and miscellaneous refrigeration products.[103] As a result, the expected compliance dates for many of the home appliance rulemakings AHAM listed will be spread out compared to the estimated compliance dates resulting from EPCA-specified lead times. *See* section V.B.2.e of this document for additional details. Regarding AHAM's recommendation of combining the product conversion costs from multiple regulations into the GRIM, DOE is concerned that combined results would make it more difficult to discern the direct impact of the amended standard on covered manufacturers. If DOE were to combine the conversion costs from multiple regulations, as requested, it would be appropriate to match the combined conversion costs with the combined revenues of the regulated products. Conversion costs would be spread over a larger revenue base and potentially result in less severe INPV impacts when evaluated on a percent change basis.

In response to the May 2023 NOPR, Gazoobie commented [104] that taking 91 percent of dishwashers off the market will lead to severe supply chain issues and product shortages for minimal savings. Gazoobie asserted that supply chain issues could lead to higher prices than estimated, and facing shortages, more consumers will repair their older and less efficient dishwashers. Further, Gazoobie stated that DOE should not adopt a rule that takes so many units out of existence and recommended DOE adopt a lower TSL that removes less than 33 percent of the units or finalize a no new standards rule to see if supply chain issues becomes resolved over the next few years. (Gazoobie, No. 38 at p. 1)

DOE does not expect that the levels adopted in this direct final rule, which align with the levels proposed in the May 2023 NOPR, would lead to product shortages. Manufacturers would have until 2027 (3 years after the direct final rule is published in the **Federal Register**) to redesign models to meet the amended standards and/or increase production capacity of compliant models. DOE notes that most OEMs already offer models that meet the adopted TSL. Of the 19 OEMs offering standard-size products, 16 OEMs offer products that meet the efficiency level required. All the compact-size dishwasher OEMs currently offer products that meet the adopted TSL. Furthermore, as discussed in section V.B.2.c of this document, manufacturers did not express any concerns about production capacity at the levels adopted in this direct final rule. Additionally, DOE notes that TSL 3 corresponds to the levels recommended in the Joint Agreement, which includes signatories representing dishwasher manufacturers.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions in emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the AEO, including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A of the direct final rule TSD. The analysis presented in this notice uses projections from *AEO2023.* Power sector emissions of CH_4 and N_2O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the EPA.[105]

The on-site operation of dishwashers involves combustion of fossil fuels and results in emissions of CO_2, NO_X, SO_2, CH_4, and N_2O where these products are used. Site emissions of these gases were estimated using Emission Factors for Greenhouse Gas Inventories and, for NO_X and SO_2, emissions intensity factors from an EPA publication.[106]

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in chapter 15 of the direct final rule TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the AEO, which incorporates the projected impacts of existing air quality regulations on emissions. *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.[107]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (''DC''). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of

[103] The Joint Agreement is available in the docket at *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0055.*

[104] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0038.*

[105] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed Oct. 24, 2023).

[106] 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 Oct. 24, 2023).

[107] 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 Oct. 24, 2023).

January 1, 2015.[108] 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 SO_2 emissions limits under CSAPR, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants.[109] 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 SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation will generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *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 cases, 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 CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this final rule.

To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the SC of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive orders, and DOE would reach the same conclusion presented in this rulemaking in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the IWG on the Social Cost of Greenhouse Gases or by another means, did not affect the rule ultimately adopted by DOE.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions using SC–GHG values that were based on the interim values presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990,* published in February 2021 by the IWG (''February 2021 SC–GHG TSD''). The SC–GHG is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, the SC–GHG includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHG therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHG is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O and CH_4 emissions.

As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agreed that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates are developed reflecting the latest, peer-reviewed science. *See* 87 FR 78382, 78406–78408 for discussion of the development and details of the IWG SC–GHG estimates.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for

[108] CSAPR requires States to address annual emissions of SO_2 and NO_X, precursors to the formation of fine particulate matter (''$PM_{2.5}$'') pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (''NAAQS''). CSAPR also requires certain states to address the ozone season (May-September) emissions of NO_X, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five states in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule), and EPA issued the CSAPR Update for the 2008 ozone NAAQS. 81 FR 74504 (Oct. 26, 2016).

[109] 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 SO_2 emissions.

intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[110] Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO2 estimates. However, as discussed in the February 2021 SC–GHG TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this direct final rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

For this direct final rule, DOE considered comments it had received regarding its approach for monetizing greenhouse gas emissions in the May 2023 NOPR. The approach used for this direct final rule is largely the same approach DOE had used for the May 2023 NOPR analysis.

In response to the May 2023 NOPR, AHAM objected to DOE using the social cost of carbon and other monetization of emissions reductions benefits in its analysis of the factors EPCA requires DOE to balance in determining the appropriate standard, which AHAM noted are constantly subject to change. (AHAM, No. 51 at p. 25) AHAM commented that DOE's decision making should not rely on the monetization of reductions benefits and that it is unclear to what extent DOE's deliberation to propose a TSL rely on the monetization of emissions reduction. (AHAM, No. 51 at pp. 24–25) AHAM stated that based on the extent to which DOE calculates climate and health benefits, it appears that DOE is prepared to rely upon the estimated monetary value of emissions reductions should the consumer NPV and energy savings not appear to justify a more stringent level. (*Id.* at p. 15) 'AHAM commented that DOE has responded to these objections by indicating that environmental and public health benefits associated with the more efficient use of energy, including those connected to global climate change, are important to take into account when considering the need for national energy conservation, which is one of the factors EPCA requires DOE to evaluate in determining whether a potential energy conservation standard is economically justified, and AHAM does not object to DOE considering the benefits. AHAM stated that it objects to DOE relying upon those benefits to justify a rule given the uncertain and ever-evolving nature of the estimates. AHAM commented that DOE can consider ''other factors'' under EPCA, but that does not override the key criteria EPCA requires DOE to balance and DOE must consider EPCA's factors together and achieve a balance of impacts and benefits—a balance DOE has failed to strike in this rule. (*Id.* at p. 25) AHAM stated that while it may be acceptable for DOE to continue its current practice of examining the social cost of carbon and monetization of other emissions reductions benefits as informational so long as the underlying interagency analysis is transparent and vigorous, the monetization analysis should not impact the TSLs DOE selects as a new or amended standard. (*Id.*)

Zycher commented that the IWG analysis is deeply flawed because it asserts the benefits of GHG reductions on a global scale. (Zycher, No. 49 at pp. 22–23) Zycher stated that the IWG analysis incorporates explicitly in its benefit/cost calculation the purported global climate benefits from reductions in U.S. GHG emissions, presumably on the grounds that the assumed GHG externality is global in nature. Zycher asserted that this argument is fundamentally flawed, in substantial part because the global climate effect of all U.S. GHG emissions is very close to zero. (Zycher, No. 49 at p. 25)

In response to the AHAM and Zycher's comments regarding global impacts, DOE reiterates its view that the environmental and public health benefits associated with more efficient use of energy, including those connected to global climate change, are important to take into account when considering the need for national energy conservation. (*See* 42 U.S.C. 6295(o)(2)(B)(i)(IV)) Additionally, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents.

In addition, Executive Order 13563, which was re-affirmed on January 21, 2021, stated that each agency must, among other things: ''select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).'' For these reasons, DOE considers the monetized value of emissions reductions in its evaluation of potential standard levels. While the benefits associated with reduction of GHG emissions inform DOE's evaluation of potential standards, DOE would reach the same conclusion regarding the economic justification of standards presented in this direct final rule without considering the social cost of greenhouse gases. As described in detail in section V.C.1 of this document, at the adopted TSL for dishwashers, the average LCC savings for both product classes are positive, a shipment-weighted 3 percent of consumers would experience a net cost, and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate.

Zycher commented [111] that the interim IWG estimates are deeply flawed for a number of reasons, they: (1) distort the actual economic growth predictions produced by the integrated assessment models, (2) base predictions of future climate phenomena on climate models that cannot predict the past or the present, (3) incorporate co-benefits in the form of a reduction in the emissions of other criteria and hazardous air pollutants already regulated under different provisions of the Clean Air Act, (4) incorporate the

[110] Interagency Working Group on Social Cost of Greenhouse Gases. 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government. Available at *www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/.*

[111] Available at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0049.*

asserted benefits of GHG reductions on a global basis, and (5) employ discount rates that are inconsistent and inappropriate. (Zycher, No. 49 at pp. 22–23)

Zycher commented that the artificially low discount rate applied to the asserted climate benefits is incorrect analytically and that the opportunity cost of capital is the appropriate discount rate to be applied to the evaluation of the asserted climate benefits of the proposed rule because the allocation of resources to such endeavors imposes an opportunity cost in the form of forgone investments. (Zycher, No. 49 at p. 26) Zycher commented that the IWG estimates are flawed for a number of reasons, including the use of inconsistent and inappropriate discount rates: (1) ''consumption rate of interest'' is an incorrect conceptual discount rate for a proposed rule analysis because the use of resources for purposes of reductions in GHG emissions is obviously an investment, the opportunity cost of which is the marginal social return to investment and (2) incorrect identification of future generations' preferences. (Zycher, No. 49 at pp. 27–28) In regards to the consumption rate of interest, Zycher stated that the use of a low consumption rate of interest for the evaluation of climate benefits only would introduce an important bias in the allocation of resources among government policies and between government and private-sector resource use. Zycher commented that the private sector would not choose to use an artificially-low discount rate for the evaluation of alternative resource uses. (*Id.* at p. 27) In regards to intergenerational preferences, Zycher asserted that future generations prefer to receive a bequest of a bequest of an aggregate capital stock. (*Id.*)

The reasons for using a consumption discount rate rather than a rate based on the social rate of return on capital (estimated to be 7 percent under OMB's 2003 Circular A–4 guidance) is because the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE reiterates that while OMB Circular A–4, as published in 2003, recommends using 3-percent and 7-percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits . . . at a lower rate than for intragenerational analysis.''

CEI *et al.* commented that there are numerous flaws with IWG 2021 that overstate the calculated benefits of avoided emissions. CEI commented that IWG used improperly low discount rates, relied on climate models that have consistently overstated actual warming and on baseline emission scenarios that assume an increasingly coal-centric global energy system through 2100 and beyond, while downplaying the capacity for adaptation to mitigate climate impacts. CEI *et al.* also stated that the inclusion of claimed climate benefits out nearly 300 years into the future and the use of global rather than national benefits, are also skewed toward inflating the end result. (CEI *et al.,* No. 48 at p. 6) 'CEI *et al.* commented that missing from the agency's analysis is any estimate of the temperature increase it believes will be averted as a result of the proposed rule, which CEI *et al.* estimated to be 0.0003 °C by 2050. (CEI *et al.,* No. 48 at p. 7)

DOE notes that the IWG's SC–GHG estimates were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. A number of criticisms raised in the comments were addressed by the IWG in its February 2021 SC–GHG TSD. DOE agrees that the interim SC–GHG values applied for this direct final rule are conservative estimates. In the February 2021 SC–GHG TSD, the IWG stated that the models used to produce the interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. For these same impacts, the science underlying their ''damage functions'' lags behind the most recent research. In the judgment of the IWG, these and other limitations suggest that the range of four interim SC–GHG estimates presented in the TSD likely underestimate societal damages from GHG emissions.

DOE is aware that in December 2023, EPA issued a new set of SC–GHG estimates in connection with a final rulemaking under the Clean Air Act.[112] As DOE had used the IWG interim values in proposing this rule and is currently reviewing the updated 2023 SC–GHG values, for this direct final rule, DOE used these updated 2023 SC–GHG values to conduct a sensitivity analysis of the value of GHG emissions reductions associated with alternative standards for dishwashers (*see* section IV.L.1.c of this document). DOE notes that because EPA's estimates are considerably higher than the IWG's interim SC–GHG values applied for this direct final rule, an analysis that uses the EPA's estimates results in significantly greater climate-related benefits. However, such results would not affect DOE's decision in this direct final rule. As stated elsewhere in this document, DOE would reach the same conclusion regarding the economic justification of the standards presented in this direct final rule without considering the IWG's interim SC–GHG values. For the same reason, if DOE were to use EPA's higher SC–GHG estimates, they would not change DOE's conclusion that the standards are economically justified.

In response to Zycher's comment regarding the use of consumption discount rate instead of a rate based on the social rate of return on capital, DOE notes that DOE's analysis is only using the medium discount rate presented in the IWG TSD as a central estimate of climate benefits. The IWG TSD has provided significant details to justify the choice of discount rate and DOE agrees with the assessment. However, there is no suggested justification to use a 7 percent discount rate in the IWG TSD. DOE also wants to note that while DOE could have used other discount rate values (5 percent or 2.5 percent), as presented by the IWG, it would have only resulted in lower or higher climate benefit, but would not have changed DOE's conclusion of economic justification. As stated in section V.C.1 of this document, DOE concludes that the rule is economically justified even without factoring in the climate benefit.

DOE's derivations of the SC–CO_2, SC–N_2O, and SC–CH_4 values used for this direct final rule are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon Dioxide

The SC–CO_2 values used for this direct final rule were based on the values developed for the IWG's February 2021 TSD, which are shown in Table IV.16 in five-year increments from 2020 to 2050. The set of annual values

[112] *See www.epa.gov/environmental-economics/scghg.*

that DOE used, which was adapted from estimates published by EPA,[113] is presented in appendix 14A of the direct 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. DOE expects additional climate benefits to accrue for products still operating after 2070, but a lack of available SC–CO_2 estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

Table IV.16. Annual SC-CO_2 Values from 2021 Interagency Update, 2020–2050 (2020$ per Metric Ton CO_2)

Year	Discount Rate and Statistic			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2020	14	51	76	152
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 CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. DOE adjusted the values to 2022$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this direct final rule were based on the values developed for the February 2021 SC–GHG TSD. Table IV.17 shows the updated sets of SC–CH_4 and SC–N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the direct final rule TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

Table IV.17. Annual SC-CH_4 and SC-N_2O Values from 2021 Interagency Update, 2020–2050 (2020$ per Metric Ton)

Year	SC-CH_4				SC-N_2O			
	Discount Rate and Statistic				Discount Rate and Statistic			
	5%	3%	2.5%	3%	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile	Average	Average	Average	95th percentile
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. DOE adjusted the values to 2022$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case.

c. Sensitivity Analysis Using EPA's New SC–GHG Estimates

In December 2023, EPA issued an updated set of SC–GHG estimates (2023 SC–GHG) in connection with a final rulemaking under the Clean Air Act. These estimates incorporate recent research and address recommendations of the National Academies (2017) and comments from a 2023 external peer review of the accompanying technical report.

For this rulemaking, DOE used these updated 2023 SC–GHG values to

[113] *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 Feb. 21, 2023).

conduct a sensitivity analysis of the value of GHG emissions reductions associated with alternative standards for dishwashers. This sensitivity analysis provides an expanded range of potential climate benefits associated with amended standards. The final year of EPA's new 2023 SC–GHG estimates is 2080; therefore, DOE did not monetize the climate benefits of GHG emissions reductions occurring after 2080.

The overall climate benefits are greater when using the higher, updated 2023 SC–GHG estimates, compared to the climate benefits using the older IWG SC–GHG estimates. The results of the sensitivity analysis are presented in appendix 14C of the direct final rule TSD.

2. Monetization of Other Emissions Impacts

For the direct final rule, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using benefit-per-ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[114] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025 and 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040, the values are held constant. 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 SO_2 (*see* appendix 14B of the direct final rule TSD).

DOE also estimated the monetized value of NO_X and SO_2 emissions reductions from site use of natural gas in dishwashers 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.[115] The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.[116] DOE used the same linear interpolation and extrapolation as it did with the values for electricity generation.

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO2023*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO2023* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the direct final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards. 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.[117] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this direct final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[118] ImSET is a special-purpose version of

[114] 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. *www.epa.gov/benmap/estimating-benefit-ton-reducing-directly-emitted-pm25-pm25-precursors-and-ozone-precursors.*

[115] ''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.

[116] ''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.*

[117] *See* U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (''RIMS II'').* 1997. U.S. Government Printing Office: Washington, DC. Available at *apps.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf* (last accessed July 1, 2021).

[118] 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.

the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may overestimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2027–2031), where these uncertainties are reduced. For more details on the employment impact analysis, *see* chapter 16 of the direct final rule TSD.

O. Regulatory Impact Analysis

For any regulatory action that the Administrator of the Office of Information and Regulatory Affairs (''OIRA'') within OMB determines is a significant regulatory action under section 3(f)(1)) of E.O. 12866, section 6(a)(3)(C) of E.O. 12866 requires Federal agencies to provide an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable non-regulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives. 58 FR 51735, 51741. As discussed further in section VII.A of this document, OIRA has determined that this final regulatory action constitutes a ''significant regulatory action'' within the scope of section 3(f)(1) of E.O. 12866. Accordingly, DOE conducted a regulatory impact analysis (''RIA'') for this direct final rule.

As part of the RIA, DOE identifies major alternatives to standards that represent feasible policy options to reduce the energy and water consumption of the covered product. DOE evaluates each alternative in terms of its ability to achieve significant energy and water savings at a reasonable cost and compares the effectiveness of each alternative to the effectiveness of the finalized standard. DOE recognizes that voluntary or other non-regulatory efforts by manufacturers, utilities, and other interested parties can substantially affect energy and water efficiency or reduce energy and water consumption. DOE bases its assessment on the recorded impacts of any such initiatives to date, but also considers information presented by interested parties regarding the impacts current initiatives may have in the future. Further details regarding the RIA are provided in chapter 17 of the direct final rule TSD.

P. Other Comments

As discussed previously, DOE considered relevant comments, data, and information obtained during its own rulemaking process in determining whether the recommended standards from the Joint Agreement are in accordance with 42 U.S.C. 6295(o). And while some of those comments were directed at specific aspects of DOE's analysis of the Joint Agreement under 42 U.S.C. 6295(o), others were more generally applicable to DOE's energy conservation standards rulemaking program as a whole. The ensuing discussion focuses on these general comments concerning energy conservation standards issued under EPCA.

1. Non-Regulatory Approaches

AHAM commented that it incorporated by reference its comments on the January 2022 Preliminary TSD regarding AHAM's position that there is more to be gained from increasing proper dishwasher use and ownership than from increasing energy conservation standards beyond efficiency level (''EL'') 1. (AHAM, No. 51 at p. 7) AHAM stated that the environmental goal for dishwasher cleaning should be to focus on dish cleaning as a process, as continued efficiency improvements for dishwashers themselves have diminishing returns with available technology. AHAM commented that the dishwasher is an important part of that process and increasing ownership and proper use of dishwashers has the potential to drive enormous water and significant energy savings that would dwarf the savings attributable to further amended standards. AHAM commented that in the future, conserving water—rather than energy—will continue to be the defining environmental issue for dishwasher cleaning performance. (*Id.*) AHAM commented that there is a wide range of dish cleaning behavior and from an environmental perspective, the preferred ordering of consumer behaviors is to run a full or partial dishwasher load without pre-rinsing and abstaining from hand-washing dishes altogether, as the latter tends to use far more water than running a dishwasher. (*Id.* at pp. 7–8) AHAM cited the Energy Information Administration's (''EIA's'') 2020 *Residential Energy Consumption Survey* (''*RECS*''), stating that 14 percent of households have and do not use their dishwasher. Additionally, according to RECS, dishwasher presence is lower in renter-occupied homes. AHAM recommended that DOE make an effort to increase educational and awareness initiatives on effective dishwasher use. (*Id.* at p. 8) AHAM cited data from EPA and a study from the University of Michigan by Gabriela Porras *et al.* to reiterate that properly using a dishwasher without pre-rinsing is the most economical approach for energy, water, and time usage, and that handwashing using between 6.9 to 22.8 gallons for eight place settings, respectively. (*Id.* at p. 9) AHAM asserted that by increasing dishwasher usage through educational initiatives promoting dishwasher ownership and proper use, DOE can achieve far greater savings that would show on consumers' utility bills than it can by amending standards. (*Id.* at p. 10)

DOE acknowledges that a percentage of households do not own or own but do not use their dishwashers. DOE also acknowledges that non-regulatory options may exist to promote dishwasher ownership and property use to further push the potential for energy and water savings. However, DOE is required by EPCA to establish or amend standards for a covered product that are designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(g), (m), and (o)(2)(A)) DOE has determined that the energy conservation standards for dishwashers adopted in this direct final rule achieve the maximum improvement in energy efficiency which is technologically feasible and economically justified.

2. Test Procedure Usage Factors

The CA IOUs recommended DOE adjust the current load usage factors to reflect changes in consumer pre-treating habits since 2001, the date of the studies DOE relies on in this rulemaking. (CA IOUs, No. 50 at pp. 5–6) The CA IOUs commented that a nationally representative study by Lawrence Berkeley National Laboratory (''LBNL'') in 2021 (''2021 LBNL Study'') [119] shows

[119] Stratton, H. *et al.,* ''Dishwashers in the Residential Sector: A Survey of Product Characteristics, Usage, and Consumer Preferences,'' Continued

consumers pre-treat their dishes less often (when compared to 2001) before placing them in a dishwasher, and the CA IOUs recommended DOE capture this change by updating the light, medium, and heavy soil level distribution to 48 percent, 38 percent, and 14 percent, respectively. (*Id.*)

DOE notes that it established the load usage factors in the dishwasher test procedure in August 2003 to account for the varying energy and water performance of units that include soil sensors. 68 FR 51887, 51890. In that rulemaking, DOE relied on survey data gathered and analyzed by Arthur D. Little (''ADL'') [120] to characterize the quantity of soils that consumers load into a dishwasher. 68 FR 51887, 51890. Using the soil loads from an earlier version of AHAM DW–1 [121] as a reference point, the ADL report defined a light soil load as half the quantity of a single soiled place setting as defined in AHAM DW–1. A medium soil load was equivalent to two soiled AHAM DW–1 place settings and a heavy soil load was approximately equal to four soiled AHAM DW–1 place settings. With these load size definitions, ADL found that consumers reported that they most frequently washed lightly soiled loads (62 percent of loads), with medium (33 percent) and heavy (5 percent) soil loads making up the remainder. Therefore, DOE used this as the distribution of soil loads for the heavy, medium, and light soil load cycles in the DOE test procedure. 68 FR 51887, 51890. While the ADL report also presented data on the frequency of different types of pre-treatment, it did not correlate pre-treatment itself to different resulting soil loads and thus load usage factors.

More recently, in the January 2023 TP Final Rule, DOE addressed comments from the CA IOUs and Samsung pertaining to whether consumers' pre-rinsing habits, including those surveyed in the 2021 LBNL Study, warranted amendments to the soil loads and corresponding usage factors in the dishwasher test procedure. DOE determined in the January 2023 TP Final Rule that it did not have, nor did commenters submit, any specific information about the types of soils that would be used to reflect pre-rinsing, or lack thereof, or the consumer relevance of such soils. 88 FR 3234, 3246. Accordingly, DOE did not amend the soil load usage factors in the January 2023 TP Final Rule.

DOE also notes that the 2021 LBNL Study focused on consumer priorities with respect to their dishwashers. The requirement for pre-treatment of dishes was identified as the second to last priority of 18 possibilities for the 1201 survey respondents (less important than cutlery tray location). Pre-treatment of dishes reflect consumer habit, rather than dishwasher performance.[122] [123] The 2021 LBNL Study did not address a correlation of pre-treatment of dishes with resulting soil loads on the dishes, which may have changed since the time of the ADL report, so did not provide information with which to evaluate any different load usage factors. Additionally, the LCC employs no load usage factor but relies on the reported number of weekly loads for each household in the RECS 2020 dataset.

3. National Academy of Sciences Report

The National Academies of Sciences, Engineering, and Medicine (''NAS'') periodically appoint a committee to peer review the assumptions, models, and methodologies that DOE uses in setting energy conservation standards for covered products and equipment. The most recent such peer review was conducted in a series of meetings in 2020, and NAS issued the report [124] in 2021 detailing its findings and recommendations on how DOE can improve its analyses and align them with best practices for cost-benefit analysis.

AHAM stated that despite previous requests from AHAM and others, DOE has failed to review and incorporate the recommendations of the NAS report, instead indicating that it will conduct a separate rulemaking process without such a process having been initiated. (AHAM, No. 51 at p. 17) AHAM asserted that DOE seems to be ignoring the recommendations in the NAS Peer Review Report and even conducting analyses that are the opposite of these recommendations. AHAM stated that DOE cannot continue to perpetuate the errors in its analytical approach that have been pointed out by stakeholders and the NAS report, as to do so will lead to arbitrary and capricious rules. (*Id.*)

As discussed, the rulemaking process for establishing new or amended standards for covered products and equipment is specified at appendix A. DOE periodically examines and revises these provisions in separate rulemaking proceedings. The recommendations provided in the 2021 NAS report, which pertain to the processes by which DOE analyzes energy conservation standards, will be considered by DOE in a forthcoming rulemaking process.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for dishwashers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for dishwashers, and the standards levels that DOE is adopting in this direct final rule. Additional details regarding DOE's analyses are contained in the direct final rule TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential 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 dishwasher 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 direct final rule, DOE analyzed the benefits and burdens of five TSLs for dishwashers. DOE developed TSLs that combine efficiency levels for each analyzed dishwasher class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the direct final rule TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for dishwashers. TSL 5 represents the max-tech energy efficiency for both product classes and corresponds to EL 4 for standard-size dishwashers and EL

Energy Technologies Area Publications, May 2021 *https://eta-publications.lbl.gov/sites/default/files/osg_lbnl_report_dishwashers_final_4.pdf.*

[120] ADL survey data are available at *www.regulations.gov/document?D=EERE–2006–TP–0096–0055.*

[121] ''Household Electric Dishwashers.'' AHAM DW–1 was renumbered to AHAM DW–2 when it was updated in 2020. Although not identical to the soil loads in AHAM DW–2–2020, they are substantially similar. This standard provides a uniform method to test and measure cleaning performance of dishwashers, including the soil preparation, soil application, and scoring of test load to calculate cleaning index.

[122] Richter, Christian Paul, 2011. Use of dishwashers: observation of consumer habits in the domestic environment. (Last accessed January 23, 2024.) *https://pubag.nal.usda.gov/catalog/547534.*

[123] Stamminger, et al., 2017. A European Comparison of Cleaning Dishes by Hand. (Last accessed January 23, 2024.) *https://silo.tips/download/a-european-comparison-of-cleaning-dishes-by-hand.*

[124] National Academies of Sciences, Engineering, and Medicine. 2021. *Review of Methods for Setting Building and Equipment Performance Standards.* Available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards* (last accessed Nov. 20, 2023).

2 for compact-size dishwashers. TSL 4 is the TSL that maximizes net benefits at a 3-percent discount rate; this TSL represents the highest efficiency levels providing positive LCC savings, which comprises the gap-fill efficiency level between ENERGY STAR V. 6.0 and ENERGY STAR V. 7.0 (EL 2) for standard-size dishwashers and max-tech efficiency level (EL 2) for compact-size dishwashers. TSL 3 is the Recommended TSL detailed in the Joint Agreement. TSL 3 maximizes net benefits at a 7-percent discount rate; this TSL comprises the gap-fill efficiency level between the ENERGY STAR V. 6.0 level and ENERGY STAR V. 7.0 level (EL 2) for standard-size dishwashers and the ENERGY STAR V. 6.0 level (EL 1) for compact-size dishwashers. TSL 2 comprises the ENERGY STAR V. 6.0 level (EL 1) for standard-size dishwashers and the max-tech efficiency level (EL 2) for compact-size dishwashers. TSL 1 represents EL 1 across both product classes and the ENERGY STAR V. 6.0 level. While representative ELs were included in the TSLs, DOE considered all efficiency levels as part of its analysis and included the efficiency levels with positive LCC savings in the TSLs.[125]

Table V.1 Trial Standard Levels for Dishwashers

TSL	PC 1: Standard-Size Dishwasher			PC 2: Compact-Size Dishwasher		
	Efficiency Level	Estimated Annual Energy Use *(kWh/year)**	Per-Cycle Water Consumption *(gal/cycle)*	Efficiency Level	Estimated Annual Energy Use *(kWh/year)**	Per-Cycle Water Consumption *(gal/cycle)*
1	1	232	3.5	1	174	3.1
2	1	232	3.5	2	124	1.6
3**	2	223	3.3	1	174	3.1
4	2	223	3.3	2	124	1.6
5	4	193	2.4	2	124	1.6

* Based on appendix C2.

** Recommended TSL from the Joint Agreement.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on dishwasher 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. Because the technologies to improve energy efficiency may also reduce water usage (as discussed in IV.C.1.b), annual operating costs include both energy and water consumption. 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 and water use, energy prices, energy and water price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the direct final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.5 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, 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 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.

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[125] Efficiency levels that were analyzed for this final rule are discussed in section IV.C.4 of this document. Results by efficiency level are presented in TSD chapters 8, 10, and 12.

Table V.2 Average LCC and PBP Results for PC 1: Standard-Size Dishwashers

TSL	EL	Average Costs (2022$)				Simple Payback (years)	Average Lifetime (years)
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	Baseline	$470	$45	$625	$1,095	--	15.2
1,2	1	$496	$40	$592	$1,088	4.9	15.2
3,4	2	$496	$39	$576	$1,072	3.9	15.2
5	4	$649	$34	$585	$1,234	15.9	15.2

* Based on the test procedure assumption of 184 cycles per year.
Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The simple PBP is measured relative to the baseline product.

Table V.3 Average LCC Savings Relative to the No-New-Standards Case for PC 1: Standard-Size Dishwashers

TSL	EL	Life-Cycle Cost Savings	
		Average LCC Savings* (2022$)	Percent of Consumers that Experience Net Cost
1,2	1	$5	4%
3,4	2	$17	3%
5	4	($145)	97%

Table V.4 Average LCC and PBP Results for PC 2: Compact-Size Dishwashers

TSL	EL	Average Costs (2022$)				Simple Payback (years)	Average Lifetime (years)
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	Baseline	$508	$33	$491	$999	--	15.2
1,3	1	$508	$31	$460	$968	0.0	15.2
2,4,5	2	$566	$23	$398	$964	5.5	15.2

* Based on the test procedure assumption of 184 cycles per year.
Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The simple PBP is measured relative to the baseline product.

Table V.5 Average LCC Savings Relative to the No-New-Standards Case for PC 2: Compact-Size Dishwashers

TSL	EL	Life-Cycle Cost Savings	
		Average LCC Savings* (2022$)	Percent of Consumers that Experience Net Cost
1,3	1	$32	0%
2,4,5	2	$4	54%

* The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households, senior-only households, and well-water households. Table V.6 and Table V.7 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for standard-size dishwashers. In most cases, the average LCC savings and PBP for low-income households, senior-only households, and well-water households at the considered efficiency levels are not substantially different from the average for all households. The well-users have reduced water operating costs and therefore receive less operating cost savings (and lower LCC savings). The senior subgroup has

slightly lower dishwasher usage frequency compared to the national sample and therefore also experience lower operating cost savings (and lower LCC savings).

Chapter 11 of the direct final rule TSD presents the complete LCC and PBP results for the subgroups.

Table V.6 Comparison of LCC Savings and PBP for Consumer Subgroups and All Households;* PC 1: Standard-Size Dishwashers

	Low-Income Households**	Senior-Only Households†	Well-water Households‡	All Households
	Average LCC Savings* (2022$)			
TSL 1-2	$45	($7)	($18)	$5
TSL 3-4	$21	$13	$12	$17
TSL 5	($29)	($159)	($162)	($145)
	Payback Period (years)			
TSL 1-2	2.0	6.2	7.2	4.9
TSL 3-4	1.6	4.9	5.5	3.9
TSL 5	6.6	19.8	21.4	15.9
	Consumers with Net Benefit (%)			
TSL 1-2	4%	2%	2%	2%
TSL 3-4	81%	87%	86%	87%
TSL 5	45%	2%	2%	3%
	Consumers with Net Cost (%)			
TSL 1-2	2%	5%	5%	4%
TSL 3-4	2%	4%	4%	3%
TSL 5	46%	98%	98%	97%

* The savings represent the average LCC for affected consumers.

** Low-income households represent 5.7 percent of all households for this product class. To perform the cost-benefit analysis, DOE drew 10,000 consumer samples from the low-income sample pool and distinguished the assumption on low-income owners and renters depending on if they were paying the energy bills. More details can be found in Table IV.15. The statistics of the 10,000 low-income consumer samples were shown in the table.

† Senior-only households represent 23.2 percent of all households for this product class.

‡ Well-water households represent 10.5 percent of all households for this product class.

Table V.7 Comparison of LCC Savings and PBP for Consumer Subgroups and All Households;* PC 2: Compact-Size Dishwashers

	Low-Income Households**	Senior-Only Households†	Well water Households‡	All Households
	Average LCC Savings* (2022$)			
TSL 1,3	$39	$26	$23	$32
TSL 2,4,5	$62	($14)	($19)	$4
	Payback Period (years)			
TSL 1,3	0.0	0.0	0.0	0.0
TSL 2,4,5	2.3	6.8	6.9	5.5
	Consumers with Net Benefit (%)			
TSL 1,3	2%	2%	2%	2%
TSL 2,4,5	52%	23%	22%	31%
	Consumers with Net Cost (%)			
TSL 1,3	0%	0%	0%	0%
TSL 2,4,5	26%	62%	63%	54%

* The savings represent the average LCC for affected consumers.

** Low-income households represent 5.7 percent of all households for this product class.

† Senior-only households represent 23.2 percent of all households for this product class.

‡ Well-water households represent 10.5 percent of all households for this product class.

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c. Rebuttable Presumption Payback

As discussed in section III.D.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii)) In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for dishwashers. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.8 presents the rebuttable-presumption payback periods for the considered TSLs for dishwashers. While DOE examined the rebuttable-presumption criterion, it 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.8 Rebuttable-Presumption Payback Periods

Product Class	TSL				
	1	2	3	4	5
	years				
PC 1: Standard-Size	3.7	3.7	3.0	3.0	12.6
PC 2: Compact-Size	0.0	4.6	0.0	4.6	4.6

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of dishwashers. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the direct final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The following tables illustrate the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of dishwashers, as well as the conversion costs that DOE estimates manufacturers of dishwashers would incur at each TSL.

To evaluate the range of cash-flow impacts on the dishwasher industry, DOE modeled two scenarios using different assumptions that correspond to the range of anticipated market responses to amended energy conservation standards: (1) a preservation of gross margin percentage scenario; (2) a tiered scenario, as discussed in section IV.J.2.d of this document. The preservation of gross margin percentage applies a ''gross margin percentage'' of 19.4 percent for both standard-size and compact-size product classes.[126] This scenario assumes that a manufacturer's per-unit dollar profit would increase as MPCs increase in the standards cases and represents the upper-bound to industry profitability under potential amended energy conservation standards.

The tiered scenario starts with the three different product manufacturer markups in the no-new-standards case (baseline, ENERGY STAR V. 6.0, and ENERGY STAR V. 7.0[127]). This scenario reflects a concern about product commoditization at higher efficiency levels as efficiency differentiators are eliminated and manufacturer markups are reduced. The tiered scenario results in the lower (or larger in magnitude) bound to impacts of potential amended standards on industry.

Each of the modeled scenarios results in a unique set of cash flows and corresponding INPV for each TSL. INPV is the sum of the discounted cash flows to the industry from the direct final rule publication year through the end of the analysis period (2024–2056). The ''change in INPV'' results refer to the difference in industry value between the no-new-standards case and standards case at each TSL. To provide perspective on the short-run cash flow impact, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

Conversion costs are one-time investments for manufacturers to bring their manufacturing facilities and product designs into compliance with potential amended standards. As described in section IV.J.2.c of this document, conversion cost investments occur between the year of publication of the direct final rule and the year by which manufacturers must comply with the new standard. The conversion costs can have a significant impact on the short-term cash flow of the industry and generally result in lower free cash flow in the period between the publication of the direct final rule and the compliance date of potential amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

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[126] The gross margin percentage of 19.4 percent is based on a manufacturer markup of 1.24.

[127] ENERGY STAR V. 7.0 corresponds to the 2022 ENERGY STAR Most Efficient qualification criteria.

Table V.9 Manufacturer Impact Analysis Results for Dishwashers

	Unit	No-new-standards case	TSL 1	TSL 2	TSL 3**	TSL 4	TSL 5
INPV	*2022$ Million*	735.8	680.8 to 729.7	673.7 to 723.3	587.1 to 639.1	579.9 to 632.8	334.4 to 414.6
Change in INPV*	*%*	-	(7.5) to (0.8)	(8.4) to (1.7)	(20.2) to (13.1)	(21.2) to (14.0)	(54.5) to (43.7)
Free Cash Flow (2026)*	*2022$ Million*	52.3	47.9	43.8	1.5	(2.5)	(236.4)
Change in Free Cash Flow (2026)*	*%*	-	(8.5)	(16.3)	(97.1)	(104.8)	(552.0)
Product Conversion Costs	*2022$ Million*	-	11.8	17.0	58.3	63.5	249.0
Capital Conversion Costs	*2022$ Million*	-	1.0	6.0	68.7	73.7	432.0
Total Conversion Costs	*2022$ Million*	-	12.7	23.0	126.9	137.2	681.0

* Parentheses indicates negative (-) values.
**The Recommended TSL

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At TSL 1, the standard represents EL 1 across both standard-size and compact-size dishwashers and the ENERGY STAR V. 6.0 level. The change in INPV is expected to range from −7.5 percent to −0.8 percent. At this level, free cash flow is estimated to decrease by 8.5 percent compared to the no-new-standards case value of $52.3 million in the year 2026, the year before the standards year. Currently, approximately 93 percent of domestic dishwasher shipments meet the efficiencies required at TSL 1. For standard-size dishwashers, which account for approximately 98 percent of annual shipments, 93 percent of shipments meet the efficiencies required. For compact-size dishwashers, which account for the remaining 2 percent of annual shipments, 87 percent of shipments meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers include implementing electronic controls, soil sensing, multiple spray arms, improved water filters, a separate drain pump, and tub insulation. The design options DOE analyzed for compact-size dishwashers include implementing improved controls. At this level, capital conversion costs are minimal since the majority of products already meet the efficiency levels required. As with all the analyzed TSLs, conversion costs incorporate industry testing costs as manufacturers implement the cleaning performance test and re-rate all their existing, compliant models in accordance with the new appendix C2. 10 CFR appendix C2 to subpart of part 430. DOE expects industry to incur some re-flooring costs associated with standard-size dishwashers as manufacturers redesign baseline products to meet the efficiency levels required by TSL 1. In interviews, manufacturers stated that there are not re-flooring costs associated with compact-size dishwashers as those are typically not on display at big-box stores. DOE estimates capital conversion costs of $1.0 million and product conversion costs of $11.8 million. Conversion costs total $12.7 million.

Under the tiered manufacturer markup scenario, which is discussed in IV.J.2.d of this document, the key driver of impacts to INPV at TSL 1 is the result of margin compression for both standard-size and compact-size dishwashers as manufacturers forfeit premiums and cut into margins as they try to maintain a competitively priced baseline product. Although only a small fraction of products (approximately 7 percent of shipments) would need to be redesigned at this level, the margin compression under the tiered scenario has a disproportionately large impact on INPV, since most of the market (approximately 84 percent of standard-size and compact-size dishwasher shipments) is at EL 1 (*i.e.,* the ENERGY STAR V. 6.0 level) in the no-new-standards case.

At TSL 2, the standard represents the ENERGY STAR V. 6.0 level (EL 1) for standard-size dishwashers and the max-tech efficiency level (EL 2) for compact-size dishwashers. The change in INPV is expected to range from –8.4 percent to –1.7 percent. At this level, free cash flow is estimated to decrease by 16.3 percent compared to the no-new-standards case value of $52.3 million in the year 2026, the year before the standards year. Currently, approximately 92 percent of domestic dishwasher shipments meet the efficiencies required at TSL 2. As with TSL 1, 93 percent of standard-size dishwasher shipments meet the efficiencies required. For compact-size dishwashers, 21 percent of shipments currently meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers are the same as at TSL 1. The design options analyzed for compact-size dishwashers include implementing the design options at TSL 1 as well as permanent magnet motors, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. The increase in

conversion costs from the prior TSL is entirely due to the higher efficiency level required for compact-size dishwashers. At TSL 2, all manufacturers of compact-size countertop dishwashers with four or more place settings and in-sink dishwashers with less than four place settings would need to redesign their products to meet the efficiencies required, as DOE is not aware of any currently available products in these two configurations that meet TSL 2. Manufacturer feedback and the engineering analysis indicate that redesigning these compact-size configurations to meet max-tech would require significant investment, both in terms of engineering resources and new tooling, relative to the size of the domestic compact-size dishwasher market. While it is technologically feasible for compact-size countertop dishwashers with four or more place settings and in-sink dishwashers with less than four place settings to meet TSL 2 (max-tech for compact-size dishwashers), manufacturers would need to determine whether the shipments volumes justify the level of investment required. DOE expects industry to incur the same re-flooring costs as at TSL 1. DOE estimates capital conversion costs of $6.0 million and product conversion costs of $17.0 million. Conversion costs total $23.0 million.

Under the tiered manufacturer markup scenario, the key driver of impacts to INPV at TSL 2 is the result of margin compression for both standard-size and compact-size dishwashers as manufacturers forfeit premiums and cut into margins in an attempt to maintain a competitively priced baseline product. In particular, because TSL 2 sets standards for compact-size dishwashers at max-tech, manufacturers lose their premium markup for high-efficiency compact-size products, contributing to a reduction in future revenues and INPV.

At TSL 3, the standard represents the gap-fill efficiency level between the ENERGY STAR V. 6.0 level and ENERGY STAR V. 7.0 level (EL 2) for standard-size dishwashers and the ENERGY STAR V. 6.0 level (EL 1) for compact-size dishwashers. The change in INPV is expected to range from −20.2 percent to −13.1 percent. At this level, free cash flow is estimated to decrease by 97.1 percent compared to the no-new-standards case value of $52.3 million in the year 2026, the year before the standards year. Currently, approximately 11 percent of domestic dishwasher shipments meet the efficiencies required at TSL 3. For standard-size dishwashers, 9 percent of current shipments meet the efficiencies required. As with TSL 1, 87 percent of compact-size dishwasher shipments meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers include implementing the design options at TSL 1 and TSL 2 as well as improved control strategies, which could necessitate product redesign to more closely control water temperature, water fill volumes, *etc.* The design options analyzed for compact-size dishwashers are the same as for TSL 1. The increase in conversion costs from the prior TSL is entirely due to the increased efficiency level required for standard-size dishwashers. In interviews, some manufacturers stated that meeting TSL 3 would involve physical improvements to system elements to enable tighter controls and better design tolerances, while maintaining certain product attributes valued by their consumers. Although manufacturers tended to agree that the key product attributes (in addition to energy use, water use, and cleaning performance) included drying performance, cycle duration, and noise levels, manufacturers identified different priorities and internal targets for those metrics. One manufacturer noted that maintaining the same normal cycle time across its dishwasher portfolio was a key design parameter, as this feature was part of its value proposition and marketing material. A different manufacturer emphasized that maintaining drying performance, particularly of plastic dishware, was a key concern for its consumer base. These manufacturers stated that they may need new tooling and some modifications to the assembly line to improve the system elements to meet TSL 3 efficiencies while maintaining these product attributes. DOE notes that since the May 2023 NOPR published, more manufacturers now offer standard-size dishwasher models that meet the TSL 3 efficiencies. DOE believes that the recent introduction of more high-efficiency standard-size dishwashers is largely in response to ENERGY STAR V. 7.0, which went into effect in July 2023. Of the 19 OEMs offering standard-size products, 16 OEMs offer products that meet the efficiency level required. DOE expects industry to incur more re-flooring costs compared to TSL 2. DOE estimates capital conversion costs of $68.7 million and product conversion costs of $58.3 million. Conversion costs total $126.9 million.

TSL 3 brings standards for standard-size dishwashers above ENERGY STAR V. 6.0 levels. Under the tiered scenario, the fraction of products that are eligible for any additional premium markups above baseline is further reduced as manufacturers sacrifice margins while seeking to maintain a low-price-point baseline model.

At TSL 4, the standard represents the highest efficiency levels providing positive LCC savings, which comprise the gap-fill efficiency level between the ENERGY STAR V. 6.0 level and ENERGY STAR V. 7.0 level (EL 2) for standard-size dishwashers and max-tech efficiency level (EL 2) for compact-size dishwashers. The change in INPV is expected to range from −21.2 percent to −14.0 percent. At this level, free cash flow is estimated to decrease by 104.8 percent compared to the no-new-standards case value of $52.3 million in the year 2026, the year before the standards year. Currently, approximately 10 percent of domestic dishwasher shipments meet the efficiencies required at TSL 4. As with TSL 3, 9 percent of standard-size dishwasher shipments meet the efficiencies required. As with TSL 2, 21 percent of compact-size dishwasher shipments meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers are the same as at TSL 3. The design options analyzed for compact-size dishwashers are the same as at TSL 2 and include implementing permanent magnet motors, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. The increase in conversion costs from the prior TSL is entirely due to the increased efficiency level required for compact-size dishwashers. As discussed previously, all manufacturers of compact-size countertop dishwashers with four or more place settings and in-sink dishwashers with less than four place settings would need to redesign their products to meet the efficiencies required, as DOE is not aware of any currently available products in these two configurations that meet TSL 4 (max-tech for compact-size dishwashers). Manufacturer feedback and the engineering analysis indicate that redesigning these compact-size dishwasher configurations to meet TSL 4 would require significant investment, both in terms of engineering resources and new tooling, relative to the size of the domestic compact-size dishwasher market. DOE expects industry to incur similar re-flooring costs compared to TSL 3. DOE estimates capital conversion costs of $73.7 million and product conversion costs of $63.5 million. Conversion costs total $137.2 million.

At TSL 4, the large conversion costs result in free cash flow dropping below zero in the years before the standards year. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

Under the tiered manufacturer markup scenario, one of the key drivers of impacts to INPV at TSL 4 is the result of margin compression for both standard-size and compact-size dishwashers as manufacturers forfeit premiums and cut into margins in an attempt to maintain a competitively priced baseline product. In particular, because TSL 4 sets standards for compact-size dishwashers at max-tech, manufacturers lose their premium markups for high-efficiency compact-size products, contributing to a reduction in future revenues and INPV.

At TSL 5, the standard represents the max-tech energy efficiency for both product classes and corresponds to EL 4 for standard-size dishwashers and EL 2 for compact-size dishwashers. The change in INPV is expected to range from −54.5 percent to −43.7 percent. At this level, free cash flow is estimated to decrease by 552.0 percent compared to the no-new-standards case value of $52.3 million in the year 2026, the year before the standards year. Currently, less than 1 percent of domestic dishwasher shipments meet the efficiencies required at TSL 5. For standard-size dishwashers, DOE estimates that no shipments currently meet the efficiencies required. As with TSL 4, 21 percent of compact-size dishwasher shipments meet the efficiencies required.

The design options DOE analyzed for standard-size dishwashers include design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters and control strategies, separate drain pump, tub insulation, hydraulic system optimization, water diverter assembly, temperature sensor, 3-phase variable-speed motor, and flow meter) and include additional design options such as condensation drying, including use of a stainless steel tub; flow-through heating implemented as an in-sump integrated heater; and control strategies. The design options analyzed for compact-size dishwashers are the same as at TSL 4. The increase in conversion costs from the prior TSL is entirely due to the increased efficiencies required for standard-size dishwashers.

All manufacturers interviewed stated that meeting max-tech would necessitate significant platform redesign in order to meet the required efficiencies and maintain the product attributes that consumers desire. Manufacturers noted that investments in new tooling, equipment, and production line modifications may be necessary to implement a range of design options. Specifically, manufacturers discussed tooling for additional spray arms, new sump tooling, new stamping equipment, door opening systems, improved filtration systems, and new dish racks. Manufacturers would likely need to convert all existing plastic tub designs to stainless steel tubs, which would necessitate expanding existing stainless steel tub production capacity and retiring plastic injection equipment used for plastic tubs. None of the manufacturers interviewed, which together account for approximately 90 percent of dishwasher shipments, currently offer standard-size dishwashers that meet max-tech. Therefore, most manufacturers expressed technical uncertainty about the extent of the design changes and production line updates that would be needed to meet max-tech and satisfy their consumer base. Some manufacturers suggested they would explore new water purification technology systems for water reuse. Other manufacturers noted that meeting max-tech may necessitate new tub architectures, which would require significant capital investment. These manufacturers noted that if new technology was necessary (*e.g.,* water purification systems) or if new tub architectures were required, the 3-year compliance period may be insufficient to complete the necessary product redesign and production facility updates. DOE estimates capital conversion costs of $432.0 million and product conversion costs of $249.0 million. Conversion costs total $681.0 million.

At TSL 5, the large conversion costs result in free cash flow dropping below zero in the years before the standards year. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

TSL 5 sets the standard for all products as high as technologically feasible, leaving manufacturers no ability to differentiate products by efficiency under the tiered manufacturer markup scenario. Thus, all margins collapse to the baseline levels.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the dishwasher industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. For this direct final rule, DOE used the most up-to-date information available. DOE calculated these values using statistical data from the U.S. Census Bureau's 2021 *ASM,*[128] BLS employee compensation data,[129] results of the engineering analysis, and manufacturer interviews.

Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on the *ASM* inputs: Production Workers Annual Wages, Production Workers Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE also relied on the BLS employee compensation data to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

The total of production employees is then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered product. This value is derived from manufacturer interviews, product database analysis, and publicly available information. DOE estimates that approximately 78 percent of standard-size dishwashers are produced domestically. DOE estimates that no compact-size dishwashers are produced domestically. Therefore, overall, DOE estimates that approximately 76 percent of all covered dishwashers sold in the

[128] U.S. Census Bureau, *Annual Survey of Manufactures.* ''Summary Statistics for Industry Groups and Industries in the U.S. (2021).'' Available at *www.census.gov/data/tables/time-series/econ/asm/2018-2021-asm.html* (last accessed Nov. 22, 2023).

[129] U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation.* September 12, 2023. Available at *www.bls.gov/news.release/archives/ecec_12152023.pdf* (last accessed Nov. 22, 2023).

United States are produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling products within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this direct final rule.

Non-production workers account for the remainder of the direct employment figure. The number of non-production employees covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, management, *etc.* Using the number of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-new-standards case and standards cases.

Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 3,950 domestic production and non-production workers for standard-size dishwashers in 2027 (the analyzed compliance year). To evaluate the range of cash-flow impacts on the dishwasher industry, DOE modeled two scenarios using different assumptions that correspond to the range of anticipated market responses to amended energy conservation standards: (1) a preservation of gross margin percentage scenario; (2) a tiered scenario, as discussed in section IV.J.2.d of this document. The preservation of gross margin percentage applies a ''gross margin percentage'' of 19.4 percent for both standard-size and compact-size product classes. This scenario assumes that a manufacturer's per-unit dollar profit would increase as MPCs increase in the standards cases and represents the upper-bound to industry profitability under potential amended energy conservation standards.

The tiered scenario starts with the three different product manufacturer markups in the no-new-standards case (baseline, ENERGY STAR V. 6.0, and ENERGY STAR V. 7.0). This scenario reflects a concern about product commoditization at higher efficiency levels as efficiency differentiators are eliminated and manufacturer markups are reduced. The tiered scenario results in the lower (or larger in magnitude) bound to impacts of potential amended standards on industry.

Each of the modeled scenarios results in a unique set of cash flows and corresponding INPV for each TSL. INPV is the sum of the discounted cash flows to the industry from the direct final rule publication year through the end of the analysis period (2024–2056). The ''change in INPV'' results refer to the difference in industry value between the no-new-standards case and standards case at each TSL. To provide perspective on the short-run cash flow impact, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

Conversion costs are one-time investments for manufacturers to bring their manufacturing facilities and product designs into compliance with potential amended standards. As described in section IV.J.2.c of this document, conversion cost investments occur between the year of publication of the direct final rule and the year by which manufacturers must comply with the new standard. The conversion costs can have a significant impact on the short-term cash flow of the industry and generally result in lower free cash flow in the period between the publication of the direct final rule and the compliance date of potential amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

Table V.9 Table V.10 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the standard-size dishwasher industry. As previously noted, DOE did not identify any U.S. manufacturing facilities producing compact-size dishwashers for the domestic market, and therefore does not present a range of direct employment impacts. The following discussion provides a qualitative evaluation of the range of potential impacts presented in Table V.10.

Table V.10 Direct Employment Impacts for Domestic Standard-Size Dishwasher Manufacturers in 2027*

	No-Standards Case	Trial Standard Level				
		1	2	3**	4	5
Direct Employment in 2027 (Production Workers + Non-Production Workers)	3,950	3,981	3,981	3,981	3,981	4,583
Potential Changes in Direct Employment in 2027*	-	(3,526) to 31	(3,526) to 31	(3,526) to 31	(3,526) to 31	(3,526) to 633

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

**The Recommended TSL

The direct employment impacts shown in Table V.10 represent the potential domestic employment changes that could result following the compliance date for the standard-size dishwashers in this direct final rule. The upper bound estimate corresponds to an increase in the number of domestic workers that would result from amended energy conservation standards if manufacturers continue to produce the same scope of covered products within the United States after compliance takes effect.

To establish a conservative lower bound, DOE assumes all manufacturers would shift production to foreign countries or would shift to importing finished goods (versus manufacturing in-house). As previously discussed, the majority of standard-size dishwashers sold in the United States are manufactured in domestic production facilities. However, many major dishwasher OEMs with U.S. production facilities also have dishwasher manufacturing facilities located outside the United States. At lower TSLs (*i.e.,* TSL 1 through TSL 4), DOE believes the likelihood of changes in production location due to amended standards are low due to the relatively minor production line updates required. However, at max-tech, both the complexity and cost of production facility updates increases, manufacturers are more likely to revisit their production location decisions. At max-tech, one manufacturer representing a large portion of the U.S. dishwasher market noted concerns about the level of investment and indicated the potential need to relocate production lines in order to remain competitive. In this direct final rule, DOE is adopting the Recommended TSL, which corresponds to the standard levels recommended in the Joint Agreement. As discussed in section III.B of this document, the Joint Agreement included a trade association, AHAM, which represents 16 manufacturers of dishwashers. Additionally, DOE notes that the Recommended TSL for standard-size dishwashers corresponds to EL 2 and not max-tech (EL 4). Furthermore, most OEMs already make standard-size dishwashers that meet the Recommended TSL. Of the 19 OEMs offering standard-size products, 16 OEMs already offer standard-size dishwashers that meet the efficiency level required. Since most manufacturers with U.S. production facilities already manufacture standard-size dishwashers that meet the adopted levels, DOE expects that the likelihood of shifts in domestic production locations as a direct result of amended standards for standard-size dishwashers are relatively low.

Additional detail on the analysis of direct employment can be found in chapter 12 of the direct 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 direct final rule TSD.

c. Impacts on Manufacturing Capacity

As discussed in section V.B.2.a of this document, implementing the different design options analyzed for this direct final rule would require varying levels of resources and investment. At higher efficiency levels, manufacturers noted that balancing more stringent energy and water use requirements while maintaining the product attributes their consumers value becomes increasingly challenging. All manufacturers interviewed, which together account for approximately 90 percent of industry shipments, noted that meeting the standard-size dishwasher max-tech efficiencies and cleaning performance requirement while maintaining internal targets for other product attributes such as drying performance, cycle duration, and noise levels, would require significant investment. None of the manufacturers interviewed currently offer a max-tech product, and they expressed technical uncertainty about the exact technologies and production line changes that would be needed to meet both the required efficiencies and the manufacturers' internal design standards. In interviews, several manufacturers expressed concerns that the 3-year time period between the announcement of the direct final rule and the compliance date of the amended energy conservation standard might be insufficient to design, test, and manufacture the necessary number of products to meet consumer demand. These manufacturers noted that the 3-year time period would be particularly problematic if the standard necessitated completely new tub architectures. However, because TSL 3 (*i.e.,* the Recommended TSL, which corresponds to the levels recommended in the Joint Agreement) would not require max-tech efficiencies, DOE does not expect manufacturers to face long-term capacity constraints due to the standard levels detailed in this direct final rule.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop industry cash-flow estimates may not capture the differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs substantially from the industry average could be affected disproportionately. DOE investigated small businesses as a manufacturer subgroup that could be disproportionally impacted by energy conservation standards and could merit additional analysis. DOE did not identify any other adversely impacted manufacturer subgroups for this rulemaking based on the results of the industry characterization.

DOE analyzes the impacts on small businesses in a separate analysis for the standards proposed in the NOPR published elsewhere in this issue of the **Federal Register** and in chapter 12 of the direct final rule TSD. In summary, the Small Business Administration (''SBA'') defines a ''small business'' as having 1,500 employees or less for NAICS 335220, ''Major Household Appliance Manufacturing.'' [130] Based on this classification, DOE did not identify any domestic OEM that qualifies as a small business. For a discussion of the impacts on the small business manufacturer subgroup, *see* chapter 12 of the direct final rule TSD.

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 examines Federal, product-specific regulations that could affect dishwasher manufacturers that take effect approximately 3 years before or after the 2027 compliance date (2024 to 2030). This information is presented in Table V.11.

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[130] U.S. Small Business Administration. ''Table of Small Business Size Standards.'' (Effective March 17, 2023). Available at *www.sba.gov/document/support-table-size-standards* (last accessed Nov. 18, 2023).

Table V.11 Compliance Dates and Expected Conversion Expenses of Federal Energy Conservation Standards Affecting Dishwasher 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***
Portable Air Conditioners 85 FR 1378 (January 10, 2020)	9	2	2025	$320.9 (2015$)	6.7%
Miscellaneous Refrigeration Products† 88 FR 19382 (March 31, 2023)	38	8	2029	$126.9 (2021$)	3.1%
Automatic Commercial Ice Makers† 88 FR 30508 (May 11, 2023)	23	3	2027	$15.9 (2022$)	0.6%
Refrigerated Bottled or Canned Beverage Vending Machines† 88 FR 33968 (May 25, 2023)	5	1	2028	$1.5 (2022$)	0.2%
Room Air Conditioners 88 FR 34298 (May 26, 2023)	8	4	2026	$24.8 (2021$)	0.4%
Microwave Ovens 88 FR 39912 (June 20, 2023)	18	10	2026	$46.1 (2021$)	0.7%
Consumer Water Heaters† 88 FR 49058 (July 27, 2023)	22	3	2030	$228.1 (2022$)	1.1%
Consumer Boilers† 88 FR 55128 (August 14, 2023)	24	1	2030	$98.0 (2022$)	3.6%
Commercial Water Heating Equipment 88 FR 69686 (October 6, 2023)	15	1	2026	$42.7 (2022$)	3.8%
Commercial Refrigerators, Refrigerator-Freezers, and Freezers† 88 FR 70196 (October 10, 2023)	83	4	2028	$226.4 (2022$)	1.6%
Dehumidifiers† 88 FR 76510 (November 6, 2023)	20	4	2028	$6.9 (2022$)	0.4%
Consumer Furnaces 88 FR 87502 (December 18, 2023)	15	1	2029	$162.0 (2022$)	1.8%

Refrigerators, Refrigerator-Freezers, and Freezers 89 FR 3026 (January 17, 2024)	63	9	2029 and 2030‡	$830.3 (2022$)	1.3%
Consumer Conventional Cooking Products 89 FR 11434 (February 14, 2024)	35	12	2028	$66.7 (2022$)	0.3%
Consumer Clothes Dryers 89 FR 18164 (March 12, 2024)	19	11	2028	$180.7 (2022$)	1.4%
Residential Clothes Washers 89 FR 19026 (March 15, 2024)	22	12	2028	$320.0 (2022$)	1.8%

* 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 dishwashers 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 equipment revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the direct 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.

As shown in Table V.11, the rulemakings with the largest overlap of dishwasher OEMs include refrigerators, refrigerator-freezers, and freezers, consumer conventional cooking products, residential clothes washers, consumer clothes dryers, and miscellaneous refrigeration products, which are all part of the multi-product Joint Agreement submitted by interested parties.[131] As detailed in the multi-product Joint Agreement, the signatories indicated that their recommendations should be considered a ''complete package.'' The signatories further stated that ''each part of this agreement is contingent upon the other parts being implemented.'' (Joint Agreement, No. 55 at p. 3)

The multi-product Joint Agreement states the ''jointly recommended compliance dates will achieve the overall energy and economic benefits of this agreement while allowing necessary lead-times for manufacturers to redesign products and retool manufacturing plants to meet the recommended standards across product categories.'' (Joint Agreement, No. 55 at p. 2) The staggered compliance dates help mitigate manufacturers' concerns about their ability to allocate sufficient resources to comply with multiple concurrent amended standards and about the need to align compliance dates for products that are typically designed or sold as matched pairs. *See* section IV.J.3 of this document for stakeholder comments about cumulative regulatory burden. *See* Table V.12 for a comparison of the estimated compliance dates based on EPCA-specified timelines and the compliance dates detailed in the Joint Agreement.

[131] The microwave ovens energy conservation standards final rule (88 FR 39912), which has 10 overlapping OEMs, was published prior to the joint submission of the multi-product Joint Agreement.

Table V.12 Expected Compliance Dates for Multi-Product Joint Agreement

Rulemaking	Estimated Compliance Year based on EPCA Requirements	Compliance Year in the Joint Agreement
Consumer Clothes Dryers	2027	2028
Residential Clothes Washers	2027	2028
Consumer Conventional Cooking Products	2027	2028
Dishwashers	2027	2027*
Refrigerators, Refrigerator-Freezers, and Freezers	2027	2029 or 2030 depending on the product class
Miscellaneous Refrigeration Products	2029	2029

*Estimated compliance year. The Joint Agreement states, "3 years after the publication of a final rule in the *Federal Register.*" (Joint Agreement, No. 55 at p. 2)

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3. National Impact Analysis

This section presents DOE's estimates of the national energy savings, NWS, and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy and Water Savings

To estimate the energy and water savings attributable to potential amended standards for dishwashers, DOE compared their energy and water consumption under the no-new-standards case to their anticipated energy and water consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V.13 and Table V.14 present DOE's projections of the national energy and water savings for each TSL considered for dishwashers. The savings were calculated using the approach described in section IV.H.2 of this document.

Table V.13 Cumulative National Energy Savings for Dishwashers; 30 Years of Shipments (2027–2056)

	Trial Standard Level				
	1	2	3	4	5
	quads				
Primary energy	0.05	0.07	0.30	0.32	1.21
FFC energy	0.05	0.08	0.31	0.34	1.28

Table V.14 Cumulative National Water Savings for Dishwashers; 30 Years of Shipments (2027–2056)

	Trial Standard Level				
	1	2	3	4	5
	trillion gallons				
Water Savings	0.09	0.11	0.24	0.26	0.92

OMB Circular A–4 [132] 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

[132] U.S. Office of Management and Budget. Circular A–4: Regulatory Analysis. Available at *www.whitehouse.gov/omb/information-for-agencies/circulars* (last accessed April 10, 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 March 11, 2024).

revised standards.[133] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to dishwashers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES and NWS sensitivity analysis results based on a 9-year analytical period are presented in Table V.15 and Table V.16. The impacts are counted over the lifetime of dishwashers purchased during the period 2027–2035.

Table V.15 Cumulative National Energy Savings for Dishwashers; 9 Years of Shipments (2027–2035)

	Trial Standard Level				
	1	2	3	4	5
	quads				
Source energy	0.01	0.02	0.08	0.09	0.33
FFC energy	0.01	0.02	0.09	0.09	0.35

Table V.16 Cumulative National Water Savings for Dishwashers; 9 Years of Shipments (2027–2035)

	Trial Standard Level				
	1	2	3	4	5
	trillion gallons				
Water Savings	0.02	0.03	0.07	0.07	0.25

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for dishwashers. In accordance with OMB's guidelines on regulatory analysis,[134] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.17 shows the consumer NPV results with impacts counted over the lifetime of products purchased during the period 2027–2056.

Table V.17 Cumulative Net Present Value of Consumer Benefits for Dishwashers; 30 Years of Shipments (2027–2056)

Discount Rate	Trial Standard Level				
	1	2	3	4	5
	billion 2022$				
3 percent	0.17	0.22	2.90	2.95	(20.12)
7 percent	0.03	0.03	1.23	1.23	(12.18)

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.18. The impacts are counted over the lifetime of products purchased during the period 2027–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

Table V.18 Cumulative Net Present Value of Consumer Benefits for Dishwashers; 9 Years of Shipments (2027–2035)

Discount Rate	Trial Standard Level				
	1	2	3	4	5
	billion 2022$				
3 percent	0.04	0.05	1.01	1.02	(8.30)
7 percent	0.02	(0.03)	0.58	0.57	(6.52)

[133] 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.

[134] U.S. Office of Management and Budget. Circular A–4: Regulatory Analysis. Available at *www.whitehouse.gov/omb/information-for-agencies/circulars* (last accessed April 10, 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 March 11, 2024).

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The previous results reflect the use of a default trend to estimate the change in price for dishwashers 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 direct 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 dishwashers 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 (2027–2056), 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 direct final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As stated, EPCA, as codified, contains the provision that 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))

As discussed in this section, DOE has concluded that the standards adopted in this direct final rule will not lessen the utility or performance of the dishwashers under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards.

In making this determination for this direct final rule, DOE considered comments it had received in response to the May 2023 NOPR.

a. Cleaning Performance

EPCA authorizes DOE to design test procedures that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) Representative average use of a dishwasher reflects, in part, a consumer using the dishwasher to achieve an acceptable level of cleaning performance. As discussed, the amended standards adopted in this direct final rule require the use of the test procedure at appendix C2, which includes a minimum cleaning performance threshold as a condition for a valid test cycle to determine if a dishwasher, when tested according to the DOE test procedure, ''completely washes a normally soiled load of dishes,'' so as to better represent consumer use of the product. *See* section 1 of appendix C2 for definition of ''normal cycle'' and section 4 of appendix C2 for the cleaning index threshold.

In response to the May 2023 NOPR, ASAP *et al.* asserted that analyses from DOE and EPA demonstrate that dishwashers meeting the proposed standards meet consumer expectations in various performance areas. (ASAP *et al.* No. 46 at pp. 2–3) ASAP *et al.* commented that as part of the development of ENERGY STAR V. 7.0, EPA used web-scraped and Consumer Reports data to understand how dishwashers meeting the proposed requirements perform across a range of metrics that impact consumer satisfaction and found standard-size dishwashers on the market that could meet the ENERGY STAR Most Efficient 2022 criteria [135] while achieving the cleaning performance threshold. (*Id.*) ASAP *et al.* additionally commented that EPA's analysis indicated that standard-size dishwashers are able to meet EL 3, while providing high consumer satisfaction across various areas of performance such as drying time, cycle time, and noise performance. (*Id.*)

Samsung supported DOE's revised cleaning index threshold value of 70 and commented that the minimum cleaning index would help incentivize dishwasher designs that do not require multiple runs to perform basic functionality, thereby avoiding increased energy use from running multiple cycles. (Samsung, No. 52 at p. 3) NEEA also commented in support of DOE's requirement of a certain cleaning performance level for the normal cycle to ensure dishwasher cleaning performance is maintained. NEEA noted that NEEA's dishwasher market research, previously shared confidentially with DOE, shows no correlation between cleaning performance and efficiency for current models. (NEEA, No. 53 at p. 2)

AHAM commented that DOE must further evaluate the impact of amended standards on performance despite the newly finalized cleaning performance metric in the test procedure. AHAM stated that the test procedure requirement alone is not sufficient to satisfy EPCA's requirement that standards not result in the unavailability of products with performance characteristics substantially the same as those currently available. AHAM commented that DOE has not presented any consumer data to demonstrate that its test and/or threshold are relevant to consumers nor has it produced sufficient data to demonstrate that its proposed standards will not result in a degradation of performance. (AHAM, No. 51 at p. 10).

Sub-Zero asserted that the degradation in dishwasher performance that will result from the proposed standards will affect consumer opinions of Sub-Zero's products and disproportionately harm the segment of the market in which Sub-Zero operates. (Sub-Zero, No. 47 at pp. 1–2)

CEI *et al.* stated that adverse impacts of the agency's past dishwasher rules have necessitated compensating behaviors that are not only costly and inconvenient, but also undercut any climate benefits. (CEI *et al.,* No. 48 at p. 7) CEI *et al.* commented that the reduced useful life of compliance models is also environmentally detrimental, as it results in greater energy and other resources going into the manufacturing and disposal of dishwashers. (CEI et al., No. 48 at p. 7)

Zycher commented that DOE claims the proposed standard would not reduce the utility or performance of the products under consideration in this rulemaking, but Zycher asserted that the

[135] 2022 ENERGY STAR Most Efficient Requirement for Dishwashers: *www.energystar.gov/sites/default/files/ENERGY%20STAR%20Most%20Efficient%202022%20Dishwasher%20Final%20Criteria%20Memo_0.pdf.*

only analytical support for this statement provided by DOE is that manufacturers of these products currently offer units that meet or exceed the proposed standards. (Zycher, No. 49 at pp. 2, 4, 28) Zycher stated that this argument does not provide any information about the relative ''utility or performance'' of such options. (*Id.*)

In response to comments from stakeholders over concerns about product cleaning performance for standard-size dishwashers at EL 2, DOE reiterates that the amended standards adopted in this direct final rule require the use of the test procedure at appendix C2, which includes a minimum cleaning performance threshold to determine if a dishwasher, when tested according to the DOE test procedure, ''completely washes a normally soiled load of dishes,'' so as to better represent consumer use of the product. That is, the new test procedure at appendix C2 ensures that the rated energy and water consumption of dishwashers are representative of a consumer-acceptable level of cleaning performance.

DOE further references its investigatory testing data that was presented in the January 2022 Preliminary Analysis, which demonstrated that standard-size dishwashers within the test sample could achieve the threshold cleaning performance finalized in the January 2023 TP Final Rule at all soil levels for efficiency levels up to EL 3. DOE also notes that feedback from some manufacturers during confidential interviews indicates that the adopted standards are achievable without impacting consumer utility. Additionally, DOE identified dishwasher models that are certified as 2024 ENERGY STAR Most Efficient, [136] which specifies equivalent cleaning performance requirements as appendix C2 but has more stringent water and energy use criteria than the standards adopted in this document. Some of these models met or exceeded EL 4, indicating that max-tech efficiency dishwashers that can achieve the threshold cleaning performance on the normal cycle currently exist on the market. In fact, DOE's investigatory testing data shows that the best performing unit at all soil levels is a unit that meets the adopted standard level. DOE also did not observe any correlation between cleaning indices and efficiency level in its test sample and units that would meet the amended standard have the same average cleaning index across all soil levels as units that would not meet the amended standard.

Furthermore, as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement in which the signatories reaffirmed the standards recommended in the Joint Agreement.[137] In particular, the letter states that there are more than 400 dishwasher models that are certified to the current ENERGY STAR V. 7.0 level, which is more stringent that the standards recommended in the Joint Agreement, that are also required to meet a minimum cleaning index threshold of 65. The signatories stated that the prevalence of these ENERGY STAR certified dishwashers indicated that dishwashers meeting the recommended standard levels can provide cleaning performance at levels consistent with those on the market today.

Accordingly, DOE has concluded, based not only on its newly adopted test procedure, but also on confirmatory testing data, confidential interviews, and ENERGY STAR's performance requirements, that the standards adopted here will not negatively impact dishwasher performance.

CEI *et al.* commented that the previous rulemakings affecting existing energy and water efficiency measures for dishwashers have already led to widespread and well-documented consumer dissatisfaction and that the proposed rulemaking would exacerbate the issues. (CEI *et al.,* No. 48 at p. 2)

Whirlpool commented that it was concerned with any amended dishwashers energy conservation standards beyond EL 1. Whirlpool commented that the proposed rule would lessen the utility and performance of dishwashers, especially as compared to consumer expectations of dishwashers today, and the experiences from past dishwashers that consumers may have owned. (Whirlpool, No. 45 at pp. 3, 4) Whirlpool also commented that DOE should not take any action that would potentially degrade the performance or lower the utility of dishwashers, especially because dishwashers have among the lowest household penetration rates of any major appliance in U.S. households. (*Id.* at p. 4) Whirlpool also asserted that the new cleaning index requirement does not adequately correlate to real-world consumer satisfaction and that consumers will perform compensatory behaviors to make up for the loss in cleaning performance. (*Id.* at p. 5) Whirlpool stated that lowering the energy and water consumption of a dishwasher further will degrade cleaning and drying performance for consumers, and create negative rebound effects, thus making it less attractive for many consumers to own and use their dishwashers. (Whirlpool, No. 45 at p. 6) Whirlpool commented that DOE should work collaboratively to increase overall penetration of the already energy and water efficient appliances but the proposed rule may disincentivize increased penetration and utilization as dishwashers offer consumers lower utility and performance benefits. (*Id.* at p. 3)

AHAM asserted that further cost-effective efficiency gains may threaten performance and product functionality as opportunities for additional energy and water savings beyond those already achieved are severely diminished as products are near maximum efficiency under available technology. (AHAM, No. 51 at pp. 1–2) AHAM noted that while DOE does account for the cleaning performance outcome, DOE does not account for the relationship of cleaning performance to other performance elements in the dishwasher system including washing temperatures, length of washing cycles, types and amounts of detergent applied, and mechanics (power). (*Id.* at pp. 10–11) AHAM commented that reducing one aspect of wash performance, such as energy or water, can lead to an impact on these other performance elements. (*Id.* at p. 11) AHAM commented that the test procedure's cleaning performance metric ignores all performance aspects other than cleaning performance. AHAM stated that AHAM DW–2–2020, which DOE proposed to use in appendix C2 for the determination of cleaning performance was primarily designed to address performance in terms of redeposition of soils and the soils were selected with that in mind. AHAM stated that AHAM DW–2–2020 does not assess greasy or detergent buildup over time, which it stated is an issue for the majority of dishwasher users who pre-rinse their dishes. AHAM also commented that the test procedure does not address other elements of performance such as drying performance, cycle length, and noise. (*Id.*) AHAM stated that some of these performance factors, such as wash temperature, cannot be lowered

[136] ENERGY STAR Most Efficient 2024. ''Recognition Criteria Residential Dishwashers.'' 2024. Available online at *www.energystar.gov/sites/default/files/asset/document/Dishwasher%20ENERGY%20STAR%20Most%20Efficient%202024%20Final%20Criteria.pdf.*

[137] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0059.*

indefinitely because the wash temperature must be warm enough to activate the detergent and remove fatty soils, otherwise the dishwasher would lose its utility. AHAM stated that water heating is the biggest contributor to energy use and once water heating energy is reduced as much as possible, it leaves fewer options for manufacturers to consider other than lengthening cycles, reducing drying performance or eliminating drying altogether, or increasing the noise level of the dishwasher to allow for greater power, in order to maintain cleaning performance while also meeting more stringent standards. (*Id.*) AHAM asserted that by requiring energy and water levels and a cleaning performance level, DOE could force manufacturers to design dishwashers that satisfy DOE's test procedure requirements but do not satisfy consumers on all factors, including cleaning performance. Therefore, AHAM stated that DOE must assess the impact of its proposed standards from a more holistic perspective. (*Id.*) AHAM recommended that DOE issue a NODA or other notice that would provide data on the impact of these standards on performance and provide interested parties with an opportunity to comment. (*Id.*)

Sub-Zero asserted that any standard beyond ENERGY STAR V. 6.0 (*i.e.,* EL 1) will force manufacturers to make significant design changes that lower a dishwasher's cleaning performance scores. Sub-Zero also asserted that the levers of performance and energy consumption have already been working against each other for years via serial rulemakings on dishwashers, but with the proposed standards, its consumers would be the most disappointed based on the consumer purchase price versus consumer expectations correlation. (Sub-Zero, No. 47 at p. 1)

CEI *et al.* stated that DOE has violated the ''features provision'' of EPCA, which prohibits setting an efficiency standard so stringent that it would sacrifice any desired product characteristics. CEI *et al.* asserted that by DOE's own admission, DOE has imposed standards on dishwashers that increase cycle times. (CEI *et al.,* No. 48 at p. 3) CEI *et al.* also asserted that previous efficiency standards have led to other drawbacks by negatively affecting dishwasher reliability and durability, adversely impact cleaning performance, and undermining drying performance. (*Id.* at p. 4) CEI *et al.* additionally asserted that DOE's proposed rulemaking would exacerbate these issues and therefore would violate EPCA's features provision. (*Id.* at p. 5)

DOE does not anticipate that significant design changes will be necessary for standard-size dishwashers to reach EL 2 because DOE's teardown analysis, described in chapter 5 of the direct final rule TSD, showed that existing products at EL 2 utilize the same design options as those at EL 1 with improved control strategies. Improved control strategies would allow manufacturers to more closely control water temperature and water fill volumes, thereby optimizing the wash cycle and minimizing losses. For these reasons, DOE does not expect any impact to utility or performance at the standards adopted in this direct final rule. As such, DOE's analysis indicates that it is possible to meet the adopted standards in this direct final rule without making significant design changes and without impacting a dishwasher's cleaning performance or other performance attributes, as discussed further in this section (regarding cleaning performance) and sections IV.H.2 (regarding impact on non-dishwasher cleaning patterns), V.B.4.b (regarding drying performance), and V.B.4.c (regarding cycle length) of this document.

Furthermore, in this direct final rule, DOE is adopting standards for dishwashers that are consistent with the standards recommended in the Joint Agreement. Additionally, as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement in which the signatories reaffirmed the standards recommended in the Joint Agreement, and stated that they would not negatively affect features or performance, including cycle times.[138]

b. Drying Performance

Whirlpool asserted that DOE's proposed standards for dishwashers will be difficult for manufacturers to meet while meeting consumer demand for dishwashers capable of drying dishes thoroughly. (Whirlpool, No. 45 at p. 5) Whirlpool stated that the low final rinse temperatures and shorter heated drying durations that would be required to meet stringent energy conservation standards beyond EL 1 would make it increasingly difficult to completely dry all items in the dishwasher. Whirlpool stated that DOE must not set standards beyond EL 1, which would further reduce the total allowable energy usage that manufacturers can dedicate to effective drying performance and further reduce consumer satisfaction with drying performance. (*Id.*)

In response to concerns over drying performance, DOE expects existing drying options would continue to be available on dishwashers regardless of amended standards up to at least EL 3 because there are no unique drying technologies at EL2 and EL3. In the May 2023 NOPR TSD as well as in this final rule, DOE noted that dishwasher models could reach EL 2 or EL 3 with the same drying technology options on the regulated cycle as at EL 1 (*see* chapter 5 of this final rule TSD). DOE expects that any amended standards up to at least EL 3 would not stifle innovation around drying options and other features that could be implemented on dishwashers outside the regulated cycle.

Furthermore, as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement (including AHAM, of which Whirlpool is a member) in which the signatories reaffirmed the standards recommended in the Joint Agreement.[139] In particular, the letter states that the stakeholders do not anticipate the recommended standards will negatively affect features, which DOE assumes would also include drying performance.

c. Cycle Length

CEI *et al.* stated that given the long cycle times and other issues with dishwashers traceable to current standards, this is the proper regulatory avenue that DOE should be pursuing. CEI *et al.* commented that DOE should be fixing the problems with existing dishwasher standards rather than making them worse with the proposed rule. CEI *et al.* stated DOE has previously taken steps to address longer cycle times, but the efforts were reversed. CEI *et al.* commented that corrective rulemakings should be revived and expanded to include all performance-related features that have been impacted by past dishwashers regulations. (CEI *et al.,* No. 48 at pp. 7–8) CEI *et al.* commented that compliance with EPCA is best served by DOE regulations that address the consumer problems with dishwashers, not ones that exacerbate these problems. (*Id.*)

In this rulemaking, DOE considered dishwasher performance, including comments raised about cycle times. In the January 2022 Preliminary TSD, DOE provided data from its investigatory testing sample that determined cycle

[138] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0059.*

[139] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0059.*

time is not substantively correlated with energy and water consumption of the normal cycle. (*See* section 5.9 of the January 2022 Preliminary TSD). Additionally, the adopted standards are applicable to the regulated cycle type (*i.e.,* normal cycle); manufacturers can continue to provide additional, non-regulated cycle types (*e.g.,* quick cycles, pots and pans, heavy, delicates, *etc.*) for consumers that choose to utilize them. Specifically, DOE expects quick cycles, many of which clean a load within 1 hour or less would still be available on dishwasher models that currently offer such cycle types. DOE has determined that the adopted standards in this direct final rule are compliant with the applicable provisions of EPCA. Additionally, in this direct final rule, DOE is adopting standards for dishwashers that are consistent with the standards recommended in the Joint Agreement, which do not apply to any short-cycle product classes. Further, as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement in which the signatories reaffirmed the standards recommended in the Joint Agreement.[140] In particular, the signatories acknowledge that DOE's investigative testing shows that cycle times at the recommended levels for dishwashers are the same as dishwashers on the market today.

Finally, as noted previously, the Fifth Circuit Court of Appeals recently remanded to DOE the January 2022 Rule for further consideration. As noted elsewhere in this document, DOE has published an RFI regarding short-cycle products. 89 FR 17338.

d. Water Dilution

Whirlpool commented that water dilution and soil and detergent redeposition remain an issue under amended standards beyond EL 1, and that DOE does not cite new technology in its supporting analysis to indicate that this problem will be resolved. (Whirlpool, No. 45 at p. 5) As a result, Whirlpool asserted that according to its own test data, dishwasher cleaning performance will degrade under the proposed standards. (*Id.*)

As noted in the May 2023 NOPR, while DOE recognizes that poor water dilution can impact cleaning performance, as mentioned elsewhere in this document (as well as the May 2023 NOPR and January 2022 Preliminary TSD), DOE's testing and analysis indicates that satisfactory cleaning performance is achievable at all efficiencies. (S*ee* 88 FR 32514, 32533–32534 and chapter 5 of the May 2023 NOPR TSD and January 2022 Preliminary TSD). Additionally, the minimum cleaning index threshold requirement specified in the new appendix C2 ensures that cleaning performance will be maintained after the compliance date of any new standards.

e. Equipment Lifetime and Energy Savings

CEI *et al.* commented that the reduced useful life of compliance models is also environmentally detrimental, as it results in greater energy and other resources going into the manufacturing and disposal of dishwashers. (CEI et al., No. 48 at p. 7)

DOE determines the lifetime of dishwashers from an analysis of historical shipments, AHS and RECS data. *See* section IV.F.6 of this document for more information. No publicly available data show that the lifetime of a dishwasher is correlated with its efficiency level.

Zycher asserted that energy savings *per se* are not relevant analytically because the economic benefits of energy savings are captured fully by purchasers of such appliances. Further, Zycher commented that there is no externality attendant upon energy consumption *per se,* and if energy savings are to be considered relevant for purpose of benefit/cost analysis, then the adverse effects or costs of reduction in energy consumption in terms of the quality of dishwasher performance in the context of this proposed rule must be included in the analysis. (Zycher, No. 49 at p. 3) Zycher also asserted that DOE's estimates of the annual cost savings are subject to uncertainty and the asserted benefits are so small that that from an analytical standpoint they cannot be regarded as benefits at all. Zycher further asserted that the proposed rule would force consumers to change their purchase choices in ways that have not and would not be observed in the absence of the proposed rule. Zycher commented that this demonstrates that the energy cost savings, even if the underlying calculations are accepted, must be accompanied by some explicit or implicit costs in terms of forgone quality dimensions of dishwasher performance, the value of which must be greater than the value of the purported energy cost savings. (*Id.* at p. 4)

In regard to the purported adverse effects of reduction in energy consumption in terms of the quality of dishwasher performance, DOE does not expect any rebound effect due to reduced energy and water consumption in the standards case. More detailed discussion can be found in section IV.H.2 of this document regarding the rebound effect and in section V.B.4.a of this document regarding the standards' impact on the cleaning performance.

In response to comments regarding the significance of annualized LCC savings, as described in section IV.E of this document, DOE's LCC analysis captures the variability of consumer's life cycle costs. For example, DOE's energy and water use analysis relied on RECS 2020, which provides sample household's dishwasher usage frequency information ranging from one to 21 cycles per week. DOE also considered the variability of energy and water costs based on the sample household's geographic location, as well as the range of product lifetime. Taking into account the variability of those inputs allows DOE to observe the full range of LCC savings and to understand the distribution of results, enabling a more informed evaluation of the potential impact of the adopted standards. DOE presents all statistic results of LCC savings in chapter 8 of the direct final rule TSD. Based on the LCC savings estimates of 10,000 household samples, 97 percent of the sample households would either not be affected (11 percent) or experience a positive savings (86 percent). The weighted average LCC savings are $17 for the selected TSL which is significantly different from zero. In addition, DOE's decision on amended standards is not solely determined by LCC savings. While they play an important role, they may be considered alongside other critical factors, including the percentage of negatively impacted consumers, the simple payback period, and the overall impact on the manufacturers.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.d 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

[140] This document is available in the docket at: *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0059.*

determination, DOE is providing DOJ with copies of the direct final rule and the TSD for review.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 of the direct final rule TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for dishwashers is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.19 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section III.C of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the direct final rule TSD.

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Table V.19 Cumulative Emissions Reduction for Dishwashers Shipped During the Period 2027–2056

	Trial Standard Level				
	1	2	3	4	5
Electric Power Sector Emissions					
CO_2 (*million metric tons*)	2.06	2.80	8.43	9.17	34.54
CH_4 (*thousand tons*)	0.06	0.09	0.36	0.40	1.48
N_2O (*thousand tons*)	0.01	0.01	0.05	0.06	0.22
SO_2 (*thousand tons*)	0.16	0.27	1.37	1.49	5.59
NO_X (*thousand tons*)	1.72	2.26	6.01	6.55	24.70
Hg (*tons*)	0.00	0.00	0.01	0.01	0.03
Upstream Emissions					
CO_2 (*million metric tons*)	0.28	0.38	1.06	1.15	4.35
CH_4 (*thousand tons*)	26.65	35.44	98.60	107.40	404.81
N_2O (*thousand tons*)	0.00	0.00	0.00	0.00	0.01
SO_2 (*thousand tons*)	0.01	0.01	0.04	0.04	0.15
NO_X (*thousand tons*)	4.37	5.83	16.36	17.82	67.16
Hg (*tons*)	0.00	0.00	0.00	0.00	0.00
Total FFC Emissions					
CO_2 (*million metric tons*)	2.34	3.18	9.48	10.33	38.89
CH_4 (*thousand tons*)	26.70	35.53	98.97	107.80	406.30
N_2O (*thousand tons*)	0.01	0.01	0.06	0.06	0.23
SO_2 (*thousand tons*)	0.16	0.28	1.41	1.53	5.73
NO_X (*thousand tons*)	6.09	8.09	22.37	24.37	91.86
Hg (*tons*)	0.00	0.00	0.01	0.01	0.03

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for dishwashers. Section IV.L of this document discusses the estimated SC–CO_2 values that DOE used. Table V19 presents the value of CO_2 emissions reduction at each TSL for each of the SC–CO_2 cases. The time-series of annual values is presented for the Recommended TSL in chapter 14 of the direct final rule TSD.

Table V.20 Present Value of CO_2 Emissions Reduction for Dishwashers Shipped During the Period 2027–2056

TSL	SC-CO_2 Case			
	Discount Rate and Statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	Million 2022$			
1	23.0	98.2	153.5	297.9
2	31.3	133.7	209.0	405.7
3	94.1	400.3	625.1	1,214.6
4	102.4	435.9	680.6	1,322.4
5	385.7	1,641.3	2,563.1	4,979.8

As discussed in section IV.L.2 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for dishwashers. Table V.21 presents the value of the CH_4 emissions reduction at each TSL, and Table V.22 presents the value of the N_2O emissions reduction at each TSL. The time-series of annual values is presented for the Recommended TSL in chapter 14 of the direct final rule TSD.

Table V.21 Present Value of Methane Emissions Reduction for Dishwashers Shipped During the Period 2027–2056

TSL	SC-CH_4 Case			
	Discount Rate and Statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	Million 2022$			
1	12.2	36.3	50.6	96.0
2	16.3	48.3	67.3	127.8
3	45.4	134.6	187.6	356.2
4	49.4	146.6	204.3	387.9
5	186.2	552.7	770.0	1,462.2

Table V.22 Present Value of Nitrous Oxide Emissions Reduction for Dishwashers Shipped During the Period 2027–2056

TSL	SC-N_2O Case			
	Discount Rate and Statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	Million 2022$			
1	0.0	0.1	0.2	0.4
2	0.1	0.2	0.3	0.6
3	0.2	0.9	1.3	2.3
4	0.2	0.9	1.4	2.5
5	0.9	3.5	5.4	9.3

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes, 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 SO_2 emissions reductions anticipated to result from the considered TSLs for dishwashers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.23 presents the

present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.24 presents similar results for SO_2 emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the Recommended TSL in chapter 14 of the direct final rule TSD.

Table V.23 Present Value of NO_X Emissions Reduction for Dishwashers Shipped During the Period 2027–2056

TSL	7% Discount Rate	3% Discount Rate
	million 2022$	
1	83.6	214.1
2	113.5	290.0
3	336.5	853.5
4	366.3	929.3
5	1,379.9	3,500.2

Table V.24 Present Value of SO_2 Emissions Reduction for Dishwashers Shipped During the Period 2027–2056

TSL	7% Discount Rate	3% Discount Rate
	million 2022$	
1	3.4	8.3
2	6.4	15.7
3	35.1	85.9
4	38.1	93.3
5	142.7	349.2

Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_X, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.25 presents the NPV values that result from adding the estimates of the economic benefits resulting from reduced GHG and NO_X and SO_2 emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered dishwashers, and are measured for the lifetime of products shipped during the period 2027–2056. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of dishwashers shipped during the period 2027–2056.

Table V.25 Consumer NPV Combined with Present Value of Climate Benefits and Health Benefits

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Using 3% discount rate for Consumer NPV and Health Benefits *(billion 2022$)*					
5% Average SC-GHG case	0.4	0.6	4.0	4.1	(15.7)
3% Average SC-GHG case	0.5	0.7	4.4	4.6	(14.1)
2.5% Average SC-GHG case	0.6	0.8	4.7	4.9	(12.9)
3% 95th percentile SC-GHG case	0.8	1.1	5.4	5.7	(9.8)
Using 7% discount rate for Consumer NPV and Health Benefits *(billion 2022$)*					
5% Average SC-GHG case	0.2	0.2	1.7	1.8	(10.1)
3% Average SC-GHG case	0.3	0.3	2.1	2.2	(8.5)
2.5% Average SC-GHG case	0.3	0.4	2.4	2.5	(7.3)
3% 95th percentile SC-GHG case	0.5	0.7	3.2	3.3	(4.2)

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C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered dishwasher 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 direct final rule, DOE considered the impacts of amended standards for dishwashers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy and water 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 and water savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the direct 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.[141]

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.[142] 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 Dishwashers Standards

Table V.26 and Table V.27 summarize the quantitative impacts estimated for each TSL for dishwashers. The national impacts are measured over the lifetime of dishwashers purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2027–2056). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The consumer operating savings are inclusive of energy and water. DOE is presenting monetized benefits of GHG emissions reductions in accordance with the applicable Executive Orders and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the Interim Estimates presented by the IWG. The efficiency levels contained in each TSL are described in section V.A of this document.

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[141] 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.*

[142] 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 July 1, 2021).

Table V.26 Summary of Analytical Results for Dishwashers TSLs: National Impacts

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative FFC National Energy Savings					
Quads	0.05	0.08	0.31	0.34	1.28
Cumulative Water Savings					
Trillion gallons	0.09	0.11	0.24	0.26	0.92
Cumulative FFC Emissions Reduction					
CO_2 *(million metric tons)*	2.34	3.18	9.48	10.33	38.89
CH_4 *(thousand tons)*	26.70	35.53	98.97	107.80	406.30
N_2O *(thousand tons)*	0.01	0.01	0.06	0.06	0.23
NO_X *(thousand tons)*	6.09	8.09	22.37	24.37	91.86
SO_2 *(thousand tons)*	0.16	0.28	1.41	1.53	5.73
Hg *(tons)*	0.00	0.00	0.01	0.01	0.03
Present Value of Monetized Benefits and Costs (*3% discount rate, billion 2022$*)					
Consumer Operating Cost Savings	0.43	0.63	3.16	3.36	1.75
Climate Benefits*	0.13	0.18	0.54	0.58	2.20
Health Benefits**	0.22	0.31	0.94	1.02	3.85
Total Benefits†	0.79	1.12	4.64	4.97	7.80
Consumer Incremental Product Costs‡	0.26	0.41	0.26	0.41	21.87
Consumer Net Benefits	0.17	0.22	2.90	2.95	(20.12)
Total Net Benefits	0.53	0.71	4.38	4.56	(14.08)
Present Value of Monetized Benefits and Costs (*7% discount rate, billion 2022$*)					
Consumer Operating Cost Savings	0.18	0.27	1.38	1.46	0.68
Climate Benefits*	0.13	0.18	0.54	0.58	2.20
Health Benefits**	0.09	0.12	0.37	0.40	1.52
Total Benefits†	0.41	0.57	2.29	2.45	4.40
Consumer Incremental Product Costs‡	0.15	0.24	0.15	0.24	12.86
Consumer Net Benefits	0.03	0.03	1.23	1.23	(12.18)
Total Net Benefits	0.25	0.33	2.13	2.21	(8.46)

Note: This table presents the costs and benefits associated with dishwashers shipped during the period 2027−2056. These results include benefits to consumers which accrue after 2056 from the products shipped during the period 2027−2056.

* Climate benefits are calculated using four different estimates of the SC-CO_2, SC-CH_4 and SC-N_2O. Together, these represent the global SC-GHG. For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

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

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate.

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

Table V.27 Summary of Analytical Results for Dishwashers TSLs: Manufacturer and Consumer Impacts

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts					
Industry NPV (million 2022$) (No-new-standards case INPV = 735.8)	680.8 to 729.7	673.7 to 723.3	587.1 to 639.1	579.9 to 632.8	334.4 to 414.6
Industry NPV (% change)	(7.5) to (0.8)	(8.4) to (1.7)	(20.2) to (13.1)	(21.2) to (14.0)	(54.5) to (43.7)
Consumer Average LCC Savings (2022$)					
PC 1: Standard-size dishwashers	$5	$5	$17	$17	($145)
PC 2: Compact-size dishwashers	$32	$4	$32	$4	$4
Shipment-Weighted Average*	$5	$4	$17	$16	($142)
Consumer Simple PBP (years)					
PC 1: Standard-size dishwashers	4.9	4.9	3.9	3.9	15.9
PC 2: Compact-size dishwashers	0.0	5.5	0.0	5.5	5.5
Shipment-Weighted Average*	4.8	4.9	3.8	3.9	15.7
Percent of Consumers that Experience a Net Cost					
PC 1: Standard-size dishwashers	4%	4%	3%	3%	97%
PC 2: Compact-size dishwashers	0%	54%	0%	54%	54%
Shipment-Weighted Average*	4%	5%	3%	4%	96%

Parentheses indicate negative (-) values. The entry "n.a." means not applicable because there is no change in the standard at certain TSLs.

* Weighted by shares of each product class in total projected shipments in 2027.

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DOE first considered TSL 5, which represents the max-tech efficiency levels for both product classes. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters and control strategies, separate drain pump, tub insulation, hydraulic system optimization, water diverter assembly, temperature sensor, 3-phase variable-speed motor, and flow meter) and condensation drying, including use of a stainless steel tub; flow-through heating implemented as an in-sump integrated heater; and control strategies. The majority of these design options reduce both energy and water use together.[143] For a compact-size dishwasher, this efficiency level includes the design options considered at the lower efficiency levels (*i.e.,* improved control strategies) and additionally includes the use of permanent magnet motor, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. Similar to standard-size dishwashers, the majority of these design options reduce both energy and water use together. TSL 5 would save an estimated 1.28 quads of energy and 0.92 trillion gallons of water, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit (inclusive of both energy and water) would be −$12.18 billion using a discount rate of 7 percent, and −$20.12 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 38.89 Mt of CO_2, 5.73 thousand tons of SO_2, 91.86 thousand tons of NO_X, 0.03 tons of Hg, 406.30 thousand tons of CH_4, and 0.23 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 5 is $2.20 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $1.52 billion using a 7-percent discount rate and $3.85 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 5 is −$8.46 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total

[143] As discussed previously in section IV.A.2 of this document, because the energy used to heat the water consumed by the dishwasher is included as part of the EAEU energy use metric, technologies that decrease water use also inherently decrease energy use.

NPV at TSL 5 is −$14.08 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether an amended standard level is economically justified.

At TSL 5, the average LCC impact is a loss of $145 for standard-size dishwashers and a $4 savings for compact-size dishwashers. The simple payback period is 15.9 years for standard-size dishwashers and 5.5 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost is 97 percent for standard-size dishwashers and 54 percent for compact-size dishwashers. Notably, for the standard-size product class, which as discussed represents 98 percent of the market, TSL 5 (which includes EL 4 for this product class) would increase the first cost by $178. This associated increase in first cost at TSL 5 for standard-size dishwashers could impact the number of new shipments by approximately less than 2 percent annually due to consumers shifting to extending the lives of their existing dishwashers beyond their useful life, repairing instead of replacing, or handwashing their dishes. In the national impact analysis, DOE modeled a scenario where part of this 2-percent of consumers forgoing the purchase of a new dishwasher due to price increases will substitute to handwashing. This results in a small increase in energy and water use, which is then subtracted from the energy and water savings projected to result from the amended standards at TSL5.

For the low-income consumer group, the average LCC impact is a loss of $29 for standard-size dishwashers and a savings of $62 for compact-size dishwashers. The simple payback period is 6.6 years for standard-size dishwashers and 2.3 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost is 46 percent for standard-size dishwashers and 26 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact is a loss of $159 for standard-size dishwashers and a loss of $14 for compact-size dishwashers. The simple payback period is 19.8 years for standard-size dishwashers and 6.8 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost is 98 percent for standard-size dishwashers and 62 percent for compact-size dishwashers. For the consumer sub-group of well-water households, the average LCC impact is a loss of $162 for standard-size dishwashers and a loss of $19 for compact-size dishwashers. The simple payback period is 21.4 years for standard-size dishwashers and 6.9 years for compact-size dishwashers. The fraction of well-water consumers experiencing a net LCC cost is 98 percent for standard-size dishwashers and 63 percent for compact-size dishwashers.

At TSL 5, the projected change in INPV ranges from a decrease of $334.4 million to a decrease of $414.6 million, which corresponds to decreases of 54.5 percent and 43.7 percent, respectively. Industry conversion costs could reach $681.0 million at this TSL, as manufacturers work to redesign their portfolios of model offerings, transition their standard-size dishwasher platforms entirely to stainless steel tubs, and renovate manufacturing facilities to accommodate changes to the production line and manufacturing processes.

DOE estimates that less than 1 percent of dishwasher shipments currently meet the max-tech levels. Standard-size dishwashers account for approximately 98 percent of annual shipments. Of the 19 standard-size dishwasher OEMs, only one OEM, which accounts for approximately 2 percent of basic models in the CCD, currently offers products that meet the max-tech efficiencies required. All manufacturers interviewed, which together account for approximately 90 percent of the industry shipments, expressed uncertainty as to whether they could reliably meet the standard-size dishwasher max-tech efficiencies and the cleaning performance threshold and noted meeting max-tech would require a platform redesign and significant investment in tooling, equipment, and production line modifications. Many manufacturers would need to increase production capacity of stainless steel tub designs. Some manufacturers noted that a max-tech standard could necessitate new tub architectures.

For compact-size dishwashers, which account for the remaining 2 percent of annual shipments, DOE estimates that 14 percent of shipments currently meet the required max-tech efficiencies. Of the five compact-size dishwasher OEMs, two OEMs currently offer compact-size products that meet max-tech. At TSL 5, compact-size countertop dishwashers with four or more place settings and in-sink dishwashers with less than four place settings are not currently available in the market. Meeting TSL 5 is technologically feasible for those products; however, DOE expects that it would take significant investment relative to the size of the compact-size dishwasher market to redesign products to meet the max-tech efficiencies.

Based on the above considerations, the Secretary concludes that at TSL 5 for dishwashers, the benefits of energy and water savings, emissions reductions, and the estimated monetary value of the health benefits and climate benefits from emissions reductions would be outweighed by the negative NPV of consumer benefits and the impacts on manufacturers, including the large potential reduction in INPV. At TSL 5, a majority of standard-size dishwasher consumers (97 percent) would experience a net cost and the average LCC loss is $145 for this product class. Additionally, at TSL 5, manufacturers would need to make significant upfront investments to redesign product platforms and update manufacturing facilities. Some manufacturers expressed concern that they would not be able to complete product and production line updates within the 3-year conversion period. Consequently, the Secretary has concluded that TSL 5 is not economically justified.

DOE next considered TSL 4, which represents the highest efficiency levels providing positive LCC savings. TSL 4 comprises the gap-fill efficiency level between the ENERGY STAR V. 7.0 level and the ENERGY STAR V. 6.0 level (EL 2) for standard-size dishwashers and the max-tech efficiency level for compact-size dishwashers. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters, separate drain pump, and tub insulation) and additionally includes the use of improved control strategies. For a compact-size dishwasher, this efficiency level includes the design options considered at the lower efficiency levels (*i.e.,* improved control strategies) and additionally includes the use of a permanent magnet motor, improved filters, hydraulic system optimization, heater incorporated into base of tub, and reduced sump volume. The majority of these design options for both standard-size and compact-size dishwashers reduce both energy and water use together. TSL 4 would save an estimated 0.34 quads of energy and 0.26 trillion gallons of water, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit (inclusive of energy and water) would be $1.23 billion using a discount rate of 7 percent, and $2.95 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 10.33 Mt of CO_2, 1.53 thousand tons of SO_2, 24.37 thousand

tons of NO_X, 0.01 tons of Hg, 107.80 thousand tons of CH_4, and 0.06 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 4 is $0.58 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $0.40 billion using a 7-percent discount rate and $1.02 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is $2.21 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $4.56 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 4, the average LCC impact is a savings of $17 for standard-size dishwashers and $4 for compact-size dishwashers. The simple payback period is 3.9 years for standard-size dishwashers and 5.5 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost is 3 percent for standard-size dishwashers and 54 percent for compact-size dishwashers.

For the low-income consumer group, the average LCC impact is a savings of $21 for standard-size dishwashers and $62 for compact-size dishwashers. The simple payback period is 1.6 years for standard-size dishwashers and 2.3 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost is 2 percent for standard-size dishwashers and 26 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact is a savings of $13 for standard-size dishwashers and a loss of $14 for compact-size dishwashers. The simple payback period is 4.9 years for standard-size dishwashers and 6.8 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost is 4 percent for standard-size dishwashers and 62 percent for compact-size dishwashers. For the consumer sub-group of well-water households, the average LCC impact is a savings of $12 for standard-size dishwashers and a loss of $19 for compact-size dishwashers. The simple payback period is 5.5 years for standard-size dishwashers and 6.9 years for compact-size dishwashers. The fraction of well-water consumers experiencing a net LCC cost is 4 percent for standard-size dishwashers and 63 percent for compact-size dishwashers.

At TSL 4, the projected change in INPV ranges from a decrease of $155.9 million to a decrease of $103.1 million, which corresponds to decreases of 21.2 percent and 14.0 percent, respectively. Industry conversion costs could reach $137.2 million at this TSL as some manufacturers of standard-size dishwashers redesign products to enable improved controls and better design tolerances and manufacturers of certain compact-size dishwashers redesign products to meet max-tech.

DOE estimates that approximately 10 percent of dishwasher shipments currently meet the TSL 4 efficiencies, of which approximately 9 percent of standard-size dishwasher shipments and 14 percent of compact-size dishwasher shipments meet the required efficiencies. Compared to max-tech, more manufacturers offer standard-size dishwashers that meet the required efficiencies. Furthermore, since the May 2023 NOPR, more manufacturers now offer standard-size dishwasher models that meet the TSL 4 efficiencies. DOE believes that the recent introduction of more high-efficiency standard-size dishwashers is largely in response to ENERGY STAR V. 7.0, which went into effect in July 2023. Of the 19 OEMs offering standard-size products, 16 OEMs offer products that meet the efficiency level required. For compact-size dishwashers, TSL 4 represents the same efficiency level as for TSL 5. Just as with TSL 5, compact-size countertop dishwashers with four or more place settings and in-sink dishwashers with less than four place settings are not currently available in the market at TSL 4 levels. Meeting TSL 4 is technologically feasible for those products; however, DOE expects that it would take significant investment (nearly $11 million) relative to the size of the compact-size dishwasher market (no-new-standards case INPV of $15.4 million) for them to meet the max-tech efficiencies.

Based upon the above considerations, the Secretary concludes that at TSL 4 for dishwashers, the benefits of energy and water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the health benefits and climate benefits from emissions reductions would be outweighed by negative LCC savings for the senior-only households for the compact-size dishwasher product class and the high percentage of consumers with net costs for the compact-size dishwasher product class. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered the Recommended TSL (*i.e.,* TSL 3), which comprises the gap-fill efficiency level between the ENERGY STAR V. 7.0 level and the ENERGY STAR V. 6.0 level (EL 2) for standard-size dishwashers and the ENERGY STAR V. 6.0 level (EL 1) for compact-size dishwashers. Specifically, for a standard-size dishwasher, this efficiency level includes design options considered at the lower efficiency levels (*i.e.,* electronic controls, soil sensors, multiple spray arms, improved water filters, separate drain pump, and tub insulation) and additionally includes the use of improved control strategies. For a compact-size dishwasher, this efficiency level represents the use of improved controls. The majority of these design options for both standard-size and compact-size dishwashers reduce both energy and water use together. The Recommended TSL would save an estimated 0.31 quads of energy and 0.24 trillion gallons of water, an amount DOE considers significant. Under the Recommended TSL, the NPV of consumer benefit (inclusive of energy and water) would be $1.23 billion using a discount rate of 7 percent, and $2.90 billion using a discount rate of 3 percent.

The cumulative emissions reductions at the Recommended TSL are 9.48 Mt of CO_2, 1.41 thousand tons of SO_2, 22.37 thousand tons of NO_X, 0.01 tons of Hg, 98.97 thousand tons of CH_4, and 0.06 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at the Recommended TSL is $0.54 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at the Recommended TSL is $0.37 billion using a 7-percent discount rate and $0.94 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at the Recommended TSL is $2.13 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at the Recommended TSL is $4.38 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining

whether a proposed standard level is economically justified.

At the Recommended TSL, the average LCC impact is a savings of $17 for standard-size dishwashers and $32 for compact-size dishwashers. The simple payback period is 3.9 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of consumers experiencing a net LCC cost is 3 percent for standard-size dishwashers and 0 percent for compact-size dishwashers.

For the low-income consumer group, the average LCC impact is a savings of $21 for standard-size dishwashers and $39 for compact-size dishwashers. The simple payback period is 1.6 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of low-income consumers experiencing a net LCC cost is 2 percent for standard-size dishwashers and 0 percent for compact-size dishwashers. For the senior-only households consumer group, the average LCC impact is a savings of $13 for standard-size dishwashers and $26 for compact-size dishwashers. The simple payback period is 4.9 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of senior-only consumers experiencing a net LCC cost is 4 percent for standard-size dishwashers and 0 percent for compact-size dishwashers. For the consumer sub-group of well water households, the average LCC impact is a savings of $12 for standard-size dishwashers and $23 for compact-size dishwashers. The simple payback period is 5.5 years for standard-size dishwashers and 0.0 years for compact-size dishwashers. The fraction of well water consumers experiencing a net LCC cost is 4 percent for standard-size dishwashers and 0 percent for compact-size dishwashers.

At the Recommended TSL, the projected change in INPV ranges from a decrease of $148.8 million to a decrease of $96.7 million, which corresponds to decreases of 20.2 percent and 13.1 percent, respectively. Industry conversion costs could reach $126.9 million at this TSL as some manufacturers redesign standard-size products to enable improved controls and better design tolerances.

DOE estimates that approximately 11 percent of dishwasher shipments currently meet the Recommended TSL efficiencies, of which approximately 9 percent of standard-size dishwasher shipments and 87 percent of compact-size dishwasher shipments meet the required efficiencies. At this level, the decrease in conversion costs compared to TSL 4 is entirely due to the lower efficiency level required for compact-size dishwashers, as the efficiency level required for standard-size dishwashers is the same as for TSL 4 (EL 2). All the compact-size dishwasher OEMs currently offer products that meet the Recommended TSL. At this level, DOE expects manufacturers of compact-size dishwashers would implement improved controls, which would likely require minimal upfront investment.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that a standard set at the Recommended TSL for dishwashers would be economically justified. At this TSL, the shipments weighted-average LCC savings for both product classes is $17. The shipments weighted-average share of consumers with a net LCC cost for both product classes is 3 percent. For all consumer sub-groups, the LCC savings are positive and the net share of consumers with a net LCC cost is below 5 percent for both product classes. The FFC national energy and water savings are significant and the NPV of consumer benefits is $2.90 billion and $1.23 billion using both a 3-percent and 7-percent discount rate respectively. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At the Recommended TSL, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over eight times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at the Recommended TSL are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $0.54 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $0.94 billion (using a 3-percent discount rate) or $0.37 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

The adopted standards are applicable to the regulated cycle type (*i.e.,* normal cycle) as specified by the DOE test procedures; manufacturers can continue to provide additional, non-regulated cycle types (*e.g.,* quick cycles, pots and pans, heavy, delicates, *etc.*). Specifically, DOE expects quick cycles, many of which clean a load within 1 hour or less, and existing drying options would still be available on dishwasher models that currently offer such cycle types. DOE has no information suggesting that any aspect of this direct final rule would limit the other cycle options, especially quick cycles. Additionally, in the January 2022 Preliminary TSD, DOE provided data from its investigatory testing sample that determined cycle time is not substantively correlated with energy and water consumption of the normal cycle.[144] Based on these results, DOE has determined that this direct final rule would not have any substantive impact to normal cycle durations.

The test procedure in appendix C2, which includes provisions for a minimum cleaning index threshold of 70 to validate the selected test cycle, will go into effect at such time as compliance is required with any amended energy conservation standards. At the Recommended TSL, both standard-size and compact-size dishwasher models achieving the efficiencies, as measured by appendix C2, including the cleaning performance threshold, are readily available on the market.

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 considers amended standard levels for dishwashers by grouping the efficiency levels for each product class into TSLs and evaluates all analyzed efficiency levels in its LCC analysis and all efficiency levels with positive LCC savings for the NIA and MIA. For both standard-size and compact-size dishwashers, the adopted standard level represents the maximum energy savings that do not result in a large percentage of consumers experiencing a net LCC cost. The efficiency levels at the adopted standard level result in positive LCC savings for both product classes, significantly reduce the number of consumers experiencing a net cost, and reduce the decrease in INPV and conversion costs to the point where DOE has concluded they are economically justified, as discussed for the Recommended TSL in the preceding paragraphs.

At the Recommended standard level for the standard-size product class, the average LCC savings are $17, the percentage of consumers experiencing a net cost is 3 percent (*see* Table V.3), and

[144] *See* section 5.5.1 of the January 2022 Preliminary TSD. Available at *www.energy.gov/sites/default/files/2022-01/dw-tsd.pdf.*

the FFC energy savings are 0.3 quads. At the Recommended standard level for compact-size product class, the average LCC savings are $32 and there are no consumers that would experience a net cost. DOE concludes that there is economic justification to adopt the standards for standard-size and compact size dishwashers independent of each other.

Therefore, based on the previous considerations, DOE adopts the energy conservation standards for dishwashers at the Recommended TSL.

While DOE considered each potential TSL under the criteria laid out in 42 U.S.C. 6295(o) as discussed in the preceding paragraphs, DOE notes that the Recommended TSL for dishwashers adopted in this direct final rule is part of a multi-product Joint Agreement covering six rulemakings (refrigerators, refrigerator-freezers, and freezers; miscellaneous refrigeration products; consumer conventional cooking products; residential clothes washers; consumer clothes dryers; and dishwashers). The signatories indicate that the Joint Agreement for the six rulemakings should be considered as a joint statement of recommended standards, to be adopted in its entirety. As discussed in section V.B.2.e of this document, many dishwasher OEMs also manufacture refrigerators, refrigerator-freezers, and freezers, miscellaneous refrigeration products, consumer conventional cooking products, residential clothes washers, and consumer clothes dryers. Rather than requiring compliance with five amended standards in a single year (2027),[145] the negotiated multi-product Joint Agreement staggers the compliance dates for the five amended standards over a 4-year period (2027–2030). In response to the May 2023 NOPR, AHAM expressed concerns about the timing of ongoing home appliance rulemakings. Specifically, AHAM commented that the combination of the stringency of DOE's proposals, the short lead-in time required under EPCA to comply with standards, and the overlapping timeframe of multiple standards affecting the same manufacturers represents significant cumulative regulatory burden for the home appliance industry. (AHAM, No. 51 at pp. 21–24) AHAM has submitted similar comments to other ongoing consumer product rulemakings.[146] As AHAM is a key signatory of the Joint Agreement, DOE understands that the compliance dates recommended in the Joint Agreement would help reduce cumulative regulatory burden. These compliance dates help relieve concern on the part of some manufacturers about their ability to allocate sufficient resources to comply with multiple concurrent amended standards, about the need to align compliance dates for products that are typically designed or sold as matched pairs, and about the ability of their suppliers to ramp up production of key components. The Joint Agreement also provides additional years of regulatory certainty for manufacturers and their suppliers while still achieving the maximum improvement in energy efficiency that is technologically feasible and economically justified.

The amended energy conservation standards for dishwashers, which are expressed in EAEU and per-cycle water consumption, shall not exceed the values shown in Table V.28.

Table V.28 Amended Energy Conservation Standards for Dishwashers

Product Class	Estimated Annual Energy Use *(kWh/year)**	Per-Cycle Water Consumption *(gal/cycle)*
PC 1: Standard-size Dishwashers (≥ 8 place settings plus 6 serving pieces)	223	3.3
PC 2: Compact-size Dishwashers (< 8 place settings plus 6 serving pieces)	174	3.1

* Based on appendix C2.

2. Annualized Benefits and Costs of the 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 2022$) of the benefits from operating products that meet the adopted standards (consisting primarily of operating cost savings from using less energy and water), minus increases in product purchase costs, and 2) the annualized monetary value of the climate and health benefits.

Table V.29 shows the annualized values for dishwashers under the Recommended TSL, expressed in 2022$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reductions, and the 3-percent discount rate case for GHG social costs, the estimated cost of the adopted standards for dishwashers is $14.0 million per year in increased equipment installed costs, while the estimated annual benefits are $127.2 million from reduced equipment operating costs, $29.0 million in GHG reductions, and $34.3 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $176.4 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the adopted standards for dishwashers is $14.0 million per year in increased equipment costs, while the estimated

[145] The refrigerators, refrigerator-freezers, and freezers (88 FR 12452); consumer conventional cooking products (88 FR 6818); residential clothes washers (88 FR 13520); consumer clothes dryers (87 FR 51734); and dishwashers (88 FR 32514) utilized a 2027 compliance year for analysis at the proposed rule stage. Miscellaneous refrigeration products (88 FR 12452) utilized a 2029 compliance year for the NOPR analysis.

[146] AHAM has submitted written comments regarding cumulative regulatory burden for the other five rulemakings included in the multi-product Joint Agreement. AHAM's written comments on cumulative regulatory burden are available at: *www.regulations.gov/comment/EERE–2017–BT–STD–0003–0069* (pp. 20–21) for refrigerators, refrigerator-freezers, and freezers; *www.regulations.gov/comment/EERE–2020–BT–STD–0039–0031* (pp. 12–15) for miscellaneous refrigeration products; *www.regulations.gov/comment/EERE–2014–BT–STD–0005–2285* (pp. 44–47) for consumer conventional cooking products; *www.regulations.gov/comment/EERE–2017–BT–STD–0014–0464* (pp. 40–44) for residential clothes washers; and *www.regulations.gov/comment/EERE–2014–BT–STD–0058–0046* (pp. 12–13) for consumer clothes dryers.

annual benefits are $171.2 million in reduced operating costs, $29.0 million from GHG reductions, and $50.8 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $237.0 million per year.

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Table V.29 Annualized Benefits and Costs of Adopted Standards (the Recommended TSL) for Dishwashers

	Million 2022$/year		
Category	**Primary Estimate**	**Low-Net-Benefits Estimate**	**High-Net-Benefits Estimate**
3% discount rate			
Consumer Operating Cost Savings	171.2	164.1	175.8
Climate Benefits*	29.0	28.3	29.3
Health Benefit**	50.8	49.6	51.3
Total Benefits†	251.0	242.0	256.4
Consumer Incremental Product Costs‡	14.0	17.0	13.2
Net Monetized Benefits	237.0	224.9	243.1
Change in Producer Cashflow (INPV‡‡)	(14) - (9)	(14) - (9)	(14) - (9)
7% discount rate			
Consumer Operating Cost Savings	127.2	122.5	130.5
Climate Benefits*	29.0	28.3	29.3
Health Benefit**	34.3	33.5	34.5
Total Benefits†	190.5	184.3	194.3
Consumer Incremental Product Costs‡	14.0	16.7	13.3
Net Monetized Benefits	176.4	167.6	181.0
Change in Producer Cashflow (INPV‡‡)	(14) - (9)	(14) - (9)	(14) - (9)

Note: This table presents the costs and benefits associated with dishwashers shipped during the period 2027–2056. These results include consumer, climate, and health benefits that accrue after 2056 from the products shipped during the period 2027–2056. 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 and IV.H of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC-GHG (*see* section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

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

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate.

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

‡‡ Operating Cost Savings are calculated based on the life-cycle cost 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 8.5 percent that is estimated in the MIA (*see* chapter 12 of the direct final rule TSD for a complete description of the industry weighted-average cost of capital). For dishwashers, the change in INPV ranges from -$14 million to -$9 million. DOE accounts for that range of likely impacts in analyzing whether a trial standard level 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 Tiered scenario, which models a reduction of manufacturer markups due to reduced product differentiation as a result of amended standards. 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 direct 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 for this direct final rule, the annualized net benefits would range from $223 million to $228 million at 3-percent discount rate and would range from $163 million to $168 million at 7-percent discount rate. Parentheses () indicate negative values.

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VI. Severability

DOE added a new paragraph (3) into section 10 CFR 430.32(f) to provide that each energy and water conservation for each dishwasher category is separate and severable from one another, and that if any energy or water conservation standard is stayed or determined to be invalid by a court of competent jurisdiction, the remaining standards shall continue in effect. This severability clause is intended to clearly express the Department's intent that should an energy or water conservation standard for any product class be stayed or invalidated, the other conservation standards shall continue in effect. In the event a court were to stay or invalidate one or more energy or water conservation standards for any product class as finalized, the Department would want the remaining energy or conservation standards as finalized to remain in full force and legal effect.

VII. 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 (Apr. 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, OIRA in the OMB has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this 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) 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 and a final regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE is not obligated to prepare a regulatory flexibility analysis for this rulemaking because there is not a requirement to publish a general notice of proposed rulemaking under the Administrative Procedure Act. *See* 5 U.S.C. 601(2), 603(a). As discussed previously, DOE has determined that the Joint Agreement meets the necessary requirements under EPCA to issue this direct final rule for energy conservation standards for dishwashers under the procedures in 42 U.S.C. 6295(p)(4). DOE notes that the NOPR for energy conservation standards for dishwashers published elsewhere in this issue of the **Federal Register** contains a regulatory flexibility analysis.

C. Review Under the Paperwork Reduction Act

Manufacturers of dishwashers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for dishwashers, including any amendments adopted for those test

procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including dishwashers. (*See generally* 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (''NEPA''), DOE has analyzed this proposed action rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the 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 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this direct final rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE has concluded that this direct final rule may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include (1) investment in research and development and in capital expenditures by dishwashers manufacturers in the years between the direct final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency dishwashers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the direct final rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this document and the TSD for this

direct final rule respond to those requirements.

Under section 205 of UMRA, 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 direct final rule establishes amended energy conservation standards for dishwashers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 6295(o)(2)(A) and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this direct 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 rule that may affect family well-being. Although this direct final rule would not have any impact on the autonomy or integrity of the family as an institution as defined, this rule could impact a family's 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.

DOE has considered how the proposed benefits of this rule compare to the possible financial impact on a family (the only factor listed that is relevant to this rule). As part of its rulemaking process, DOE must determine whether the energy conservation standards contained in this final rule are economically justified. As discussed in section V.C.1 of this document, DOE has determined that the standards are economically justified because the benefits to consumers far outweigh the costs to manufacturers. Families will also see LCC savings as a result of this rule. Moreover, as discussed further in section V.B.1 of this document, DOE has determined that for the for low-income households, average LCC savings and PBP at the considered efficiency levels are improved (*i.e.,* higher LCC savings and lower payback period) 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 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf*. DOE has reviewed this direct final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth amended energy conservation standards for dishwashers, 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 direct final rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a report describing that peer review.[147] 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.[148]

M. Materials Incorporated by Reference

The following standard appears in the amendatory text of this document and was previously approved for the locations in which it appears: AHAM DW–1–2020.

N. 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 this rule meets the criteria set forth in 5 U.S.C. 804(2).

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this direct final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

Signing Authority

This document of the Department of Energy was signed on April 12, 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 April 12, 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:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend § 430.32 by revising paragraph (f) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(f) *Dishwashers.* (1) All dishwashers manufactured on or after May 30, 2013, shall meet the following standard—

(i) Standard size dishwashers shall not exceed 307 kwh/year and 5.0 gallons per cycle. Standard size dishwashers have a capacity equal to or greater than eight place settings plus six serving pieces as specified in AHAM DW–1–2020 (incorporated by reference, see § 430.3) using the test load specified in section 2.3 of appendix C1 or section 2.4 of appendix C2 to subpart B of this part, as applicable.

(ii) Compact size dishwashers shall not exceed 222 kwh/year and 3.5 gallons per cycle. Compact size dishwashers have a capacity less than eight place settings plus six serving pieces as specified in AHAM DW–1–2020 (incorporated by reference, see § 430.3) using the test load specified in section 2.3 of appendix C1 or section 2.4 of appendix C2 to subpart B of this part, as applicable.

(2) All dishwashers manufactured on or after April 23, 2027, shall not exceed the following standard—

[147] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed Nov. 15, 2023).

[148] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

Product class	Estimated annual energy use (kWh/year)	Maximum per-cycle water consumption (gal/cycle)
(i) Standard-size [1] (≥8 place settings plus 6 serving pieces) [2]	223	3.3
(ii) Compact-size (<8 place settings plus 6 serving pieces) [2]	174	3.1

[1] The energy conservation standards in this table do not apply to standard-size dishwashers with a cycle time for the normal cycle of 60 minutes or less.

[2] Place settings are as specified in AHAM DW–1–2020 (incorporated by reference, see § 430.3) and the test load is as specified in section 2.4 of appendix C2 to subpart B of this part.

(3) The provisions of paragraph (f)(2) of this section are separate and severable from one another. Should a court of competent jurisdiction hold any provision(s) of this section to be stayed or invalid, such action shall not affect any other provision of this section.

* * * * *

[FR Doc. 2024–08212 Filed 4–23–24; 8:45 am]

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Gulf of Mexico; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 240410–0195]

RIN 0648–BL68

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: NMFS has reassessed the statutorily mandated findings supporting its January 19, 2021 final rule, ''Regulations Governing Taking Marine Mammals Incidental to Geophysical Survey Activities in the Gulf of Mexico,'' issued pursuant to the Marine Mammal Protection Act (MMPA), as the estimates of incidental take of marine mammals anticipated from the activities analyzed for the 2021 final rule were erroneous. NMFS has corrected this error and considered and incorporated other newly available and pertinent information relevant to the analyses supporting some of the findings in the 2021 final rule and the taking allowable under the regulations. There are no changes to the specified activities or the specified geographical region in which those activities would be conducted, nor to the original 5-year period of effectiveness. In light of the new information, NMFS presents new analyses supporting our affirmance of the negligible impact determinations for all species, and affirms that the existing regulations, which contain mitigation, monitoring, and reporting requirements, are consistent with the ''least practicable adverse impact (LPAI) standard'' of the MMPA.

DATES: Effective from May 24, 2024 through April 19, 2026.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

On January 19, 2021 (86 FR 5322), in response to a petition request from the Bureau of Ocean Energy Management (BOEM), NMFS issued a final rule under the MMPA, 16 U.S.C. 1361 *et seq.,* for regulations governing the take of marine mammals incidental to the conduct of geophysical survey activities in the Gulf of Mexico (GOM). This incidental take regulation (ITR), which became effective on April 19, 2021, established a framework to allow for the issuance of Letters of Authorization (LOA) to authorize take by individual survey operators (50 CFR 216.106; 86 FR 5322 (January 19, 2021)). Take is expected to occur by Level A and/or Level B harassment incidental to use of active sound sources as described below.

Errors in the estimates of the maximum annual and 5-year take numbers, discovered during implementation of the ITR, preclude NMFS from issuing LOAs for the full amount of activity described by BOEM in the petition (as revised) and intended to be covered under the ITR. As a result, the utility of the ITR has been limited. NMFS has produced corrected take estimates, including updates to the best available science incorporated into the take estimation process (*i.e.,* new marine mammal density information). Changes to the take numbers required additional analysis to ensure that the necessary statutory findings can still be made. This rule revises NMFS' analysis and affirms the statutory findings that underlie its January 19, 2021, final rule (86 FR 5322), based on consideration of information that corrects and updates the take estimates that were considered for the 2021 final rule.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5 years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the LPAI on the affected species or stocks and their habitat (see the discussion below in the Mitigation section), as well as monitoring and reporting requirements. Under NMFS' implementing regulations for section 101(a)(5)(A), NMFS issues LOAs to individuals (including entities) seeking authorization for take under the activity-specific incidental take regulations (50 CFR 216.106).

Summary of Major Provisions Within the Regulations

Following is a summary of the major provisions of the current ITR regarding geophysical survey activities, which NMFS reaffirms through this rulemaking. The regulations contain requirements for mitigation, monitoring, and reporting, including:

- Standard detection-based mitigation measures, including use of visual and acoustic observation to detect marine mammals and shut down acoustic sources in certain circumstances;
- A time-area restriction designed to avoid effects to bottlenose dolphins in times and places believed to be of particular importance;
- Vessel strike avoidance measures; and
- Monitoring and reporting requirements.

See 50 CFR 217.180 *et seq.* The ITR continues to govern and allow for the issuance of LOAs for the take of marine mammals incidental to the specified activity (which is unchanged from what was described in the 2021 final rule), within the upper bounds of take evaluated herein.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the LPAI on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the

availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and set forth requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

On October 17, 2016, BOEM submitted a revised petition [1] to NMFS for rulemaking under section 101(a)(5)(A) of the MMPA to authorize take of marine mammals incidental to conducting geophysical surveys during oil and gas industry exploration and development activities in the GOM. This revised petition was deemed adequate and complete based on NMFS' implementing regulations at 50 CFR 216.104.

NMFS published a notice of proposed rulemaking in the **Federal Register** for a 60-day public review on June 22, 2018 (83 FR 29212) (''2018 proposed rule''). All comments received are available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.*

On February 24, 2020, BOEM submitted a notice to NMFS of its ''updated proposed action and action area for the ongoing [ITR] process[.]'' This update consisted of removal of the area then under a Congressional leasing moratorium under the Gulf of Mexico Energy Security Act (GOMESA) (Sec. 104, Pub. L. 109–432) [2] from consideration in the ITR. BOEM stated in its notice that survey activities are not likely to be proposed within the area subject to the leasing moratorium during the 5-year period of effectiveness for the ITR and, therefore, that the ''number, type, and effects of any such proposed [survey] activities are simply too speculative and uncertain for BOEM to predict or meaningfully analyze.'' Based on this updated scope, BOEM on March 26, 2020, submitted revised projections of expected activity levels and corresponding changes to modeled acoustic exposure numbers (*i.e.,* take estimates). BOEM's notice and updated information are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* NMFS incorporated this change in scope with the revised take estimates and issued a final rule and ITR on January 19, 2021 (86 FR 5322) (''2021 final rule'' or ''2021 ITR''), which became effective on April 19, 2021. Consistent with section 101(a)(5)(A) and NMFS' implementing regulations, NMFS may issue LOAs under the 2021 ITR for a period of 5 years.

While processing requests for individual LOAs under the ITR using the methodology for developing LOA-specific take numbers presented in the 2021 final rule, NMFS discovered that the estimated maximum annual incidental take and estimated total 5-year take from all survey activities that BOEM projected for its revised scope appeared to be in error, in that maximum annual incidental take was likely to be reached much sooner than anticipated for some species based on the level of activity described in BOEM's petition as revised in 2020. NMFS contacted BOEM regarding this, and BOEM determined that, when it reduced its scope of specified activity in March 2020 by removing the GOMESA moratorium area from its proposed action, it underestimated the level of take by inadvertently factoring species density estimates into its revised exposure estimates twice. Generally, this miscalculation caused BOEM to underestimate the total predicted exposures of species from all survey activities in its revision to the petition, most pronouncedly for those species with the lowest densities (*e.g.,* killer whales).

BOEM provided NMFS with an explanation of the miscalculation with regard to its incidental take estimate and revised take estimates, which is available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* See the Estimated Take section for additional discussion. NMFS then determined it would conduct a rulemaking to analyze the revised take estimates and, if appropriate, revise its incidental take rule accordingly. On January 5, 2023, NMFS published a proposed rule, requesting comments for a period of 30 days on its revised negligible impact analyses and proposed findings and proposed retention of the existing regulations as consistent with the MMPA's LPAI standard (88 FR 916, January 5, 2023).

Our proposed and final rule together provide analysis of the same activities and activity levels considered for the 2021 final rule, for the original 5-year period, and utilize the same modeling methodology described in the 2021 final rule. We incorporate the best available information, including consideration of specific new information that has become available since the 2021 rule was published, and updates to currently available marine mammal density information. We also incorporate expanded modeling results that estimate take utilizing the existing methodology but also consider the effects of using smaller (relative to the proxy source originally defined by BOEM) airgun arrays currently prevalent, as evidenced by LOA applications received by NMFS to date (see *https://www.fisheries.noaa.gov/issued-letters-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*).

There are no changes to the nature or level of the specified activities within or across years or to the geographic scope of the activity. Based on our assessment of the specified activity in light of the revised take estimates and other new information, we have determined that the 2021 ITR at 50 CFR 217.180 *et seq.,* which include the required mitigation and associated monitoring measures, satisfy the MMPA requirement to prescribe the means of effecting the LPAI on the affected species or stocks and their habitat, and therefore, do not change those regulations, nor do we change the requirements pertaining to monitoring and reporting. This rulemaking supplements the information supporting the 2021 incidental take rule. This rule does not change the existing April 19, 2026, expiration date of the 2021 ITR. In addition, NMFS' demarcation of ''years'' under the 2021 final rule for purposes of accounting for authorized take (*e.g.,* Year 1 under the rule extended from April 19, 2021, through April 18, 2022) remains unchanged under this rule.

As to the negligible impact findings, the revised take numbers remain within those previously analyzed for most species. (Take numbers increased compared with the 2021 final rule for 4 species: Rice's whale (formerly Bryde's whale), Fraser's dolphin, rough-toothed dolphin, and striped dolphin. See tables 5 and 6. Because of the new category of ''blackfish,'' there is uncertainty on any change in the take numbers for the individual species that comprise that category, though collectively the take numbers for all species in the blackfish category remain within the levels previously analyzed.) However, we revisited the risk assessment framework used in analyses for the 2021 final rule for all species, as elements of the framework are dependent on information related to stock abundance,

[1] In the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), NMFS provided a brief history of prior petitions received from BOEM's predecessor agencies.

[2] The Congressional moratorium in GOMESA was in place until June 30, 2022. On September 8, 2020, the President withdrew, under section 12 of the Outer Continental Shelf Lands Act, the same area covered by the prior GOMESA moratorium from disposition by leasing for 10 years, beginning on July 1, 2022, and ending on June 30, 2032.

which has been updated (Hayes *et al.,* 2021; Garrison *et al.,* 2023). For most species, we provide updated negligible impact analyses and determinations. For those species for which take numbers decreased and associated evaluated risk remained static or declined, we incorporate (by either repeating, summarizing, or referencing) applicable information and analyses in the prior rulemaking and supporting documents. For those species, there is no other new information suggesting that the effect of the anticipated take might exceed what was considered in the 2021 final rule. Therefore, the analyses and findings provided in the 2021 final rule remain current and applicable. Please see the Negligible Impact Analysis and Determinations section for further information. As to the small numbers standard, we do not change the interpretation and implementation as laid out in the 2021 final rule (86 FR 5322, 5438, January 19, 2021).

Description of the Specified Activity

Overview

The specified activity for this action is unchanged from the specified activity considered for the 2021 ITR, consisting of geophysical surveys conducted for a variety of reasons. BOEM's 2016 petition described a 10-year period of geophysical survey activity and provided estimates of the amount of effort by survey type and location. BOEM's 2020 update to the scope of activity included revisions to these level-of-effort projections, including reducing the projections to 5 years and removing activity assumed to occur within the areas removed from the scope of activity. Actual total amounts of effort (including by survey type and location) are not known in advance of receiving LOA requests, but take in excess of what is analyzed in this rule would not be authorized. Applicants seeking authorization for take of marine mammals incidental to survey activities outside the geographic scope of the rule (*i.e.,* within the former GOMESA moratorium area) would need to pursue a separate MMPA incidental take authorization. See Figures 1 and 2.

Geophysical surveys in the GOM are typically conducted in support of hydrocarbon exploration, development, and production by companies that provide such services to the oil and gas industry. Broadly, these surveys include deep penetration surveys using large airgun arrays as the acoustic source; shallow penetration surveys using a small airgun array, single airgun, or other systems that may achieve similar objectives (here considered broadly as including other similar sources such as boomers and sparkers) as the acoustic source; or high-resolution surveys, which may use a variety of acoustic sources. Geophysical surveys and associated acoustic sources were described in detail in NMFS' 2018 notice of proposed rulemaking and in the notice of issuance for the 2021 final rule (83 FR 29212, June 22, 2018; 86 FR 5322, January 19, 2021). Please refer to those notices for detailed discussion of geophysical survey operations, associated acoustic sources, and the specific sources and survey types that were the subject of acoustic exposure modeling. Information provided therein remains accurate and relevant and is not repeated here. The use of these acoustic sources produces underwater sound at levels that have the potential to result in harassment of marine mammals. Marine mammal species with the potential to be present in the GOM are described below (see table 2).

The specified geographical region is illustrated below but generally speaking, survey activity may occur within U.S. territorial waters and waters of the U.S. Exclusive Economic Zone (EEZ) within the GOM (*i.e.,* to 200 nautical miles (nmi)), except for the former GOMESA moratorium area).

Dates and Duration

The dates and duration of the specified activities considered for this rule are unchanged from the dates and duration for the 2021 final rule, which may occur at any time during the period of validity of the regulations (April 19, 2021, through April 18, 2026).

Specified Geographical Region

The specified geographical region for this action is unchanged from the one considered for the 2021 final rule. The OCS planning areas are depicted in Figure 1, and the specified geographical region (with the modeling zones and depicting the area withdrawn from leasing consideration) is depicted in Figure 2. NMFS provided a detailed discussion of the specified geographical region in the 2018 notice of proposed rulemaking.

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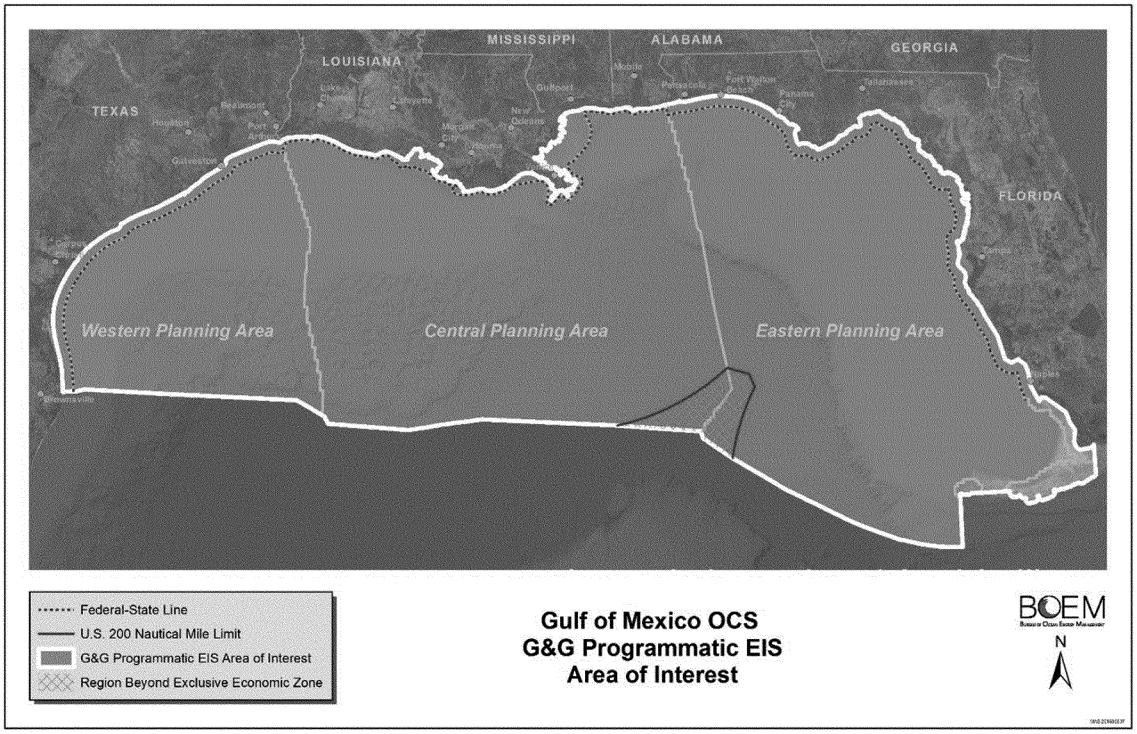

Figure 1 -- BOEM Planning Areas

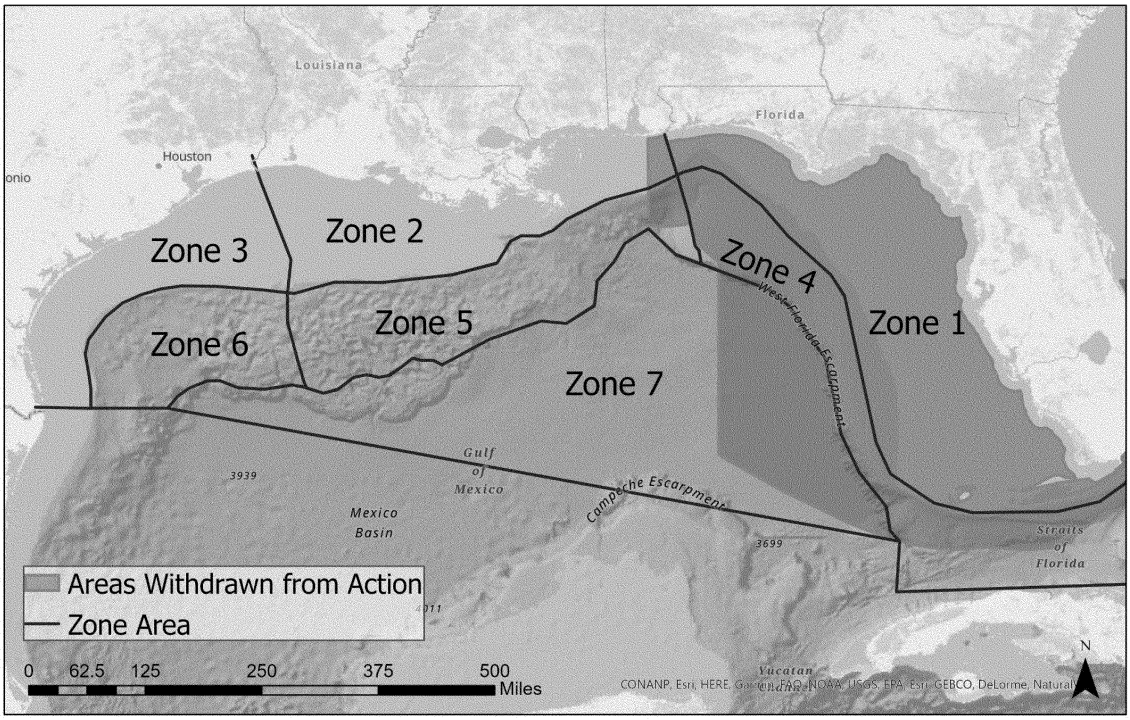

Figure 2 -- Specified Geographical Region

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Summary of Representative Sound Sources

The 2021 final rule allows for the authorization of take, through LOAs, incidental to use of airgun sources of different sizes and configurations (as well as similar sources). The supporting modeling considered two specific airgun array sizes/configurations (as well as a single airgun). Acoustic exposure modeling performed in support of the 2021 rule was described in detail in ''Acoustic Propagation and Marine Mammal Exposure Modeling of Geological and Geophysical Sources in the Gulf of Mexico'' and ''Addendum to Acoustic Propagation and Marine Mammal Exposure Modeling of Geological and Geophysical Sources in the Gulf of Mexico'' (Zeddies *et al.,* 2015, 2017a), as well as in ''Gulf of Mexico Acoustic Exposure Model Variable Analysis'' (Zeddies *et al.,* 2017b), which evaluated a smaller, alternative airgun array. For this final rule, modeling of a third airgun array size that is also smaller than the original large array and more representative of survey activities occurring under the current rule was specifically considered (Weirathmueller *et al.,* 2022). These reports provide full detail regarding the modeled acoustic sources and survey types and are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.*

Representative sources for the modeling include three different airgun arrays, a single airgun, and an acoustic source package including a CHIRP sub-bottom profiler in combination with multibeam echosounder and side-scan sonar. Two major survey types were considered: large-area (including 2D, 3D narrow azimuth (NAZ), 3D wide azimuth (WAZ), and coil surveys) and small-area (including single airgun surveys and high-resolution surveys; the single airgun was used as a proxy for surveys using a boomer or sparker). The nominal airgun sources used for analysis of the specified activity include a single airgun (90-cubic inch (in^3) airgun) and a large airgun array (72-element, 8,000 in^3). In addition, the Model Variable Analysis (Zeddies *et al.,* 2017b) provides analysis of an alternative 4,130-in^3 array, and the most recent modeling effort using the same methodology provides analysis of a 32-element, 5,110-in^3 array (Weirathmueller *et al.,* 2022), with specifications defined by NMFS in consultation with industry operators to provide exposure modeling results more relevant to arrays commonly in use (see Letters of Authorization section). Additional discussion is provided in the Estimated Take section.

While it was necessary to identify representative sources for the purposes of modeling take estimates for the analysis for the 2021 rule, the analysis is intended to be, and is appropriately, applicable to takes resulting from the use of other sizes or configurations of airguns (*e.g.,* the smaller, 5,110-in^3 airgun array currently prevalent in GOM survey effort and described in Weirathmueller *et al.* (2022), and the alternative 4,130-in^3 array initially modeled by Zeddies *et al.* (2017b)). Although the analysis herein is based on the modeling results presenting the highest estimated take number for each species (for most species, those resulting from use of the 8,000-in^3 array), actual take numbers for authorization through LOAs are generated based on the results most applicable to the array planned for use.

While these descriptions reflect existing technologies and current practice, new technologies and/or uses of existing technologies may come into practice during the remaining period of validity of these regulations. As stated in the 2021 final rule (86 FR 5322, 5442; January 19, 2021), NMFS will evaluate any such developments on a case-specific basis to determine whether expected impacts on marine mammals are consistent with those described or referenced in this document and, therefore, whether any anticipated take incidental to use of those new technologies or practices may appropriately be authorized under the existing regulatory framework. See Letters of Authorization for additional information.

Estimated Levels of Effort

As noted above, estimated levels of effort are unchanged from those considered in the 2021 final rule. Please see the 2021 final rule notice for additional detailed discussion of those estimates and of the approach to delineating modeling zones (shown in Figure 2).

In support of its 2020 revision of the scope of the rule, BOEM provided NMFS with revised 5-year level of effort predictions and associated acoustic exposure estimates. Table 1 provides those effort projections for the 5-year period, which are unchanged. This table corrects table 2 in NMFS' notice of issuance of the 2021 ITR, which erroneously presented the difference in activity levels between the 2018 proposed ITR and the revised levels after GOMESA removal. The correct information was used in the take calculations, and was concurrently made available to the public via BOEM's 2020 notice to NMFS of its updated scope.

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Table 1 -- Projected Levels of Effort in 24-hour Survey Days for 5 Years, by Zone and Survey Type[1]

Year	Zone[2]	2D[3]	3D NAZ[3]	3D WAZ[3]	Coil[3]	VSP[3]	Total (Deep)[3]	Shallow hazards[4]	Boomer[4]	HRG[4]	Total (Shallow)[4]
1	1	0	0	0	0	0	0	0	0	0	0
	2	0	236	0	0	0	236	2	0	18	20
	3	0	30	0	0	0	30	0	0	4	4
	4	0	0	0	0	0	0	0	0	0	0
	5	54	373	184	79	2	692	0	0	25	25
	6	0	186	49	21	0	256	0	0	10	10
	7	46	346	166	71	1	630	0	0	23	23
	Total	100	1,171	399	171	3	1,844	2	0	80	82
2	1	0	0	0	0	0	0	0	0	0	0
	2	0	354	42	19	0	415	2	0	18	20
	3	0	0	0	0	0	0	0	0	4	4
	4	6	0	0	0	0	6	0	0	0	0
	5	0	373	184	79	2	638	0	0	25	25
	6	0	99	0	0	0	99	0	0	11	11
	7	20	336	162	69	1	588	0	0	23	23
	Total	26	1,162	388	167	3	1,746	2	0	81	83
3	1	0	0	0	0	0	0	0	0	0	0
	2	0	236	0	0	0	236	2	0	18	20
	3	0	0	0	0	0	0	0	0	4	4
	4	0	0	0	0	0	0	0	0	0	0
	5	0	328	154	66	2	550	0	0	26	26
	6	0	186	49	21	0	256	0	0	12	12
	7	0	306	139	60	1	506	0	0	24	24
	Total	0	1,056	342	147	3	1,548	2	0	84	86
4	1	0	0	0	0	0	0	0	0	0	0
	2	0	354	42	19	0	415	2	1	16	19
	3	0	30	0	0	0	30	0	0	3	3
	4	12	11	0	0	0	23	0	0	0	0
	5	27	237	92	40	2	398	0	0	26	26
	6	0	99	0	0	0	99	0	0	12	12
	7	63	255	94	40	1	453	0	0	24	24
	Total	102	986	228	99	3	1,418	2	1	81	84
5	1	0	0	0	0	0	0	0	0	0	0
	2	0	236	0	0	0	236	0	0	19	19
	3	0	0	0	0	0	0	0	0	3	3
	4	0	17	0	0	0	17	0	0	0	0
	5	0	283	184	79	2	548	2	1	24	27
	6	0	99	0	0	0	99	0	0	13	13
	7	0	313	162	69	2	546	2	1	23	26
	Total	0	948	346	148	4	1,446	4	2	82	88

[1]Projected levels of effort in 24-hour survey days. This table corrects table 2 in NMFS' notice of issuance of the 2021 ITR, which erroneously presented the difference in activity levels between the 2018 proposed ITR and the revised levels after GOMESA removal. The correct information was concurrently made available to the public via BOEM's 2020 notice to NMFS of its updated scope.

[2]Zones follow the zones depicted in Figure 2.

[3]Deep penetration survey types include 2D, which uses one source vessel with one source array; 3D NAZ, which uses two source vessels using one source array each; 3D WAZ and coil, each of which uses 4 source vessels using one source array each (but with differing survey design); and VSP, which uses one source vessel with one source array. "Deep" refers to survey type, not to water depth. Assumptions related to modeled source and survey types were made by BOEM in its petition for rulemaking.

[4]Shallow penetration/HRG survey types include shallow hazards surveys, assumed to use a single 90-in^3 airgun or boomer, and high-resolution surveys using the multibeam echosounder, side-scan sonar, and CHIRP sub-bottom profiler systems concurrently. "Shallow" refers to survey type, not to water depth.

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The preceding description of the specified activity is a summary of critical information. The interested reader should refer to the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), as well as BOEM's petition (with addenda) and Programmatic Environmental Impact Statement (PEIS), for additional detail regarding these activities and the region.

Comments and Responses

NMFS published a notice of proposed rulemaking in the **Federal Register** on January 5, 2023 (88 FR 916), beginning a 30-day comment period. In that notice, we requested public input on the proposed rule, including but not limited to NMFS' proposed or preliminary findings, determinations, or conclusions regarding the MMPA standards, and the information NMFS relies on in support of those findings, determinations, or conclusions; and NMFS' preliminary decisions to reaffirm or not make changes to the 2021 final rule, and the information NMFS relies on in support of those preliminary decisions, and requested that interested persons submit relevant information, suggestions, and comments.

During the 30-day comment period, we received 22,832 comment letters. Of this total, we determined that approximately 71 comment letters represented unique submissions, including 6 letters from various organizations (described below) and 65 unique submissions from private citizens. The remaining approximately 22,756 comment letters followed a generic template format in which respondents provided comments that were identical or substantively the same. (For purposes of counting, we considered comments using this template as a single unique submission.)

A letter was submitted jointly by the EnerGeo Alliance (formerly the International Association of Geophysical Contractors), the American Petroleum Institute, the National Ocean Industries Association, and the Offshore Operators Committee (hereafter, the ''Associations''). A separate letter was submitted jointly by the Natural Resources Defense Council (NRDC), Association of Zoos and Aquariums, Center for Biological Diversity, Earthjustice, Healthy Gulf, and Surfrider Foundation (hereafter, ''NRDC''). Additional letters were submitted by the following: Beacon Offshore Energy (Beacon), BOEM, Chevron USA Inc. (Chevron), and the Marine Mammal Commission (MMC). We note that several of these entities refer to, or restate, comments they provided in response to NMFS' 2018 proposed rulemaking—in some cases appending the entirety of the 2018 letters to the current comment letters, and stating that the 2018 comments are incorporated to the current comments. All comments received in response to the 2018 proposed rulemaking were previously responded to by NMFS (86 FR 5322, January 19, 2021). Where new information or context warranted additional response to the prior comments, we provide it here. However, in most cases no new response is required, and we rely on our prior responses in the 2021 final rule.

NMFS has reviewed all public comments received on the 2023 proposed rule. All relevant comments and our responses are described below. All comments received are available online at: *https://www.regulations.gov.* A direct link to these comments is provided at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.*

General Comments

A large majority of commenters, including all of those following the aforementioned generic template, expressed general opposition towards oil and gas industry geophysical survey activity, suggesting that NMFS has decision-making authority regarding whether such surveys occur. Numerous letters also provide commentary regarding climate change and the relative merits of U.S. use of various sources of energy. As these comments are outside the scope of NMFS' authority and NMFS' decision under the MMPA, we do not respond further. NMFS' action here concerns only the authorization of marine mammal take incidental to projected geophysical surveys, provided that the required analyses, findings, and other requirements have been satisfied. Jurisdiction concerning decisions to allow the surveys themselves rests solely with BOEM, pursuant to its authority under the Outer Continental Shelf Lands Act (OCSLA). We also note that this rulemaking addresses only marine mammals (and their habitat). As such, effects of the surveys on other aspects of the marine environment are not relevant to NMFS' analyses and authorities under section 101(a)(5)(A) of the MMPA.

In addition, numerous commenters (including all of those following the aforementioned generic template) make unsupported assertions regarding the potential impacts of oil and gas industry geophysical survey activity, stating that such activity can deafen and cause the death of marine mammals. As the commenters provide no evidence in support of these assertions, and NMFS is not aware of any such evidence, we do not respond further to these comments.

Comment: Beacon states that it appreciates NMFS' efforts to correct previous errors, consider newly available and pertinent information, and acknowledge the impact of those factors on the analyses supporting prior findings in the 2021 final rule and the taking allowable under applicable regulations. Beacon also states that it supports the comments submitted by the Associations.

Response: NMFS appreciates the comments.

Comment: NRDC, noting that the purported projected levels of effort provided in table 2 of NMFS' 2021 final rule were unaccountably low and likely in error, requests confirmation that the activity levels presented in NMFS' 2023 proposed rule are correct and that these levels were used to generate the current estimated take numbers.

Response: NMFS confirms that the projected levels of effort provided in table 1 of its 2023 proposed rule (and in this final rule) are correct, and were used to generate the estimated take numbers provided in table 6. Table 1 corrected table 2 in NMFS' 2021 final rule, which erroneously presented the difference in activity levels between the 2018 proposed ITR and the revised levels after GOMESA removal. The correct projected levels of effort were used in the analyses presented in NMFS' 2018 proposed rule, 2021 final rule, 2023 proposed rule, and this final rule.

Comment: The Associations assert that NMFS has ''declined to provide the model inputs and outputs'' associated with acoustic exposure modeling performed in support of the rule, and state that this precludes the public from conducting a thorough review of the proposed rule. The Associations separately reference the requirements of the Administrative Procedure Act (APA) in asserting that NMFS has failed to ''fully disclose all necessary information about the models it uses (including all inputs and outputs), explain the assumptions and methodology used to prepare the models, allow for public review and feedback on the models and all related supporting information, and respond to public comments and make changes to the models as warranted based on those comments.''

Response: NMFS has provided information regarding all model inputs and outputs, as well as information regarding all other aspects of the

modeling process. In association with its 2018 proposed rulemaking, NMFS made the modeling report (Zeddies *et al.,* 2015, 2017a) available for public review for 60 days. This almost 400-page report includes full detail regarding all model inputs and outputs, assumptions, and methodology. Prior to the 60-day comment period for NMFS' 2018 proposed rulemaking, the report was made available for review and comment during NMFS' 45-day notice of receipt comment period regarding BOEM's petition, as well as during a separate 60-day comment period for BOEM's draft PEIS. Thus, this report was available for public review for a minimum aggregate of 165 days prior to the 30-day comment period for NMFS' 2023 proposed rule. Details regarding the 4,130-in^3 airgun array were provided by the Associations themselves in support of development of their 2017 Gulf of Mexico Acoustic Exposure Model Variable Analysis (Zeddies *et al.,* 2017b), which was also provided for public review during the 60-day comment period for NMFS' 2018 proposed rule (and which also remains available to the public online at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*). In order to perform this modeling variable analysis, the Associations were granted access to all modeling products and worked directly with the contracted modelers (JASCO Applied Sciences(JASCO)).

NMFS further explained in its 2023 proposed rule that ''all aspects of the modeling (including source, propagation, and animal movement modeling) are the same as described in Zeddies *et al.* (2015, 2017a, 2017b) and discussed in previous **Federal Register** notices associated with the ITR,'' with the exception of the introduction of a new source (the 5,110-in^3 array), details of which were provided in the Weirathmueller *et al.* (2022) memorandum provided for public review during the 30-day comment period for the 2023 proposed rule. (We note that the Associations claim that ''NMFS provides insufficient information. . .to determine whether this specific array size and the configuration analyzed are accurate or representative. . . .'' However, the Associations do not specify what necessary information they believe was omitted from description of the array.)

The Associations do not describe any specific model inputs or outputs or other information that they believe to have been withheld, or specifically describe any assumptions or methodology that they believe has been insufficiently explained. However, during the public comment period, EnerGeo contacted NMFS to request the following:

- Model outputs, specifically the modeled sound pressure levels across depth and range for all modeled radials for modeled seismic arrays and modeling locations/seasons.

Upon receipt of this request, NMFS contacted JASCO to ascertain the availability of the requested products (which are specific output files rather than the descriptions of model outputs that are provided in the modeling report). NMFS then communicated with EnerGeo that JASCO could provide the requested sound field files, but noted that there are several thousand files for each array volume, and that the files are in a proprietary format. Therefore, NMFS explained to EnerGeo that the request would require coordination between EnerGeo and JASCO in order to produce the requested volume of files in a format that might be useful to EnerGeo, and requested EnerGeo's response on how to conduct the necessary coordination. EnerGeo did not respond.

- At each modeling location, the specific geographic location of the centerpoint, the number of radials modeled, and the specific inputs used in the modeling including bathymetry, sound speed profiles, and the geoacoustic parameters of the seabed, as well as the sea surface assumption (sea state or other assumptions).

Regarding this request, NMFS reiterated to EnerGeo the explanation provided in the proposed rule: all of the requested information remains unchanged from the original modeling effort and is described in the original modeling report. However, NMFS noted that if EnerGeo could specify any needed information that it could not find in the modeling report, NMFS would work to provide it. EnerGeo did not respond.

- Summarized metrics on $R_{95\%}$ and R_{max} distances [3] to the 160-dB behavioral threshold, the behavioral step function (for beaked whales and all other species), and the hearing group-specific distances to Level A harassment thresholds for the NMFS-specified sound exposure level (SEL) and peak thresholds and for all modeled seismic arrays and acoustic modeling sites and seasons.

Regarding this request, NMFS explained to EnerGeo that JASCO did not specifically calculate $R_{95\%}$ and R_{max} for every site, because $R_{max}/R_{95\%}$ are not used for animal movement modeling—the entire sound fields are used. Acoustic ranges were calculated for a subset of the modeled sites in order to provide examples in the modeling report.

NMFS reiterates that the Associations provide no specific information regarding any aspect of the modeling that they believe has been inappropriately withheld from the public. Moreover, NMFS made a good faith effort to respond to EnerGeo's request for information during the public comment period, and EnerGeo neither followed up with additional questions nor responded to NMFS' offer to facilitate a working interaction with the modelers to obtain requested data files. NMFS has provided all details regarding model inputs and outputs, as well as modeling assumptions and methods, and has provided the public with a meaningful opportunity for review. NMFS has further responded to all comments, both here and in its 2021 final rule.

Comment: Chevron states that NMFS ignores real-world observations that ''directly contradict'' its model estimates.

Response: Chevron refers to observations, or lack thereof, by protected species observers (PSO) aboard survey vessels, as proof that NMFS' take estimates are overly conservative. However, PSOs are able to conduct observations over only a relatively small fraction of the area in which marine mammals may be impacted by noise from seismic surveys even during daylight hours, and many marine mammals are not observable at the surface. Similarly, many marine mammals may not be detected by acoustic monitoring. Lack of observations does not demonstrate that takes of marine mammals do not occur. Moreover, we incorporated the best available scientific information for our analysis, as evidenced (for example) by

[3] Given a regularly gridded spatial distribution of sound levels, the $R_{95\%}$ for a given sound level was defined as the radius of the circle, centered on the source, encompassing 95 percent of the grid points with sound levels at or above the given value. This definition is meaningful in terms of potential impact to animals because, regardless of the shape of the contour for a given sound level, $R_{95\%}$ is the range from the source beyond which less than 5 percent of a uniformly distributed population would be exposed to sound at or above that level. The R_{max} for a given sound level is simply the distance to the farthest occurrence of the threshold level (equivalent to $R_{100\%}$. It is more conservative than $R_{95\%}$, but may overestimate the effective exposure zone. For cases where the volume ensonified to a specific level is discontinuous and small pockets of higher received levels occur far beyond the main ensonified volume, R_{max} would be much larger than $R_{95\%}$ and could therefore be misleading if not given along with $R_{95\%}$ (Zeddies *et al.,* 2015).

our references to BOEM's synthesis studies of PSO data from 2002–15 (Barkaszi *et al.,* 2012; Barkaszi and Kelly, 2018) (as well as other similar syntheses from other locations).

Comment: The Associations reiterate comments made initially with regard to NMFS' 2018 proposed rule, asserting that NMFS has employed an ''unlawful'' approach to the estimation of incidental take, including analyses of ''unlikely worst-case scenarios,'' resulting in ''significant overestimates of take.'' Chevron echoes these concerns.

Response: The commenters' statements that NMFS has substantially overestimated takes are incorrect. As discussed in our 2021 final rule response to the Associations' 2018 comments on this topic (86 FR 5322, 5347, January 19, 2021), NMFS used current scientific information and state-of-the-art acoustic propagation and animal movement modeling to reasonably estimate potential exposures to noise. With regard to the acoustic exposure modeling, NMFS reiterates part of its 2021 response to the 2018 comments, which remains applicable: the Associations' comments do not specify which of the many data inputs are ''conservative'' or to what degree, nor do they recommend alternatives to the choices that were meticulously documented in developing the modeling.

As in their 2018 public comment letter, the Associations inappropriately characterize statements from NMFS' notice of proposed rulemaking as admissions of purposeful conservativeness. The Associations refer to NMFS' description of the take numbers subject to analysis for purposes of the negligible impact determinations in this rule. In contrast to the 2018 proposed rule, for which NMFS used modeling of one airgun array, for this final rule, NMFS considered acoustic exposure modeling results from three different airgun arrays, and stated simply that, for each species, the maximum take number resulting from analysis of the three different arrays was subject to evaluation as part of NMFS' negligible impact determinations. This approach ensures that the potential takes of each species that could occur from survey effort this final rule is designed to cover—surveys that may involve various airgun arrays—are appropriately analyzed to enable issuance of LOAs for those activities with reasonably accurate take estimates.

The Associations also refer again to the 2017 Acoustic Exposure Model Variable Analysis (Zeddies *et al.,* 2017b) as being supportive of their claims that NMFS' modeling is inappropriately conservative, stating that the results show that ''alterations to only 4 or 5 variables have dramatic consequences that are the result of redundantly applied precaution [. . .].'' The Associations incorrectly characterize the results of the analysis, which investigated five factors:

- Airgun array size (including total volume, number of array elements, element air pressure, array geometry and spacing) used in source and propagation models;
- Acoustic threshold criteria and associated weighting used to calculate exposures;
- Animal densities used for adjusting simulated computer model exposures to potential real-world animal exposures;
- Natural aversive behaviors of marine mammals; and
- The addition of mitigative measures that lessen the potential for animals' exposure to threshold levels of seismic sound.

The primary finding of the Zeddies *et al.* (2017b) analysis is that use of NMFS' acoustic injury criteria (*i.e.,* NMFS, 2016, 2018) decreased predictions of injurious exposure. Thus, NMFS' 2018 proposed rule had already incorporated the change with the most significant impact on estimated take numbers.

We addressed the Associations' investigation of quantitative consideration of animal aversion and mitigation effectiveness in responses to comments provided in the 2021 final rule. In summary, these factors were not quantified in the modeling because there is too much inherent uncertainty regarding the effectiveness of detection-based mitigation for these activities to support any reasonable quantification of its effect in reducing injurious exposure, and there is too little information regarding the likely level of onset and degree of aversion to justify its use in the modeling via precise quantitative control of animat movements (as compared to post-hoc adjustment of the modeling results, as was done in the 2021 final rule and carried forward here). Importantly, while aversion and mitigation implementation are expected to reduce somewhat the modeled levels of injurious exposure, they would not be expected to result in any meaningful reduction in assumed exposures resulting in Level B harassment, nor in total takes by harassment, as any averted injurious (Level A harassment) takes would be appropriately changed to behavioral disturbance (Level B harassment) takes. With regard to marine mammal density information, NMFS has used in both the 2021 final rule and this rule the best available scientific information.

NMFS previously responded to the Associations' comments that the selected array (8,000 in^3) is unrealistically large, resulting in an overestimation of likely source levels and, therefore, size of the sound field with which marine mammals would interact. We noted then our agreement with the premise that use of a smaller airgun array volume with lower source level would likely create a smaller ensonified area resulting in fewer numbers of animals expected to exceed exposure thresholds, but that selection of the representative array to be used in the modeling was directed by the ITR applicant (*i.e.,* BOEM). For the 2023 proposed rule, in reflection of prior comments from the Associations and others, NMFS determined it appropriate to develop full modeling results for analysis that would provide more scalable take numbers suitable for the actual sound sources in use, and introduced the alternative 4,130-in^3 and 5,110-in^3 airgun arrays. This approach directly refutes the Associations' suggestion that NMFS has not appropriately responded to public comments and made changes as warranted.

With regard to the large number of other data inputs and/or choices made in the modeling, the Associations do not specifically identify any issue where they believe a meaningful data or process error was made in the modeling. NMFS reiterates its conclusion that, while the modeling required that a number of assumptions and choices be made by subject matter experts, these are reasonable, scientifically acceptable choices. These choices do not represent a series of ''overly conservative, worst-case assumptions'' that, as the Associations state, result in a ''compounding error yielding unrealistic calculations lacking scientific basis.'' To the extent that the results of the modeling may be conservative, they are the most credible, science-based information available at this time.

NMFS reiterates its conclusion that the modeling effort incorporated representative sound sources and projected survey scenarios (based on the best available information obtained by BOEM, as supplemented by NMFS to address additional airgun sizes that are reasonably likely based on LOA applications to date—which alleviates the primary source of conservativeness about which NMFS and the Associations find agreement), physical and geological oceanographic parameters at multiple locations within the GOM and during different seasons, the best available information regarding marine mammal distribution and

density, and available information regarding known behavioral patterns of the affected species. Current scientific information and state-of-the-art acoustic propagation and animal movement modeling were used to reasonably estimate potential exposures to noise. The 2018 proposed rule described all aspects of the modeling effort in significant detail, including numerous investigations (test scenarios) designed by the agencies to understand various model sensitivities and the effects of certain choices on model results. Additionally, the 2023 proposed rule described in detail all aspects of the modeling that were different, while referring the reader to the 2018 proposed rule and supplementary information for the bulk of the modeling effort, which was unchanged. All relevant information was provided for public review, on multiple occasions.

Because it remains relevant, we quote the MMC's 2018 public comment on this topic: ''Complex sound propagation and animat modeling was used to estimate the numbers of potential takes from various types of geophysical surveys in the Gulf. NMFS received comments from industry operators suggesting that the modeling results were overly conservative [. . .]. However, the Commission has reviewed the modeling approach and parameters used to estimate takes and believes they represent the best available information regarding survey scenarios, sound sources, physical and oceanographic conditions in the Gulf, and marine mammal densities and behavior. As such, the Commission agrees with NMFS and BOEM that the resulting take estimates were conservative but reasonable, thereby minimizing the likelihood that actual takes would be underestimated.''

Comment: The Associations describe potential mistakes in the take numbers evaluated for this rule, noting that the total take numbers for aggregated beaked whales across species and for blackfish across species provided in Weirathmueller *et al.* (2022) exceed the values provided by NMFS in table 6 of the 2023 proposed rule.

Response: NMFS clarifies that Appendix B of Weirathmueller *et al.* (2022) provides essentially duplicate results for species that are represented by the same density value. For example, Garrison *et al.* (2023) [4] provide generic (versus species-specific) density information for beaked whales and blackfish. The results provided in Weirathmueller *et al.* (2022) applied those same density values to multiple species within a particular guild; thereby, duplicating modeling results for, *e.g.,* Cuvier's, Blainville's, and Gervais' beaked whale. One can see that the resulting take numbers are the same for Blainville's and Gervais' beaked whale, as these two species are governed by the same assumed animal movement parameters in the animat modeling. However, the results for Cuvier's beaked whale are slightly different, resulting from the application of slightly different animal movement parameters in the modeling. For purposes of providing an estimate of total takes for the beaked whale guild, NMFS assumed the larger set of values—as necessary to ensure that the potential takes for the species with the largest values (in this case, Cuvier's beaked whales) were appropriately analyzed. A similar situation exists for the four species in the blackfish category, *i.e.,* the four species are represented together by a generic, guild density that encompasses all four species. However, each of the four species were represented in the animal movement modeling component by animats guided by species-specific animal movement parameters. Thus, when the appropriate density value was applied to scale the animat exposure estimates to real-world exposure estimates, slightly different results were found across the four species, but the total take number for the blackfish guild is correctly represented through summing the take values for one of the species. The take numbers provided in table 6 are correct; no error exists.

Comment: Chevron states that the modeling performed in support of the rule qualifies as a ''highly influential scientific assessment.''

Response: NMFS disagrees that the modeling constitutes a highly influential scientific assessment. The Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005) defines a highly influential scientific assessment as information whose dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or for which the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest. Our Regulatory Impact Analysis (RIA) for the 2021 final rule, which remains applicable, indicated that annual impacts are less than $500 million. Moreover, similar approaches to acoustic exposure modeling have been performed by numerous disparate entities for multiple applications. In 2014, during a modeling workshop co-sponsored by the American Petroleum Institute and International Association of Geophysical Contractors, at least a half-dozen expert presenters (representing private and governmental entities from both the United States and Europe) discussed various available packages that function much the same way as the modeling supporting this rule. Thus, there is nothing novel, controversial, or precedent-setting about the modeling described here, and the additional peer review requirements associated with HISAs are not applicable.

Comment: The Associations encourage NMFS to consider employing what they refer to as a ''pooled'' approach to authorizing take of species that are rarely encountered in the GOM. The Associations suggest that NMFS may authorize take via the suggested ''pool'' approach generically, versus through an LOA issued to a specific applicant. This authorized ''pool'' of take would then be drawn down as such take occurs.

Response: NMFS appreciates the Associations' suggestion. We note that, on February 17, 2022, the Associations proposed this concept to NMFS as a potential solution to the errors in the rule. Instead, NMFS determined it appropriate to pursue a corrective rulemaking. NMFS does not believe the approach suggested by the Associations is necessary or relevant following completion of this rule.

Comment: The Associations suggest that NMFS should develop an appropriate ''scalar ratio'' for application to surveys of fewer than 20 days in duration.

Response: The scalar ratio employed by NMFS during implementation of the ITR to date was developed in consideration of the relationship between takes estimated for a full simulated 30-day survey, versus those resulting from 24-hour results scaled up to the 30-day duration, and is, therefore, suitable for use in better estimating the number of individuals affected for surveys of longer duration (*e.g.,* 20 days or more). NMFS agrees with the Associations that it would be useful to develop a suitable scalar ratio for surveys of shorter duration. However, the Associations' comments on the topic suggest a misunderstanding of the limitations under the rule on take

[4] At the time of publication of the 2023 proposed rule, no technical reports associated with the updated density models had been released to the public, and we cited the models (and density outputs, which were publicly available online) as Garrison *et al.* (2022) in that proposed rule. Associated reports (Rappucci *et al.,* 2023; Garrison *et al.,* 2023) have since been released to the public. In this final rule, references to the updated density models are cited as Garrison *et al.* (2023).

authorization. As rationale for the comment, they state that failure to develop such a scalar ratio ''is a major problem because it will result in an artificial and mathematically erroneous inflation of estimated individual takes at the LOA level that may ultimately prevent authorization of the amount of take contemplated'' in the rule. However, for all surveys, NMFS authorizes through an LOA the appropriate, unscaled estimated take number. Scaled values are only used in the LOA-specific ''small numbers'' analysis to help inform an assessment of how many individual marine mammals to which the estimated instances of take might appropriately accrue. As such, lack of an applicable scalar ratio for surveys of shorter duration means that NMFS is analyzing overestimates of the numbers of individuals potentially impacted (versus total instances of take) for purposes of the small numbers analysis, but has no other effect on NMFS' ability to authorize take under the rule. NMFS expects to consider development of the recommended scalar ratio in the future, but has not to date undertaken such an effort.

Comment: NRDC states that the density estimates used for Rice's whale ''appear to omit most of the available science'' on Rice's whale habitat, and notes that the density data are based on visual observations made during large vessel surveys without incorporating passive acoustic data.

Response: NMFS disagrees that the new Rice's whale density estimates, which are based on spatial density models, omit most of the available science on Rice's whale. These spatial density models are based upon large vessel surveys conducted by NMFS' Southeast Fisheries Science Center (SEFSC) between 2003 and 2019,[5] including a mix of broadscale line-transect surveys of shelf and oceanic waters, along with directed surveys within the Rice's whale's northeastern GOM core habitat (Rappucci *et al.,* 2023; Garrison *et al.,* 2023). Habitat variables associated with the whale sightings during vessel surveys from 2003–2019 were used to determine which variables are most predictive of whale presence.

Survey effort (kilometers of survey trackline) was partitioned into segments within a grid of cells and matched to physical oceanographic parameter values within each cell. All available oceanographic and physiographic variables were included in the model selection for Rice's whales. The selected model included water depth, chlorophyll-a concentration, geostrophic velocity, bottom temperature, and bottom salinity, and indicated that Rice's whale density was highest in waters between 100–400 meter (m) depth with intermediate bottom temperatures between 10–19 °C and intermediate surface chlorophyll-a concentrations, *i.e.,* in areas along the outer continental shelf break associated with higher productivity and upwelling of cooler bottom water (Garrison *et al.,* 2023). These predictions are consistent with the information referenced by NRDC, *i.e.,* passive acoustic detections on the continental shelf break and current information regarding habitat suitability. The web page for the habitat suitability study referenced by NRDC indicates that the data were incorporated to updated density models (see *https://www.fisheries.noaa.gov/southeast/endangered-species-conservation/trophic-interactions-and-habitat-requirements-gulf-mexico* (''Combining environmental datasets with whale sightings allows us to develop predictive habitat models that explain what environmental features may be driving whale distribution.'')).

We agree that ideally, passive acoustic data could be incorporated to the spatial density models to improve the model predictions. However, incorporation of visual and acoustic data to spatial density models remains cutting edge science, and such models have only rarely been produced. NRDC refers to Roberts *et al.* (2016) as an example of such modeling; however, Roberts *et al.* (2016) did not incorporate any acoustic data to their models. The long-term cetacean density modeling effort represented by reference to Roberts *et al.* (2016) is in fact a good example of the difficulty of doing so. This U.S. Navy-funded effort has been responsible for continually improved iterations of spatial density models for cetaceans along the U.S. East Coast since 2015. However, to date, acoustic data have been incorporated only into models for beaked whales and sperm whales (two species that are most amenable to acoustic surveys and for which acoustic detections are most important to understanding occurrence), and only in the most recently updated model iterations. This required 7 years and a model version 7 for beaked whales and model version 8 for sperm whales (*https://seamap.env.duke.edu/models/Duke/EC/*). Acoustic data have been used to qualitatively verify density model predictions for certain mysticetes, but have not been incorporated to date into any East Coast mysticete density model. Efforts to evaluate the feasibility and utility of combining visual and acoustic survey data in the GOM have only recently been conducted as a pilot study (Frasier *et al.,* 2021).

We note that the same areas in which the acoustic detections were made are predicted by the spatial density model as being suitable Rice's whale habitat (see *https://seamap.env.duke.edu/models/SEFSC/GOM/*) and, in fact, density predictions within areas expected to provide suitable habitat for Rice's whale increased compared with the predictions provided by Roberts *et al.* (2016) (*e.g.,* Rice's whale density value in Zone 5, which includes areas of the central GOM where acoustic detections were made, increased by 71 percent; see Appendix A of Weirathmueller *et al.,* 2022).

Comment: NRDC states that the only resource available to the public regarding the revised density information was the density information itself (available online for download) and that no associated report was available for public review. NRDC goes on to state that marine mammal density estimates ''are typically presented in publicly available technical memoranda or technical reports, which set forth in detail the authors' data sources, methods, quantitative results, and limitations, with discussion of their application to particular species,'' and suggests that failure to provide such a report may be a violation of the APA. The MMC similarly recommends that NMFS provide to the public ''marine mammal densities, associated [coefficients of variation], and supporting documentation regarding how such estimates were derived.'' Both NRDC and the MMC requested an additional 30-day public comment period once the information is provided.

Response: The data and analyses supporting this final rule have undergone appropriate pre-dissemination review for utility, integrity, and objectivity, and have been determined to be in compliance with the applicable information quality guidelines implementing the Information Quality Act (section 515 of Pub. L. 106–554).

NMFS acknowledges that supporting technical reports related to the marine mammal density data used in the exposure modeling informing this rule were not publicly available at the time that NMFS' proposed rule was released to the public for review. NMFS did not have discretion over the timeline for release of supporting technical reports,

[5] We note here that the 2023 proposed rule erroneously referred to the period over which survey data were considered as 2003–2018. This range is correct for species other than Rice's whale, for which surveys conducted in 2019 were incorporated.

as BOEM is the primary funding agency for development of the updated marine mammal density data. The reports have since been released (Rappucci *et al.,* 2023; Garrison *et al.,* 2023) and are available online at *https://www.govinfo.gov/collection/boem.*

The NOAA Information Quality guidelines expressly address and allow for the use of supporting information which cannot be disclosed. In this case, the supporting information (*i.e.,* the density data) was publicly available. However, technical description regarding development of that information had not been released, as described above. The ''especially rigorous robustness checks'' called for in the guidelines when proprietary models are used or when supporting information cannot be disclosed had already been conducted by the model authors, as described in the reports, and NMFS has conducted rigorous robustness checks of the data used in support of this rule.

To determine the abundance and spatial distribution of marine mammals in the GOM, NMFS' SEFSC conducts visual line transect surveys aboard NOAA research vessels or aircraft, with survey effort designed to support estimation of abundance for all marine mammals in the GOM. Similar survey efforts and abundance estimation have been ongoing in the GOM since the early 1990s and have been subject to both peer and other public review on numerous occasions.

In addition to abundance, line transect survey data can be used to develop habitat models that map animal density as a function of environmental conditions. Historically, distance sampling methodology (Buckland *et al.,* 2001) has been applied to visual line-transect survey data to estimate abundance within large geographic strata (*e.g.,* Fulling *et al.,* 2003; Mullin and Fulling, 2004; Palka, 2006). Design-based surveys that apply such sampling techniques produce stratified abundance estimates and do not provide information at appropriate spatiotemporal scales for assessing environmental risk of a planned survey. To address this issue of scale, efforts were developed to relate animal observations and environmental correlates such as sea surface temperature in order to develop predictive models used to produce fine-scale maps of habitat suitability (*e.g.,* Waring *et al.,* 2001; Hamazaki, 2002; Best *et al.,* 2012). However, these studies generally produce relative estimates that cannot be directly used to quantify potential exposures of marine mammals to sound, for example. A more recent approach known as density surface modeling, as described in Roberts *et al.* (2016) and used by Garrison *et al.* (2023), couples traditional distance sampling with multivariate regression modeling to produce density maps predicted from fine-scale environmental covariates (*e.g.,* Becker *et al.,* 2014, 2017, 2020; Forney *et al.,* 2015).

In summary, the modeling effort follows accepted, state of the science density modeling procedures (Rappucci *et al.,* 2023; Garrison *et al.,* 2023), and habitat based density modeling in general is not novel, controversial, or precedent-setting, as similar modeling has been performed for various applications for over 10 years. There were no novel assumptions or methodologies employed in development of the models; the models simply make use of updated information regarding marine mammal observations and associated habitat covariates. In addition, ample opportunity was provided for public input and review of the underlying scientific information and modeling efforts contained herein (including by scientists, peer experts at other agencies, and non-governmental organizations). NMFS has not failed to provide information necessary for interested parties to comment meaningfully.

Predictions from the updated density models were publicly released in July 2022, and we note that the authors of the previously best available density models (Roberts *et al.,* 2016), which NMFS used in support of its 2021 final rule, independently determined that the updated models represent the best available scientific data, stating ''As of October 2022, SEFSC and [the Duke Marine Geospatial Ecology Lab] consider the Roberts *et al.,* 2016 models obsolete and recommend the [Garrison *et al.,* 2023] models [. . .] be used instead.'' See *https://seamap.env.duke.edu/models/SEFSC/GOM/.* NMFS similarly determined that the updated density models represented the best available scientific data and, accordingly, should be used in an updated modeling effort.

We also note that it is not unusual for updated density information to be released without supporting technical reports. The latest major update to the Roberts *et al.* east coast cetacean density models (affecting all modeled taxa) was released in June 2022 and, as the best available science, including by virtue of providing increased quality of information regarding the North Atlantic right whale, was used in support of numerous regulatory decisions immediately upon release. However, due to the Navy's priorities as the funding agency, no associated documentation was released until June 2023. Notably, neither NRDC nor the MMC (or any other member of the public) commented on the lack of supporting documentation in any of the numerous regulatory actions under the MMPA that were proposed for public review during that interval.

Further, concerning the MMC's reference to the actual density values and associated CVs used in the take estimation process, this information was provided upon request during the public comment period to both the MMC and NRDC as well as to the Associations. (We note that the specific density values used in the prior modeling effort were included in the comprehensive modeling report. As minimal new information was associated with the current updated effort, the updated values were not included in the brief modeling memorandum, but could be duplicated by the public using available information.) None of the aforementioned entities included any comments regarding the specific density values and associated CVs used in the take estimation process in their comment letters. NMFS does not agree that the recommendations to allow for an additional 30-day comment period for the public to review supplementary technical reports in advance of issuing the final rule are warranted.

Comment: The Associations provide comments critical of NMFS' core distribution area, noting the lack of additional sightings or tagging data to support the expansion of the previously described core habitat area to areas offshore of Mississippi and stating that ''The addition of these buffers and extension of Rice's whale densities into the buffers causes overestimates of the amount of potential Rice's whale take. . . .''.

Response: Neither the core distribution area nor the core habitat area factored into the process for estimating Rice's whale takes in any way. (See the Estimated Take section for explanation of the take estimation process for this rule.) However, NMFS did consider whether additional mitigation was warranted under the LPAI standard in light of the best available information, including information regarding the core distribution area. Based on that evaluation, we concluded the current mitigation meets the LPAI standard. (See the Mitigation section for our LPAI analysis.)

Comment: The MMC recommends that NMFS require a closure to survey

activity of the portion of the Rice's whale core distribution area that overlaps the area covered by the ITR.

Response: As discussed in the 2023 proposed rule, the description of a core distribution area which, relative to the core habitat area described in the 2018 proposed rule and 2021 final rule, expands westward into waters off Mississippi and into the area of the specified activity covered by this final rule, does not reflect new information regarding documented Rice's whale occurrence. The core distribution area reflects a more conservative approach to considering the data, including the application of substantial buffer areas to account for uncertainty. Rice's whales have not been visually observed in the small portion (5 percent) of the core distribution area that overlaps the geographic scope of the specified activity under this rule, and 76 percent of that small portion of the core distribution area that overlaps the geographic scope of the specified activity under this rule is shallower than 100 m water depth or deeper than 400 m. Please see the Mitigation section for more detailed discussion.

In summary, there is no information supporting identification of this area (*i.e.,* the 5 percent of the core distribution area overlapping the geographic scope of this rule) as being of particular importance relative to Rice's whale habitat more broadly (*i.e.,* GOM waters between 100–400 m depth), and only 24 percent of this area contains water depths 100–400 m. As a result of these considerations, NMFS has determined that a restriction on survey activity within the portion of the core distribution area that occurs within the scope of the rule is not warranted, as the available information does not support a conclusion that such a restriction would contribute meaningfully to a reduction in adverse impacts to Rice's whales or their habitat. The MMC offers no additional rationale for closing this area to survey activity, other than that it is now within the geographic scope of the rule (despite the absence of new data supporting this change). As such, NMFS disagrees and does not adopt the MMC's recommendation.

In addition, we note the MMC's statement in support of this recommendation that ''[i]t is not clear from the information presented by NMFS how much the increase in the numbers of takes is attributed to geophysical surveys that are expected to occur in the expanded core distribution area [. . .].'' As described in the 2023 proposed rule, changes in take estimates for all species result from (1) correction of BOEM's errors in calculating updated estimated take following its revision of scope for the 2021 final rule; (2) revisions to species definition files governing animat behavior during animal movement modeling; and (3) new density information for all species other than Fraser's dolphin and rough-toothed dolphin. In addition, for Rice's whale only, propagation modeling of a new array specification produced the greatest values for estimated instances of take.

The process for estimating take numbers did not involve placement of projected survey effort in specific locations, such as the portion of the core distribution area that overlaps the geographic scope of the ITR. Instead, within each modeling zone, acoustic source and propagation modeling was performed using zone-specific environmental parameters, following which animal movement modeling results in zone-specific exposure estimates for animats. These estimates were then scaled to real-world values using zone-specific density estimates, generating 24-hour exposure estimates that were then scaled to totals based on zone-specific level of effort projections (see table 1). No survey effort is specifically assumed to occur within the portion of the core distribution area that overlaps the area within scope of the ITR.

The MMC goes on to state that ''the year-round restriction on geophysical surveys in the Rice's whale core distribution area was the basis of NMFS's negligible impact determination for the final rule.'' This is incorrect. As one consideration in support of our negligible impact determination for Rice's whales, we noted that no survey activity would occur in the northeastern GOM core habitat area (please see discussion provided in the Description of Marine Mammals in the Area of the Specified Activities section regarding the distinction between Rice's whale core habitat and the core distribution area discussed herein). This was not the result of any restriction, but rather, BOEM's removal of the GOMESA area from the scope of the rule.

Comment: BOEM challenges statements made in NMFS' 2023 proposed rule regarding potential Rice's whale habitat contraction relative to the historical range. The Associations echo these concerns. The Associations also claim that NMFS has made erroneous statements with regard to the potential impacts of the *Deepwater Horizon* (DWH) oil spill on Rice's whales.

Response: BOEM acknowledges that it is possible Rice's whales were historically more broadly distributed throughout the GOM, but suggests that currently available information is insufficient to definitively support such a conclusion. Passive acoustic recording devices have detected Rice's whale calls at several sites along the continental shelf break from Florida to Texas, and more recently in Mexican waters (Rice *et al.,* 2014; Soldevilla *et al.,* 2022, 2024). Nonetheless, we agree that the number of Rice's whales and the full extent to which Rice's whales use waters outside of 100–400 meter depths in the GOM remains unclear. Please see the Description of Marine Mammals in the Area of the Specified Activities section of this rule for added discussion regarding Rice's whale occurrence.

The Associations suggest NMFS has claimed that the Rice's whale population has declined. NMFS made no such statement in the 2023 proposed rule. NMFS referenced the low population abundance of the Rice's whale while citing modeling results relating to the quantification of injury from the DWH spill. The Associations are incorrect in stating that NMFS has made erroneous statements regarding the modeling results concerning quantification of injury. NMFS refers the Associations to the detailed discussion provided in the 2018 proposed rule, as well as to DWH NRDA Trustees (2016), which presents the estimates of concern to the Associations (*i.e.,* 48 percent of the Rice's whale population potentially exposed to DWH oil, with 17 percent killed). NMFS has neither mischaracterized nor engaged in speculation about the findings regarding quantified injury due to the DWH spill.

Comment: NRDC comments that NMFS has not prescribed mitigation for Rice's whales sufficient to meet the MMPA's LPAI standard, adding that NMFS has not adequately considered mitigation of impacts to habitat in its decision-making. In support, NRDC refers to new scientific information since the 2021 final rule was published, including investigations of Rice's whale habitat.

Response: NMFS disagrees with NRDC's comments regarding the adequacy of mitigation for Rice's whales and their habitat. NMFS fully considered the new information NRDC references (see the Mitigation section of this final rule). In our view, these investigations (*e.g.,* Kok *et al.,* 2023; Kiszka *et al.,* 2023; Soldevilla *et al.,* 2022) solidify NMFS' previous understanding of the importance of continental slope waters between approximately 100–400 m water depth as Rice's whale habitat. (We note this same area (*i.e.,* continental shelf and slope waters between the 100–400 m

isobaths) was recently included in NMFS' proposed rule to designate Rice's whale critical habitat under the ESA (88 FR 47453, July 24, 2023)). The previously used spatial density model for Rice's whale (Roberts *et al.,* 2016) identified waters of approximately 100–400 m depth on the continental slope throughout the GOM as potential habitat, and the updated density model (which, as discussed previously, incorporates new data on Rice's whale habitat associations) predictions do not markedly differ (Garrison *et al.,* 2023).

Perhaps the most important new information is the acoustic detection of Rice's whales in areas along the shelf break in the central and western GOM, which for the first time demonstrates year-round Rice's whale occurrence in areas outside of the previously identified core habitat. Soldevilla *et al.* (2022) detected Rice's whale calls at 3 of 4 sites in the central GOM south of Louisiana. Year-round detections occurred sporadically at two of the sites, with calls detected on 6 and 16 percent of days when recordings were available, respectively. Calls were detected on 1 percent of days at the 3rd site, in February and April only.

Additional information regarding Rice's whale acoustic detections has become available since publication of the 2023 proposed rule. A subsequent study placed acoustic recorders in shelf break waters in the same central GOM area, and added a location in the western GOM offshore of Texas (Soldevilla *et al.,* 2024). This new information provides additional evidence of the regular occurrence of Rice's whales outside the northeastern GOM, with Rice's whale calls recorded on 33 and 25 percent of days at the central and western GOM sites, respectively. As in the prior study, calls were recorded throughout the year.

The rate of call detections throughout the year is considerably higher in the eastern GOM than at the central GOM sites where calls were most commonly detected, with at least 8.3 calls/hour among 4 eastern GOM sites over 110 deployment days (Rice *et al.,* 2014) compared to 0.3 calls/hour over the 299-day deployment at the central GOM site where calls were detected most frequently during the Soldevilla *et al.* (2022) study. During that study, approximately 2,000 total calls were detected at the central site over 10 months, compared to more than 66,000 total detections at the eastern GOM deployment site over 11 months (approximately 30 times more calls detected at the eastern GOM site) (Soldevilla *et al.,* 2022). Similarly, Soldevilla *et al.* (2024) reported detecting 0.2 calls/hour at the western GOM site off Texas (1,694 detections over 8,547 hours of recording).

Caution should always be used when interpreting passive acoustic detection results because call detection rates are not necessarily correlated with the density or abundance of whales in a given area. Several factors influence call detection rates, including the rate at which whales call (which can vary by demographic group, individual, time of year, etc.) and the range over which calls can be detected (which is affected by auditory masking from competing noise sources, site characteristics and other factors) (Erbe *et al.,* 2016; Gibb *et al.,* 2018). Many of these variables remain undetermined for Rice's whales in the GOM. Those uncertainties notwithstanding, results from passive acoustic recordings, combined with the low number of confirmed and suspected visual sightings of Rice's whales in the central and western GOM (Barkaszi and Kelly, 2019; Rosel *et al.,* 2021; Garrison *et al.,* 2023), suggest that density and abundance of Rice's whales is likely lower in the central and western GOM than in the species' core habitat area in the eastern GOM. More research is needed to answer key questions about Rice's whale abundance, density, habitat use, demography, and stock structure in the central and western GOM.

Regarding the suggestion that NMFS has not adequately considered habitat in its consideration of mitigation, we disagree. Habitat value is informed by marine mammal presence and use, and the available data can support the consideration and discussion of impacts to (and mitigation for) both marine mammals and their habitat simultaneously. The discussion above clearly considers physical features that can drive habitat use (*e.g.,* depth), as well as detailed information related to relative presence in the eastern versus the central and western GOM, which is indicative of preferred habitat in the east. As stated in the 2021 final rule, because habitat value is informed by marine mammal presence and use, in some cases, there may be overlap in measures for the species or stock and for use of habitat. NRDC has not presented any information that would suggest habitat we did not consider for mitigation.

In summary, the newly available data related to marine mammal presence and habitat were considered under the LPAI standard, and we concluded additional mitigation for Rice's whale was not warranted under that standard.

Comment: NRDC finds fault with NMFS' consideration of practicability concerning possible closure of potential Rice's whale habitat in the central and western GOM to future survey activity, suggesting that NMFS' reference to analysis presented in its Regulatory Impact Analysis (RIA) for the 2021 final rule is not relevant. NRDC also suggests that NMFS must consider that OCSLA ''requires a balancing between the development of offshore energy resources and the protection of marine resources'' and that, based on the requirements of Executive Order 13990, NMFS must consider the social cost of carbon in making its determinations regarding practicability of mitigation.

Response: As was acknowledged in the 2023 proposed rule, the RIA did not directly evaluate a potential closure of potentially suitable habitat in the central and western GOM outside of the Rice's whale core distribution area. However, we disagree that the RIA is not relevant to our practicability analysis here. The RIA's assessment of potential restrictions in the northeastern GOM provided a useful framework for considering practicability relating to a broad closure of potential Rice's whale habitat to future survey activity.

To bolster that discussion, we turned to the same sources of data referenced in the RIA in analysis of potential closure areas considered therein (see *https://www.data.boem.gov/Main/Default.aspx*). While areas of Rice's whale habitat (*i.e.,* water depths of 100–400 m on the continental shelf break) contain less oil and gas industry infrastructure than do shallower, more mature waters, and have been subject to less leasing activity than deeper waters with greater expected potential reserves, they nonetheless host significant industry activity. BOEM provides summary information by water depth bin, including water depths of 201–400 m. Omitting information regarding water depths of 100–200 m, the area overlaps 33 active leases, with 17 active platforms and over 1,200 approved applications to drill. In the past 20 years, over 500 wells have been drilled in water depths of 100–400 m. These data confirm that there is substantial oil and gas industry activity in this area and, therefore, the inability to collect new seismic data could affect oil and gas development given that oil companies typically use targeted seismic to refine their geologic analysis before drilling a well. In addition, year-round occurrence of Rice's whales in waters 100–400 m deep precludes the use of seasonal closures to minimize exposure of Rice's whales. Therefore, we analyze the potential for a year-round closure, which exacerbates the potential for effects on oil and gas

productivity in the GOM because operators have no ability to plan around the closure. While the area is not as important to regional oil and gas productivity as the prospective deepwater central GOM closure analyzed in the RIA (as we acknowledged in the 2023 proposed rule), the more area-specific data provided above continue to support NMFS' previous conclusions, which we affirm here: (1) We are unable to delineate specific areas of Rice's whale habitat in the central and western GOM where restrictions on survey activity would be appropriate because there is currently uncertainty about Rice's whale density, abundance, habitat usage patterns and other factors in the central and western GOM; and (2) there is high likelihood that closures or other restrictions on survey activity in all waters of 100–400 m depth in the central and western GOM would have significant economic impacts. Finally, we note that despite NRDC's concerns, it does not recommend any particular closure that it believes NMFS should evaluate.

Regarding NRDC's suggestions concerning OCSLA—a statute administered by BOEM—NMFS' statutory obligations arise under the MMPA (with associated requirements under the Endangered Species Act, National Environmental Policy Act, and Administrative Procedure Act, among others). NMFS has no statutory obligation relative to OCSLA. Similarly, NMFS' obligations under the MMPA require that we prescribe the means of effecting the LPAI on the affected species or stock and their habitat, which we have done here. E.O. 13990 does not require NMFS to consider the social cost of carbon in determining whether potential mitigation requirements are practicable under the MMPA.

Comment: NRDC states that NMFS ''fails to consider mitigation measures'' for Rice's whale, suggesting that NMFS consider: (1) allowing some survey activities in the area, such as surveys undertaken by leaseholders to develop their lease blocks, while prohibiting others; (2) extending geographically vessel strike avoidance measures ''presently in effect for industry in the core habitat area''; and (3) requiring use of ''lowest practicable source levels within the whales' communication frequencies for activities taking place in the vicinity of the whales' habitat.'' In a somewhat similar vein, the MMC recommends that NMFS ''restrict speculative geophysical surveys from occurring in waters in the 100- to 400-m depth range in the Central and Western Planning Areas.''

Response: NRDC does not provide supporting detail regarding its recommended mitigation requirements. As such, NMFS is unable to fully evaluate the suggested measures.

Regarding the suggestion to allow some surveys but prohibit others, section 101(a)(5)(A) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals, and will not result in an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(A) is generally defined and described by the applicant. Here, BOEM is the applicant for the ITR in support of industry operators, and we are responding to the specified activity as described in that petition (and making the necessary findings on that basis). BOEM's petition made no distinction between surveys that may be speculative or otherwise fall into a category of surveys that NRDC suggests should be prohibited, and those that are not.

Moreover, NRDC does not describe any useful metric for determining which surveys should be allowed, aside from vague reference to ''surveys undertaken by leaseholders to develop their lease blocks.'' The MMC similarly does not provide any useful definition of the ''speculative'' surveys it believes NMFS should prohibit, aside from stating that it believes these are typically ''2D or similar surveys.'' No 2D surveys have been conducted in the GOM during the period of time since the ITR became effective. During that time, NMFS has issued over 50 LOAs. Less than 10 of these were issued to what are sometimes referred to as ''multi-client operators,'' or companies that conduct surveys in order to acquire data that may be sold to one or more development companies. Regardless of the small proportion of LOAs issued to such companies, the surveys conducted under those LOAs are not necessarily what the commenters may refer to as ''speculative,'' but instead may be designed to cover multiple lease areas and therefore provide data to multiple leaseholders. The suggestions are not sufficiently developed to allow for adequate consideration.

Regarding vessel strike avoidance measures, NRDC does not specify to what measures it is referring. However, the ITR already contains a suite of vessel strike avoidance measures that apply wherever survey activity is occurring.

Finally, NRDC does not describe any useful scheme by which ''lowest practicable source levels within the whales' communication frequencies'' might be defined. Further, NMFS previously responded to a similar, if more detailed, comment in its 2021 final rule (86 FR 5387, January 19, 2021).

Comment: NRDC states that NMFS ''fails to reconsider prescribing quieter alternatives to conventional seismic airguns, despite evidence of the availability of such alternatives,'' and claims that NMFS has not adequately analyzed the practicability of such a requirement.

Response: NMFS acknowledges that there are an increasing number of sources that may reasonably be considered as environmentally preferable to conventional airguns, including sources operating at lower frequencies and without the high peak pressure output associated with airguns. In fact, such sources have been used during certain surveys conducted under NMFS-issued LOAs. However, imposing requirements to use certain technologies, or prescribing the manner in which geophysical survey data must be acquired, would exceed NMFS' authority under the MMPA. Survey funders and operators define survey objectives and methodologies, including which acoustic sources are used, on the basis of data needs that are beyond NMFS' technical expertise to judge. NRDC argues that specific mandates are not required, versus a generic ''best available technology'' requirement, but offers no recommended metrics. NMFS agrees that increased use of environmentally preferable sources is an appropriate goal, but it would be more appropriate to continue working with industry to incentivize use of such sources and techniques rather than require them.

Comment: NRDC states that NMFS uses an ''arbitrary'' method to convert area-specific risk scores into a ''basis for making Gulf-wide negligible impact determinations.'' NRDC takes issue with NMFS' use of the median of zone-specific risk ratings (for those zones including at least 0.05 percent of GOM-wide abundance for a particular species), suggesting that the application of this method inappropriately minimizes findings of ''high'' to ''very high'' risk for certain species in Zone 5, where there is a confluence of relatively

high levels of survey activity and high proportions of GOM-wide abundance for some species, resulting in high take numbers. NRDC expressed concern that using the median does not allow for appropriate consideration of the importance of specific areas to a particular species, *i.e.,* that this approach ''smooths'' away granularity of the risk assessment.

Response: We disagree with NRDC's comments on this topic, and note that NRDC provided no alternative recommendation. On the contrary, this approach explicitly incorporates considerations of the importance of a particular area to a species, or the particular localized threats faced by a species, through the zone-specific vulnerability assessment that contributes to the overall risk rating. In addition, NMFS' approach is specifically designed to retain considerations of zone-specific impacts and vulnerability beyond simply the inclusion of the vulnerability scoring. For example, an alternative approach to generating a GOM-wide risk rating would be to employ a wholly different paradigm in which aggregate GOM-wide vulnerability and severity scores are assessed, versus taking a median value of zone-specific ratings. NMFS retained the median value approach precisely because we believe that evaluating risk for such a large and variable area (*i.e.,* the entire U.S. GOM) with species and activities that are each highly localized would provide only a very general and less informative answer regarding risk. The approach employed by NMFS highlights the fundamental importance of the spatiotemporal intersection of animals and activity as the fundamental driver in evaluating risk, while also allowing us to avoid exactly the effect of concern to NRDC (blurring of localized scoring) by avoiding the influence of areas where a particular species essentially does not occur on the overall risk rating for that species.

NRDC is incorrect that use of the median value is inappropriate or that it has ''no biological basis.'' We note that mean (or average) values can be more heavily skewed by outliers with small sample size than median values. Thus, we chose the median as a better descriptor of central tendency, which is a more appropriate perspective for the risk analysis. (We also rounded up values of .5 (*e.g.,* median score of 3.5 would be rounded to a 4), a mathematically valid approach that builds in a reasonable degree of conservatism.)

As we discussed in response to NRDC's public comment on the 2018 proposed rule (January 19, 2021, 86 FR 5322, 5359), one of the fundamental values of the analytical framework is that it is structured in a spatially explicit way that can be applied at multiple scales, based on the scope of the action and the information available, to inform an assessment of the risk associated with the activity (or suite of activities). This allows one to generate overall risk ratings while also evaluating risk on finer scales. In this case, severity ratings were generated on the basis of seven different GOM zones, allowing an understanding not only of the relative scenario-specific risk across the entire GOM, as is demanded for this analysis, but also to better understand the particular zones where risk may be relatively high (depending on actual future survey effort) and what part of the stock's range may be subject to relatively high risk.

NRDC cites the Expert Working Group (EWG) Report in support of its comment, stating it was ''[telling]'' that ''the [EWG] Report did not contrive a Gulf-wide risk assessment'' and that ''doing so would have belied the very different purpose underlying its design: a relative risk assessment across multiple species and geographies.'' Although the initial EWG report (Southall *et al.,* 2017) made available for public review of the framework concept did not derive GOM-wide risk ratings, the EWG did so in a later draft report that NMFS adopted in producing the risk evaluation presented in its 2021 final rule.

NRDC continues to suggest (as it did in its 2018 comment letter) that the risk ratings are the primary or even sole basis for NMFS' negligible impact determinations, and repeats the assertion that NMFS has erroneously used the relativistic assessment presented in the EWG report as the basis for the negligible impact determination, thereby incorrectly applying the EWG report as though it evaluated absolute risk. These claims are incorrect. We reiterate our 2021 response to NRDC's previous comments on these topics (January 19, 2021, 86 FR 5322, 5359): the EWG analysis is an important component of the negligible impact analysis, but is not the sole basis for our determination. While the EWG analysis comprehensively considered the spatial and temporal overlay of the activities and the marine mammals in the GOM, as well as the number of takes predicted by the described modeling, there are details about the nature of any ''take'' anticipated to result from these activities that were not considered directly in the EWG analysis and which warrant explicit consideration in the negligible impact analysis. Accordingly, NMFS' analysis considers the results of the EWG analysis, the effects of the required mitigation, and the nature and context of the takes that are predicted to occur. NMFS' analysis also explicitly considers the effects of predicted Level A harassment, duration of Level B harassment events, and impacts to marine mammal habitat, which respectively were not integrated into or included in the EWG risk ratings. These components of the full analysis, along with any germane species or stock-specific information, are integrated and summarized for each species or stock in the Species and Stock-specific Negligible Impact Analysis Summaries section of the negligible impact analysis.

While the EWG framework produces relativistic risk ratings, its components consist of absolute concepts, some of which are also absolutely quantified (*e.g.,* whether the specified activity area contains greater than 30 percent of total region-wide estimated population, between 30 and 15 percent, between 15 and 5 percent, or less than 5 percent). Further, NMFS provided substantive input into the scoring used in implementing the EWG framework for the GOM, to ensure that the categories associated with different scores, the scores themselves, and the weight of the scores within the overall risk rating all reflected meaningful biological, activity, or environmental distinctions that would appropriately inform the negligible impact analysis. Accordingly, and as intended, we used our understanding of the EWG framework and applied professional judgment to interpret the relativistic results of the EWG analysis appropriately into the larger negligible impact analysis, with the other factors discussed above, to make the necessary findings specific to the effects of the total taking on the affected species and stocks.

Comment: NRDC describes the risk assessment results for Rice's whale over time (*i.e.,* across NMFS' 2018 proposed rule, 2021 final rule, and 2023 proposed rule) as inconsistent, particularly in Zone 5, suggesting that there could be some unexplained error at play.

Response: NMFS acknowledges that the risk ratings for the Rice's whale/Bryde's whale in Zone 5 have changed compared with the original analysis presented in NMFS' 2018 proposed rule. In that analysis, Zone 5 risk was assessed as ''very high'' for the then-named Bryde's whale across all evaluated scenarios. Assessed risk was reduced to ''low'' for the species in Zone 5 in NMFS' 2021 final rule, and this rating remained consistent in NMFS' 2023 proposed rule. This change is explained by the accompanying take

estimates in each of the three analyses: in the 2018 proposed rule, the mean annual take number across scenarios for the species was 462, with Zone 5 severity rankings ranging from high to very high. Following revision of the analysis reflecting the erroneous take numbers estimated by BOEM due to its removal of the GOMESA area, the mean annual take number declined to 8. It is no surprise, then, that the associated risk ratings changed from ''very high'' to ''low.'' In NMFS' 2023 proposed rule, following correction of the estimated take numbers, but inclusive of BOEM's removal of the GOMESA area, the mean annual take number increased to 26 and, accordingly, the risk ratings remained low. The risk ratings assessed for Rice's whale across these analyses simply reflect the underlying take estimates and, therefore, the associated severity scoring. No error has been made.

Comment: The MMC recommends that NMFS provide an update on progress by LOA-holders or their representative(s) toward completing and making publicly available the synthesis report of all activities that were conducted by LOA-holders during the first year of the reporting period for the final rule.

Response: The report is complete and available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.*

Comment: The MMC reiterates its previous recommendation that NMFS and BOEM establish a GOM scientific advisory group, composed of agency and industry representatives and independent scientists, to assist in the review of data collected to date and to identify and prioritize monitoring needs and hypothesis-driven research projects to better understand the short- and long-term effects of geophysical surveys on marine mammals in GOM.

Response: NMFS reiterates its previous response to this recommendation. NMFS would be willing to explore with the MMC the appropriate mechanisms for convening such a group, including consideration of the MMC's authorities under the MMPA. However, NMFS disagrees that responsibility to establish such a group is either a requirement of the MMPA, or warranted as a condition of promulgating this rule.

Description of Marine Mammals in the Area of the Specified Activities

Table 2 lists all species with expected potential for occurrence in the GOM and summarizes information related to the population or stock, including potential biological removal (PBR). 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, is considered in concert with known sources of ongoing anthropogenic mortality (as described in NMFS' stock assessment reports (SAR)). For status of species, we provide information regarding U.S. regulatory status under the MMPA and Endangered Species Act (ESA). The affected species and stocks have not changed from those described in the notice of issuance of the 2021 rule. We incorporate information newly available since that rule, including updated information from NMFS' SARs, but do not otherwise repeat discussion provided in this section of the 2018 proposed rule and 2021 final rule.

In some cases, species are treated as guilds (as was the case for the analysis conducted in support of the 2021 ITR). In general ecological terms, a guild is a group of species that have similar requirements and play a similar role within a community. However, for purposes of stock assessment or abundance prediction, certain species may be treated together as a guild because they are difficult to distinguish visually and many observations are ambiguous. For example, NMFS' GOM SARs assess stocks of *Mesoplodon* spp. and *Kogia* spp. as guilds. As was the case for the 2021 final rule, we consider beaked whales and *Kogia* spp. as guilds. In this rule, reference to ''beaked whales'' includes the Cuvier's, Blainville's, and Gervais beaked whales, and reference to ''*Kogia* spp.'' includes both the dwarf and pygmy sperm whale.

The use of guilds in the 2021 final rule followed the best available density information at the time (*i.e.,* Roberts *et al.,* 2016). Subsequently, updated density information became available for all species except for Fraser's dolphin and rough-toothed dolphin (Garrison *et al.,* 2023). The updated density models retain the treatment of beaked whales and *Kogia* spp. as guilds and have additionally consolidated 4 species into an undifferentiated blackfish guild. These species include the melon-headed whale, false killer whale, pygmy killer whale, and killer whale. The model authors determined that, for this group of species, there were insufficient sightings of any individual species to generate a species-specific model (Garrison *et al.,* 2023). Therefore, reference to blackfish hereafter includes the melon-headed whale, false killer whale, pygmy killer whale, and killer whale.[6]

Twenty-one species (with 24 managed stocks) have the potential to co-occur with the prospective survey activities. For detailed discussion of these species, please see the 2018 proposed rule. In addition, the West Indian manatee (*Trichechus manatus latirostris*) may be found in coastal waters of the GOM. However, manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs.

All values presented in table 2 are the most recent available at the time the analyses for this notice were completed, including information presented in NMFS' 2022 SARs (the most recent SARs available at the time of publication) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

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[6] NMFS' 2021 final rule provided take estimates separately for the melon-headed whale, false killer whale, pygmy killer whale, and killer whale. This rule provides a single take estimate for those four species grouped together as the ''blackfish.'' This change in approach reflects the best available scientific information, *i.e.,* updated density information (Garrison *et al.,* 2023). These species are encountered only occasionally during any given vessel survey, and these relatively infrequent encounters make it difficult to fit species-specific detection and habitat models. Roberts *et al.* (2016) fit species-specific models based on survey data from 1992–2009, including 29, 19, 27, and 16 sightings, respectively, of these species. For each of these models, the authors detail analyses and decisions relevant to model development, as well as notes of caution regarding use of the models given the associated uncertainty resulting from development of a model based on few sightings. The Garrison *et al.* (2023) models are based on survey data from 2003–2019. Notably, surveys conducted after 2009 were conducted in ''passing'' mode, where the ship did not deviate from the trackline to approach and verify species identifications for detected marine mammal groups, resulting in an increase in observed marine mammal groups that could not be identified to species. As a result of these factors, the model authors determined it appropriate to develop a single spatial model based on sightings of unidentified blackfish, in addition to the relatively few sightings where species identification could be confirmed.

Table 2 -- Marine Mammals Potentially Present in the Specified Geographical Region

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N)[1]	NMFS stock abundance (CV, N_{min}, most recent abundance survey)[2]	Predicted mean (CV)/ maximum abundance[3]	PBR	Annual M/SI[4]
Order Cetartiodactyla – Cetacea – Superfamily Mysticeti (baleen whales)							
Family Balaenopteridae (rorquals)							
Rice's whale[5]	*Balaenoptera ricei*	Gulf of Mexico	E/D; Y	51 (0.50; 34; 2017-18)	37 (0.52)	0.1	0.5
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)							
Family Physeteridae							
Sperm whale	*Physeter macrocephalus*	GOM	E/D; Y	1,180 (0.22; 983; 2017-18)	3,007 (0.15)	2.0	9.6
Family Kogiidae							
Pygmy sperm whale	*Kogia breviceps*	GOM	-; N	336 (0.35; 253; 2017-18)[6,7]	980 (0.16)	2.5	31
Dwarf sperm whale	*K. sima*	GOM	-; N				
Family Ziphiidae (beaked whales)							
Cuvier's beaked whale	*Ziphius cavirostris*	GOM	-; N	See Footnotes 7-8	803 (0.18)	0.1	5.2
Gervais beaked whale	*Mesoplodon europaeus*	GOM	-; N			0.7	
Blainville's beaked whale	*M. densirostris*	GOM	-; N				
Family Delphinidae							
Rough-toothed dolphin	*Steno bredanensis*	GOM	-; N	3,509 (0.67; Unk.; 2009)	4,853 (0.19)	Und et.	39
Common bottlenose dolphin[7]	*Tursiops truncatus truncatus*	GOM Oceanic	-; N	7,462 (0.31; 5,769; 2017-18)	155,453 (0.13) (Shelf) 9,672 (0.15) (Oceanic)	58	32
		GOM Continental Shelf	-; N	63,280 (0.11; 57,917; 2017-18)		556	65
		GOM Coastal, Northern	-; N	11,543 (0.19; 9,881; 2017-18)		89	28
		GOM Coastal, Western	-; N	20,759 (0.13; 18,585; 2017-18)		167	36

Clymene dolphin	*Stenella clymene*	GOM	-; N	513 (1.03; 250; 2017-18)	4,619 (0.35)	2.5	8.4
Atlantic spotted dolphin	*S. frontalis*	GOM	-; N	21,506 (0.26; 17,339; 2017-18)	6,187 (0.33) (Shelf) 1,782 (0.19) (Oceanic)	166	36
Pantropical spotted dolphin	*S. attenuata attenuata*	GOM	-; N	37,195 (0.24; 30,377; 2017-18)	67,225 (0.27)	304	241
Spinner dolphin	*S. longirostris longirostris*	GOM	-; N	2,991 (0.54; 1,954; 2017-18)	5,548 (0.40)	20	113
Striped dolphin	*S. coeruleoalba*	GOM	-; N	1,817 (0.56; 1,172; 2017-18)	5,634 (0.18)	12	13
Fraser's dolphin	*Lagenodelphis hosei*	GOM	-; N	213 (1.03; 104; 2017-18)	1,665 (0.73)	1	Unk.
Risso's dolphin	*Grampus griseus*	GOM	-; N	1,974 (0.46; 1,368; 2017-18)	1,501 (0.27)	14	5.3
Melon-headed whale	*Peponocephala electra*	GOM	-; N	1,749 (0.68; 1,039; 2017-18)	6,113 (0.20)	10	9.5
Pygmy killer whale	*Feresa attenuata*	GOM	-; N	613 (1.15; 283; 2017-18)		2.8	1.6
False killer whale	*Pseudorca crassidens*	GOM	-; N	494 (0.79; 276; 2017-18)		2.8	2.2
Killer whale	*Orcinus orca*	GOM	-; N	267 (0.75; 152; 2017-18)		1.5	Unk.
Short-finned pilot whale	*Globicephala macrorhynchus*	GOM	-; N	1,321 (0.43; 934; 2017-18)	2,741 (0.18)	7.5	3.9

[1]ESA status: Endangered (E)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2]NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3]This information represents species- or guild-specific abundance predicted by habitat-based cetacean density models (Roberts *et al.*, 2016; Garrison *et al.*, 2023). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Gulf of Mexico, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. Abundance predictions for Fraser's dolphin and rough-toothed dolphin from Roberts *et al.* (2016); abundance predictions for other taxa represent the maximum predicted abundance from Garrison *et al.* (2023).

[4]These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, ship strike). These values are generally considered minimums because, among other reasons, not all fisheries that could interact with a particular stock are observed and/or observer coverage is very low, and, for some stocks (such as the Atlantic spotted dolphin and continental shelf stock of bottlenose dolphin), no estimate for injury due to the *Deepwater Horizon* oil spill has been included. See SARs for further discussion.

[5]The 2021 final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.*, 2021).

[6]NMFS' 2020 SARs state that the abundance estimate provided for *Kogia* spp. is likely a severe underestimate because it was not corrected for the probability of detection on the trackline, and because *Kogia* spp. are often difficult to see, present little of themselves at the surface, do not fluke when they dive, and have long dive times. In addition, they

exhibit avoidance behavior towards ships and changes in behavior towards approaching survey aircraft. See Hayes *et al.* (2021).

[7]Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, habitat-based cetacean density models are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. NMFS' SARs present pooled abundance estimates for *Kogia* spp. and *Mesoplodon* spp., while Garrison *et al.* (2023) produced density models to genus level for *Kogia* spp. and as a guild for beaked whales (*Ziphius cavirostris* and *Mesoplodon* spp.) and blackfish (pygmy killer whale, false killer whale, melon-headed whale, and killer whale). Finally, Garrison *et al.* (2023) produced density models for bottlenose dolphins that do not differentiate between stocks, but between oceanic and shelf dolphins.

[8]NMFS' 2020 SARs provide various abundance estimates for beaked whales: Cuvier's beaked whale, 18 (CV=0.75); Gervais' beaked whale, 20 (CV=0.98); unidentified Mesoplodont species, 98 (CV=0.46); and unidentified Ziphiids, 181 (CV=0.31). The SARs state that these estimates likely represent severe underestimates, as they were not corrected for the probability of detection on the trackline, and due to the long dive times of these species. See Hayes *et al.* (2021).

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In table 2 above, we report two sets of abundance estimates: those from NMFS' SARs and those predicted by habitat-based cetacean density models. Please see footnote 3 of table 2 for more detail. NMFS' SAR estimates are typically generated from the most recent shipboard and/or aerial surveys conducted. GOM oceanography is dynamic, and the spatial scale of the GOM is small relative to the ability of most cetacean species to travel. U.S. waters only comprise about 40 percent of the entire GOM, and 65 percent of GOM oceanic waters are south of the U.S. EEZ. Studies based on abundance and distribution surveys restricted to U.S. waters are unable to detect temporal shifts in distribution beyond U.S. waters that might account for any changes in abundance within U.S. waters. NMFS' SAR estimates also in some cases do not incorporate correction for detection bias. Therefore, for cryptic or long-diving species (*e.g.,* beaked whales, *Kogia* spp., sperm whales), they should generally be considered underestimates (see footnotes 6 and 8 of table 2).

The model-based abundance estimates represent the output of predictive models derived from multi-year observations and associated environmental parameters and which incorporate corrections for detection bias (the same models and data from which the density estimates are derived). Incorporating more data over multiple years of observation can yield different results in either direction, as the result is not as readily influenced by fine-scale shifts in species habitat preferences or by the absence of a species in the study area during a given year. NMFS' SAR abundance estimates show substantial year-to-year variability in some cases. Incorporation of correction for detection bias should systematically result in greater abundance predictions. For these reasons, the model-based estimates are generally more realistic and, for the purposes of assessing estimated exposures relative to abundance—used in this case to understand the scale of the predicted takes compared to the population—NMFS generally believes that the model-based abundance predictions are the best available information and most appropriate because they were used to generate the exposure estimates and therefore, provide the most relevant comparison.

NMFS' 2021 final rule provided take estimates separately for the melon-headed whale, false killer whale, pygmy killer whale, and killer whale. This rule provides a single take estimate for those four species grouped together as the blackfish. This approach was dictated by the best available science. The model authors determined it necessary to aggregate the few sightings data available for each of the four species with sightings data that could not be resolved to the species level in order to develop a density model, as there were not sufficient confirmed sightings of individual species to create individual spatial models (Garrison *et al.,* 2023). Further, the model authors advised that any attempt to parse the results to species would be fraught with complicated assumptions and limited data, and that there is no readily available way to do so in a scientifically defensible manner. Previous estimates (Roberts *et al.,* 2016) were based on older data (data range 1992–2009 versus 2003–2019), and the updated models notably include post-DWH oil spill survey data and, for the first time, winter survey data. Nonetheless, interested members of the public may review NMFS' 2018 proposed rule and supporting documentation, which assumed slightly greater activity levels and larger take numbers before the GOMESA area was removed and still preliminarily determined a negligible impact on all 4 species comprising the blackfish group.

NMFS does not have sufficient information to support apportioning the blackfish takes to the constituent species, but we note that the sum of annual average evaluated take for the 4 species in the 2021 final rule is 64,742, while the new annual average take estimate for blackfish (using the updated density information) is 55,441.

NMFS' ability to issue LOAs under the 2021 rule to date has been limited specifically with regard to killer whales, because BOEM's error most severely affected killer whale take numbers. (Evaluated Rice's whale takes were similarly affected, but were generally not implicated in LOA requests based on the location of planned surveys.) Effects to killer whales from the specified activity have not presented particular concern in a negligible impact context, even considering the original take numbers evaluated in NMFS' 2018 proposed rule (annual average take of 1,160), which produced overall scenario-specific risk ratings of low to moderate. Evaluated risk is similar across the 2018 proposed rule and this rule.

Further, we note that we make a conservative assumption in this rule in the application of the risk assessment framework to blackfish. Risk is a product of severity and vulnerability. While severity is based on density and abundance and is, therefore, reflective of the new density information, vulnerability is based on species-specific factors and is different for the four species. We applied the highest vulnerability score of the four to combine with the severity to get the overall risk rating for the group. Please see Negligible Impact Analysis and Determinations for additional discussion.

As part of our analyses for incidental take rules, we consider any known areas of importance as marine mammal habitat. We also consider other relevant information, such as unusual mortality events (UME) and the 2010 DWH oil

spill. The 2018 proposed rule provided detailed discussion of important marine mammal habitat, relevant UMEs, and of the DWH oil spill. The 2021 final rule updated those discussions as necessary. That information is part of the baseline for our analyses for this final rule. There have been no new UMEs, or new information regarding the UMEs discussed in the prior notices. Similarly, there is no new information regarding the DWH oil spill. However, estimates of annual mortality for many stocks over the period 2014–2018 now include mortality attributed to the effects of the DWH oil spill (see table 2) (Hayes *et al.,* 2021), and these mortality estimates are considered as part of the environmental baseline.

Habitat. Important habitat areas may include areas of known importance for reproduction, feeding, or migration, or areas where small and resident populations are known to occur. They may have independent regulatory status such as designated critical habitat for ESA-listed species (as defined by section 3 of the ESA) or be identified through other means (*e.g.,* recognized Biologically Important Areas (BIA)).

As noted above in table 2, the former GOM Bryde's whale has been described as a new species, Rice's whale (Rosel *et al.,* 2021). No critical habitat has yet been designated for the species, though a proposed rule was published (88 FR 47453, July 24, 2023). The proposal references the same supporting information discussed herein, and draws similar conclusions in suggesting that GOM continental slope waters between 100–400 m water depth be designated as critical habitat. In addition, a BIA has been recognized since 2015 (LaBrecque *et al.,* 2015). This year-round BIA was discussed in the 2018 proposed rule and 2021 final rule, and we do not repeat the description of the 2015 BIA.

NOAA's ESA status review of the former GOM Bryde's whale (Rosel *et al.,* 2016) expanded the 2015 BIA description by stating that, due to the depth of some sightings, the area is appropriately defined to the 400-m isobath and westward to Mobile Bay, Alabama, in order to provide some buffer around the deeper sightings and to include all sightings in the northeastern GOM. Based on the description provided by the status review (Rosel *et al.,* 2016), our 2018 proposed rule considered a Rice's whale ''core habitat area'' between the 100- and 400-m isobaths, from 87.5° W to 27.5° N (83 FR 29212, August 21, 2018), in order to appropriately encompass Rice's whale sightings at the time. In addition, the area largely covered the home range (*i.e.,* 95 percent of predicted abundance) predicted by Roberts *et al.* (2016).

NMFS SEFSC subsequently developed a description of what is referred to as a Rice's whale ''core distribution area'' [7] (*https://www.fisheries.noaa.gov/resource/map/rices-whale-core-distribution-area-map-gis-data*) (see Figures 3 and 4) (Rosel and Garrison, 2022). The authors state that the core distribution area description is based on visual sightings and tag data, and does not imply knowledge of habitat preferences (Rosel and Garrison, 2022). A description of the core distribution area and associated methodology was provided in the 2023 proposed rule (88 FR 916, 924–925, January 5, 2023). In summary, that process involved the addition of buffers meant to address uncertainty regarding whale locations and possible movements from those locations to a polygon encompassing all confirmed Rice's whale visual observations and location data from two tagged whales. The incorporation of this approach to address uncertainty is what differentiates the ''core habitat area'' discussed in the previous paragraph, considered in the 2018 proposed rule and 2021 final rule, from the ''core distribution area.'' The core distribution area does not reflect new sightings data or other information relative to the basis for the core habitat area. However, whereas the ''core habitat area'' was located entirely within the GOMESA area removed from the geographic scope of the specified activity for the 2021 final rule (and therefore no longer relevant for consideration in prescribing mitigation), the buffer portion of the ''core distribution area'' results in a small overlap with the geographic scope of the specified activity (5 percent) and is therefore appropriate for consideration.

Our knowledge of Rice's whale distribution is based on a combination of historic and contemporary sightings, passive acoustic detections, and spatial modeling. The evidence collected from these methods indicates that Rice's whales occupy waters along the continental shelf and slope and adjacent waters throughout the U.S. GOM, and in particular, waters between 100 and 400 m deep. The widest swath of habitat occurs in the species' core distribution area in the northeastern GOM, south and west of Alabama and Florida. However, a contiguous strip of habitat also extends south of the core distribution area toward the Florida Keys, and westward along the continental shelf and slope offshore of Mississippi, Louisiana, and Texas (Garrison *et al.,* 2023). PAM recordings have been especially valuable for confirming the species' year-round presence in the central and western GOM (Soldevilla *et al.,* 2022, 2024), helping to offset the limited visual survey effort in those locations. The shallowest and deepest waters where Rice's whales have been confirmed visually to date are 117 m and 408 m, respectively, but Rice's whales may use waters that are deeper or shallower than those values at times. Historic whaling records indicate Rice's whales occurred more broadly throughout the GOM historically (Reeves *et al.,* 2011), and unconfirmed sightings from protected species observers have occurred at a wider range of locations and depths (Barkaszi and Kelley, 2018, 2024).

[7] The 2023 proposed rule retained the ''core habitat area'' terminology when describing the core distribution area, for continuity with the 2021 rule, but this final rule reverts to preserving the different terminologies associated for each.

Potential Effects of the Specified Activities on Marine Mammals and Their Habitat

In NMFS' 2018 proposed rule (83 FR 29212, June 22, 2018), this section included a comprehensive summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat, including general background information on sound and specific discussion of potential effects to marine mammals from noise produced through use of airgun arrays. NMFS provided a description of the ways marine mammals may be affected by the same activities considered herein, including sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particularly stress responses), behavioral disturbance, or habitat effects, as well as of the potential for serious injury or mortality. The 2021 final rule (86 FR 5322, January 19, 2021) provided updates to the discussion of potential impacts, as well as significantly expanded discussion of certain issues (*e.g.,* potential effects to habitat, including prey, and the potential for stranding events to occur) in the ''Comments and Responses'' section of that notice. These prior notices also provided discussion of marine mammal hearing and detailed background discussion of active acoustic sources and related acoustic terminology used herein. We have reviewed new information available since the 2021 final rule was issued. Having considered this information, we have determined that there is no new information that substantively affects

our analysis of potential impacts on marine mammals and their habitat that appeared in the 2018 proposed and 2021 final rules, all of which remains applicable and valid for our assessment of the effects of the specified activities during the original 5-year period that is the subject of this rule. We incorporate by reference that information and do not repeat the information here, instead referring the reader to the 2018 proposed rule and 2021 final rule.

The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by the specified activity. The Negligible Impact Analysis and Determinations section includes an analysis of how these activities will impact marine mammals and considers the content of this section, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations.

Estimated Take

This section provides an estimate of the numbers and type of incidental takes that may be expected to occur under the specified activity, which informs NMFS' negligible impact determinations. Realized incidental takes would be determined by the actual levels of activity at specific times and places that occur under any issued LOAs and by the actual acoustic source used. While the methodology and modeling for estimating take remains identical to that originally described in the 2018 proposed and 2021 final rules, updated species density values have been used, and take estimates are available for three different airgun array configurations. The highest modeled estimated take (annual and 5-year total) for each species is analyzed for the negligible impact analysis.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment). As with the 2021 final rule, harassment is the only type of take expected to result from these activities. It is unlikely that lethal takes would occur even in the absence of the mitigation and monitoring measures, and no such takes are anticipated or will be authorized.

Anticipated takes would primarily be by Level B harassment, as use of the described acoustic sources, particularly airgun arrays, is likely to disrupt behavioral patterns of marine mammals upon exposure to sound at certain levels. There is also some potential for auditory injury (Level A harassment) to result for low- and high-frequency species due to the size of the predicted auditory injury zones for those species, though none is predicted to occur for Rice's whales (the only low-frequency cetacean in the GOM). NMFS does not expect auditory injury to occur for mid-frequency species. See discussion provided in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018) and in responses to public comments provided in the notice of issuance for the 2021 final rule (86 FR 5322, January 19, 2021).

Below, we summarize how the take that may be authorized was estimated using acoustic thresholds, sound field modeling, and marine mammal density data. Detailed discussion of all facets of the take estimation process was provided in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), which is incorporated by reference here, as it was into the 2021 final rule, as most aspects of the modeling have not changed; any aspects of the modeling that have changed are noted below and in Weirathmueller *et al.* (2022). Please see that 2018 proposed rule notice, and associated companion documents available on NMFS' website, for additional detail. A summary overview of the take estimation process, as well as full discussion of new information related to the development of estimated take numbers, is provided below.

Acoustic Thresholds

NMFS uses acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals generally would be reasonably expected to exhibit disruption of behavioral patterns (Level B harassment) or to incur permanent threshold shift (PTS) of some degree (Level A harassment). Acoustic criteria used herein were described in detail in the preceding notices associated with the 2018 proposed rule and 2021 final rule; that discussion is not repeated as no changes have been made to the relevant acoustic criteria. See tables 3 and 4.

Table 3 -- Behavioral Exposure Criteria

Group	Probability of response to frequency-weighted rms SPL			
	120	140	160	180
Beaked whales	50%	90%	n/a	n/a
All other species	n/a	10%	50%	90%

Table 4 -- Exposure Criteria for Auditory Injury

Hearing Group	Peak pressure[1]	Cumulative sound exposure level[2]	
		Impulsive	Non-impulsive
Low-frequency cetaceans	219 dB	183 dB	199 dB
Mid-frequency cetaceans	230 dB	185 dB	198 dB
High-frequency cetaceans	202 dB	155 dB	173 dB

[1]Referenced to 1 μPa; unweighted within generalized hearing range
[2]Referenced to 1 μPa^2-s; weighted according to appropriate auditory weighting function. Airguns and the boomer are treated as impulsive sources; other HRG sources are treated as non-impulsive.

Acoustic Exposure Modeling

Zeddies *et al.* (2015, 2017a) provided estimates of the annual marine mammal acoustic exposures exceeding the aforementioned criteria caused by sounds from geophysical survey activity in the GOM for 10 years of notional activity levels, using 8,000-in^3 airguns and other sources, as well as full detail regarding the original acoustic exposure modeling conducted in support of BOEM's 2016 petition and NMFS' subsequent analysis in support of the 2021 final ITR. Zeddies *et al.* (2017b) provided information regarding source and propagation modeling related to the 4,130-in^3 airgun array, and Weirathmueller *et al.* (2022) provide detail regarding the new modeling performed for the 5,110-in^3 airgun array. Detailed discussion of the original modeling effort was provided in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), and in responses to public comments provided in the notice of issuance for the final rule (86 FR 5322, January 19, 2021). For full details of the modeling effort, see the reports (available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*) and review discussion provided in those prior **Federal Register** notices.

All acoustic exposure modeling, including source and propagation modeling, was redone in support of this final rule to address the additional airgun array configurations and the new data on marine mammal density and species definition files, as described below in this section. However, all aspects of the modeling (including source, propagation, and animal movement modeling) are the same as described in Zeddies *et al.* (2015, 2017a, 2017b) and discussed in previous **Federal Register** notices associated with the ITR. We do not repeat discussion of those aspects of the modeling, but refer the reader to those documents.

Differences from the modeling and modeling products described in previous notices associated with this ITR are limited to source and propagation modeling of the new 5,110-in^3 array configuration, which was performed using the same procedures as were used for the previous 8,000- and 4,130-in^3 array configurations, and two new data inputs: (1) updated marine mammal density information (Garrison *et al.,* 2023) and (2) revised species definition files. The latter information consists of behavioral parameters (*e.g.,* depth, travel rate, dive profile) for each species that govern simulated animal (animat) movement within the movement model (Weirathmueller *et al.,* 2022). These files are reviewed at the start of all new and reopened modeling efforts, and are updated as necessary according to the most recent literature. NMFS previously evaluated full acoustic exposure modeling results only for the 8,000-in^3 airgun array (only demonstration results for 6 species were provided in Zeddies *et al.* (2017b) for the 4,130-in^3 array configuration), but is now able to evaluate full results for all three array configurations; thereby, providing for greater flexibility and utility in representing actual acoustic sources planned for use during consideration of LOA requests.

Marine Mammal Density Information—Since the 2021 final rule went into effect, new habitat-based cetacean density models have been produced by NMFS' Southeast Fisheries Science Center (Garrison *et al.,* 2023). These models incorporate newer survey data from 2017–18 including, notably, data from survey effort conducted during winter. Inclusion of winter data allows for increased temporal resolution of model predictions. These are the first density models that incorporate survey data collected after the DWH oil spill. New models were produced for all taxa other than Fraser's dolphin and rough-toothed dolphin, as the model authors determined that there were too few detections of these species to support model development. Therefore, we continue to rely on the Roberts *et al.* (2016) models for these two species.

For species occurring in oceanic waters, the updated density models are based upon data collected during vessel surveys conducted in 2003–04, 2009, and 2017–18 (and including surveys conducted in 2019 for Rice's whale). Survey effort was generally conducted in a survey region bounded by the shelf break (approximately the 200-m isobath) to the north and the boundary of the U.S. EEZ to the south. Separate models were created for species occurring in shelf waters (Atlantic spotted dolphin and bottlenose dolphin) based on seasonal aerial surveys conducted in 2011–12 and 2017–18. Based on water depth, the shelf models were used to predict acoustic exposures for these two species in Zones 2 and 3, and the oceanic models were used to predict exposures in Zones 4–7.

As discussed above, the updated density modeling effort retains the previous approach of treating beaked whales and *Kogia* spp. as guilds, as sightings of these species are typically difficult to resolve to the species level. In addition, the model authors determined there to be too few sightings and/or too few sightings resolved to species level for the melon-headed whale, false killer whale, pygmy killer whale, and killer whale to produce individual species models. Instead, a single blackfish model was developed to produce guild-level predictions for these species (Garrison *et al.,* 2023).

Take Estimates

Exposure estimates above Level A and Level B harassment criteria, originally developed by Zeddies *et al.* (2015, 2017a, 2017b) and updated by Weirathmueller *et al.* (2022) in association with the activity projections for the various annual effort scenarios, were generated based on the specific modeling scenarios (including source and survey geometry), *i.e.,* 2D survey (1 × source array), 3D NAZ survey (2 × source array), 3D WAZ survey (4 × source array), coil survey (4 × source array).

Level A Harassment—Here, we summarize acoustic exposure modeling results related to Level A harassment. For more detailed discussion, please see the 2018 **Federal Register** notice for the proposed rule and responses to public comment provided in the 2021 **Federal Register** notice for the final rule. Overall, there is a low likelihood of take by Level A harassment for any species, though the degree of this low likelihood is primarily influenced by the specific hearing group. For mid- and high-frequency cetaceans, potential auditory injury would be expected to occur on the basis of instantaneous exposure to peak pressure output from an airgun array while for low-frequency cetaceans, potential auditory injury would occur on the basis of the accumulation of energy output over time by an airgun array. For additional discussion, please see NMFS (2018) and discussion provided in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018) and in the notice of issuance for the 2021 final rule (86 FR 5322; January 19, 2021), *e.g.,* 83 FR 29262; 86 FR 5354; 86 FR 5397. Importantly, the modeled exposure estimates do not account for either aversion or the beneficial impacts of the required mitigation measures.

Of even greater import for mid-frequency cetaceans is that the small calculated Level A harassment zone size in conjunction with the properties of sound fields produced by arrays in the near field versus far field leads to a logical conclusion that Level A harassment is so unlikely for species in this hearing group as to be discountable. For all mid-frequency cetaceans, following evaluation of the available scientific literature regarding the auditory sensitivity of mid-frequency cetaceans and the properties of airgun array sound fields, NMFS does not expect any reasonable potential for Level A harassment to occur. This issue was addressed in detail in the response to public comments provided in NMFS' 2021 notice of issuance for the rule (86 FR 5322, January 19, 2021; see 86 FR 5354). NMFS expects the potential for Level A harassment of mid-frequency cetaceans to be discountable, even before the likely moderating effects of aversion and mitigation are considered, and NMFS does not believe that Level A harassment is a likely outcome for any mid-frequency cetacean. Therefore, the updated modeling results provided by Weirathmueller *et al.* (2022) account for this by assuming that any estimated exposures above Level A harassment thresholds for mid-frequency cetaceans resulted instead in Level B harassment (as reflected in table 6).

As discussed in greater detail in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), NMFS considered the possibility of incorporating quantitative adjustments within the modeling process to account for the effects of mitigation and/or aversion, as these factors would lead to a reduction in likely injurious exposure. However, these factors were ultimately not quantified in the modeling. In summary, there is too much inherent uncertainty regarding the effectiveness of detection-based mitigation to support any reasonable quantification of its effect in reducing injurious exposure, and there is too little information regarding the likely level of onset and degree of aversion to quantify this behavior in the modeling process. This does not mean that mitigation is not effective (to some degree) in avoiding incidents of Level A harassment, nor does it mean that aversion is not a meaningful real-world effect of noise exposure that should be expected to reduce the number of incidents of Level A harassment. As discussed in greater detail in responses to public comments provided in the 2021 notice of issuance for the final rule (86 FR 5322, January 19, 2021; see 86 FR 5353), there is ample evidence in the literature that aversion is one of the most common responses to noise exposure across varied species, though the onset and degree may be expected to vary across individuals and in different contexts. Therefore, NMFS incorporated a reasonable adjustment to modeled Level A harassment exposure estimates to account for aversion for low- and high-frequency species. That approach, which is retained here, assumes that an 80 percent reduction in modeled exposure estimates for Level A harassment for low- and high-frequency cetaceans is reasonable (Ellison *et al.,* 2016) and likely conservative in terms of the overall numbers of actual incidents of Level A harassment for these species, as the adjustment does not explicitly account for the effects of mitigation. This adjustment was incorporated into the updated modeling results provided by Weirathmueller *et al.* (2022) and reflected in table 6.

Take Estimation Error—As discussed previously, in 2020 BOEM provided an update to the scope of their proposed action through removal of the area subject to leasing moratorium under GOMESA from consideration in the rule. In support of this revision, BOEM provided revised 5-year level of effort predictions and associated acoustic exposure estimates. BOEM's process for developing this information, described in detail in ''Revised Modeled Exposure Estimates'' (available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*), was straightforward. Rather than using the PEIS's 10-year period, BOEM provided revised levels of effort for a 5-year period, using years 1–5 of the original level of effort projections. BOEM stated that the first 5 years were selected to be carried forward ''because they were contiguous, they included the three years with the most activity, and they were the best understood in relation to the historical data upon which they are based.'' Levels of effort, shown in table 1, were revised based on the basic assumption that if portions of areas are removed from consideration, then the corresponding effort previously presumed to occur in those areas also is removed from consideration. Projected levels of effort were reduced in each zone by the same proportion as was removed from each zone when BOEM reduced the scope of its proposed action, *i.e.,* the levels of effort were reduced by the same zone-specific proportions shown in table 1 in the notice of issuance for the final rule (86 FR 5322, January 19, 2021). Associated revised take estimates were provided by BOEM and evaluated in the final rule.

While processing requests for individual LOAs in 2021 under the rule using the methodology for developing LOA-specific take numbers presented in the rule, NMFS discovered discrepancies between the revised total take numbers provided by BOEM when addressing its revision to the scope of activity through removal of the GOMESA area and the underlying modeling results. (Note that the underlying modeling results are in the form of 24-hour exposure estimates, specific to each species, zone, survey type, and season. These 24-hour exposure estimates can then be scaled to generate take numbers appropriate to the specific activity or, in the case of BOEM's petition for rulemaking, to the

total levels of activity projected to occur across a number of years.)

NMFS contacted BOEM regarding the issue in June 2021. Following an initial discussion, BOEM determined that when it reduced its scope of specified activity by removing the GOMESA moratorium area from the proposed action, it underestimated the level of take by inadvertently factoring species density estimates into its revised exposure estimates twice. Generally, this miscalculation caused BOEM to underestimate the total predicted exposures of species from all survey activities in its revision to the incidental take rule application, most pronouncedly for those species with the lowest densities. The practical effect of this miscalculation is that the full amount of activity for which BOEM sought incidental take coverage in its application cannot be authorized under the existing incidental take rule.

In September 2021, BOEM provided corrected exposure estimates. These are available in BOEM's September 2021 ''Corrected Exposure Estimates'' letter, available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* Following receipt of BOEM's letter containing corrected exposure estimates, NMFS requested additional information from BOEM, including a detailed written description of the process involved in producing the revised take numbers submitted in 2020, the error(s) in that process, and the process involved in correcting those numbers. BOEM provided the requested information in October 2021. A detailed description of this explanation was provided in the notice of proposed rulemaking (88 FR 916, January 5, 2023). Please see that notice and BOEM's letter for additional detail.

The result of BOEM's process was that errors of varying degrees were introduced to the BOEM-derived take numbers evaluated in the final rule. Although NMFS was unable to replicate the derivation of the species-specific scaling factors, or to adequately compare the erroneous BOEM-derived values to the values evaluated in NMFS' 2018 proposed rule or to other published values, it remained clear that the take estimates were significantly underestimated for multiple species. Because of this, recalculation of appropriate take numbers was necessary.

New Modeling—Once it became clear that NMFS would need to recalculate the take numbers in order to support the necessary correction and reanalysis under the rule, we recognized that two other primary pieces of new information should be considered.

As discussed previously, through NMFS' experience implementing the 2021 final rule, it has become evident that operators are not currently using airgun arrays as large as the proxy array specified by BOEM for the original exposure modeling effort, and that the use of that 72-element, 8,000-in^3 array as the proxy for generating LOA-specific take estimates is overly conservative. As a result, operators applying 8,000-in^3 modeled results to operations conducted with smaller airgun arrays have been inappropriately limited in the number of planned days of data acquisition when NMFS' small numbers limit has been reached. Therefore, independently of and prior to the above-described discovery and evaluation of BOEM's error, NMFS had already determined that it would be useful and appropriate to produce new modeling results associated with a more representative airgun array. In consultation with industry operators, NMFS identified specifications associated with a 32-element, 5,110 in^3 array and contracted with the same modelers that produced the original acoustic exposure modeling (JASCO Applied Sciences) to conduct new modeling following the same approach and methodologies described in detail in Zeddies *et al.* (2015, 2017a). This information was reflected in NMFS' proposed rule and available for public review and comment (83 FR 29212, June 22, 2018). Specifically, JASCO has now produced new comprehensive modeling results for all evaluated survey types for the three different arrays described previously: (1) 4,130-in^3 array, described in detail in Zeddies *et al.* (2017b) (acoustic exposure results were provided for only 6 species in Zeddies *et al.* (2017b); full results are now available); (2) 5,110-in^3 array specified by NMFS and described in Weirathmueller *et al.* (2022); and (3) 8,000-in^3 array described in detail by Zeddies *et al.* (2015, 2017a).

Since the time of the original acoustic exposure modeling, JASCO has reviewed all species definition files and applied extensive updates for many species. These files define the species-specific parameters that control animat behavior during animal movement modeling. In particular, changes in the minimum and maximum depth preferences affected the coverage area for several species, which resulted in significant changes to some estimated exposures for some species.

In addition, at the time NMFS determined it would conduct a rulemaking to address the corrected take estimates, new cetacean density modeling (including incorporation of new Rice's whale data) was nearing completion, in association with the BOEM-funded GoMMAPPS effort (see: *https://www.boem.gov/gommapps*). NMFS determined that this new information (updated acoustic exposure modeling and new cetacean density models) should be used as the best available information for this rulemaking, and as such it is the basis for our analyses. For purposes of the negligible impact analyses, NMFS uses the maximum of the species-specific exposure modeling results from the three airgun array configurations/sizes. Specifically, for all species other than Rice's whale, these results are associated with the 8,000-in^3 array. For the Rice's whale, modeling associated with the 5,110-in^3 array produced larger exposure estimates (discussed below).

Estimated instances of take, *i.e.,* scenario-specific acoustic exposure estimates incorporating the adjustments to Level A harassment exposure estimates discussed here, are shown in table 6. For comparison, table 5 shows the estimated instances of take evaluated in the 2021 final rule. This information regarding total number of takes (with Level A harassment takes based on assumptions relating to mid-frequency cetaceans in general as well as aversion), on an annual basis for 5 years, provides the bounds within which incidental take authorizations—LOAs—may be issued in association with this regulatory framework. Importantly, modeled results showed increases in total take estimates for 4 species, while the others decreased from those analyzed in the 2021 final rule.[8]

Typically, and especially in cases where PTS is predicted, NMFS anticipates that some number of individuals may incur temporary threshold shift (TTS). However, it is not necessary to separately quantify those takes, as it is unlikely that an individual marine mammal would be exposed at the levels and duration necessary to incur TTS without also being exposed to the levels associated with potential disruption of behavioral patterns (*i.e.,* Level B harassment). As such, NMFS expects any potential TTS takes to be captured by the estimated Level B harassment takes associated with behavioral disturbance (discussed below).

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[8] Note that because of the new category of blackfish, there is uncertainty on any change in the take numbers for the individual species that comprise that category, though collectively the take numbers for all the blackfish remain within the levels previously analyzed.

Table 5 -- Scenario-specific Instances of Take (by Level A and Level B Harassment) and Mean Annual Take Levels Evaluated in the 2021 Final Rule[1]

Species	Year 1		Year 2		Year 3		Year 4		Year 5		Mean annual take	
	A	B	A	B	A	B	A	B	A	B	A	B
Rice's whale	0	10	0	8	0	8	0	6	0	7	0	8
Sperm whale	0	16,405	0	14,205	0	13,603	0	9,496	0	12,388	0	13,219
Kogia spp.[2]	371	10,383	337	9,313	310	8,542	209	6,238	314	8,318	308	8,559
Beaked whale[2]	0	191,566	0	162,301	0	158,328	0	111,415	0	142,929	0	153,308
Rough-toothed dolphin	0	30,640	0	27,024	0	25,880	0	19,620	0	23,219	0	25,277
Bottlenose dolphin	0	603,649	0	973,371	0	567,962	0	1,001,256	0	567,446	0	742,737
Clymene dolphin	0	85,828	0	67,915	0	73,522	0	47,332	0	60,379	0	66,995
Atlantic spotted dolphin	0	128,299	0	183,717	0	112,120	0	191,495	0	111,305	0	145,387
Pantropical spotted dolphin	0	478,490	0	436,047	0	391,363	0	311,316	0	395,987	0	402,641
Spinner dolphin	0	75,953	0	71,873	0	61,098	0	48,775	0	64,357	0	64,411
Striped dolphin	0	33,573	0	29,275	0	27,837	0	20,136	0	26,056	0	27,375
Fraser's dolphin	0	4,522	0	3,843	0	3,792	0	2,726	0	3,455	0	3,668
Risso's dolphin	0	21,859	0	18,767	0	18,218	0	12,738	0	16,634	0	17,643
Melon-headed whale (Blackfish)	0	55,813	0	47,784	0	46,584	0	32,581	0	42,224	0	44,997
Pygmy killer whale (Blackfish)	0	8,079	0	6,964	0	6,764	0	4,970	0	6,277	0	6,611
False killer whale (Blackfish)	0	16,165	0	13,710	0	13,604	0	9,664	0	12,269	0	13,082
Killer whale (Blackfish)	0	60	0	56	0	50	0	42	0	52	0	52
Blackfish totals	0	80,117	0	68,514	0	67,002	0	47,257	0	60,822	0	64,742
Short-finned pilot whale	0	15,045	0	9,824	0	13,645	0	7,459	0	8,959	0	10,986

[1]A and B refer to expected instances of take by Level A and Level B harassment, respectively, for Years 1-5. For *Kogia* spp., expected takes by Level A harassment represent modeled exposures adjusted to account for aversion. For the Rice's whale, no takes by Level A harassment were predicted to occur. Therefore, no adjustment to modeled exposures to account for aversion was necessary. For *Kogia* spp., exposures above Level A harassment criteria were predicted by the peak sound pressure level (SPL) metric. For the Rice's whale, the cumulative sound exposure level (SEL) metric is used to evaluate the potential for Level A harassment.

[2]*Kogia* spp. includes dwarf and pygmy sperm whales. Beaked whales include Blainville's, Gervais', and Cuvier's beaked whales.

Table 6 -- Updated Scenario-specific Instances of Take (by Level A and Level B Harassment) and Mean Annual Take Levels[1]

Species	Year 1		Year 2		Year 3		Year 4		Year 5		Mean annual take	
	A	B	A	B	A	B	A	B	A	B	A	B
Rice's whale	0	27	0	26	0	23	0	25	0	30	0	26
Sperm whale	0	13,198	0	11,208	0	11,063	0	8,126	0	10,127	0	10,744
Kogia spp.[2]	192	7,272	172	6,301	165	6,104	118	4,581	164	5,776	162	6,007
Beaked whale[2]	0	29,415	0	26,955	0	23,551	0	17,307	0	23,060	0	24,058
Rough-toothed dolphin	0	38,535	0	33,878	0	32,241	0	25,290	0	29,373	0	31,863
Bottlenose dolphin	0	284,366	0	418,676	0	251,807	0	439,366	0	248,863	0	328,616
Clymene dolphin	0	29,919	0	23,248	0	25,893	0	17,378	0	21,209	0	23,529
Atlantic spotted dolphin	0	37,080	0	34,140	0	33,126	0	34,343	0	23,906	0	32,519
Pantropical spotted dolphin	0	293,390	0	259,831	0	243,888	0	189,147	0	236,651	0	244,581
Spinner dolphin	0	4,618	0	4,456	0	3,704	0	3,147	0	4,101	0	4,006
Striped dolphin	0	56,797	0	51,623	0	46,820	0	37,449	0	47,084	0	47,955
Fraser's dolphin	0	14,499	0	12,343	0	12,181	0	8,833	0	11,118	0	11,795
Risso's dolphin	0	8,146	0	6,939	0	6,787	0	4,834	0	6,176	0	6,576
Blackfish[2]	0	67,509	0	57,010	0	56,860	0	40,787	0	51,138	0	54,661
Short-finned pilot whale	0	14,330	0	9,694	0	12,836	0	7,232	0	8,734	0	10,565

[1]A and B refer to expected instances of take by Level A and Level B harassment, respectively, for Years 1-5. Expected takes by Level A harassment represent modeled exposures adjusted to account for aversion. For the Rice's whale, this adjustment means that no takes by Level A harassment are predicted to occur. For *Kogia* spp., exposures above Level A harassment criteria were predicted by the peak SPL metric. For the Rice's whale, the cumulative SEL metric is used to evaluate the potential for Level A harassment.

[2]*Kogia* spp. includes dwarf and pygmy sperm whales. Beaked whales include Blainville's, Gervais', and Cuvier's beaked whales. Blackfish includes melon-headed whale, false killer whale, pygmy killer whale, and killer whale.

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Discussion of Estimated Take

Differences between the estimated instances of take evaluated in the 2021 final rule (table 5) and those evaluated herein (table 6) may be attributed to multiple factors. Due to the confounding nature of these factors, it is challenging to attribute species-specific differences by degree to any particular factor. These factors include: (1) BOEM errors in calculating estimated take in support of its revision of scope for the 2021 final rule, which are related to species-specific density values by zone, as well as to species-specific ''correction factors'' developed by BOEM; (2) JASCO revisions to species definition files governing animat behavior during animal movement modeling; and (3) new density information for all species other than Fraser's dolphin and rough-toothed dolphin. In addition, for the Rice's whale, propagation modeling of a new array specification produced the greatest values for estimated instances of take. While it is difficult to attribute species-specific changes to specific factors, we do know that the correction of the BOEM error could only result in take number increases from the 2021 final rule, while density changes and species definition file changes could result in either increases or decreases in take estimates. (However, most density values decreased, in many cases significantly.) NMFS has addressed BOEM's error to the extent possible in the discussion provided previously (see *Take Estimation Error*).

Regarding the species characteristics used in the new modeling, as discussed above, all species behavior files were reviewed by JASCO prior to the new

modeling, and many had extensive updates, based on the availability of new information regarding relevant behavioral parameters in the scientific literature. In particular, changes in the minimum and maximum depth preferences affected the coverage area for several species, which resulted in changes to some species exposures.

New modeling for the smaller, 5,110-in^3 array illustrated that the larger array is not necessarily always more impactful. Free-field beam patterns are different for the arrays as are the tow depths. The 5,110-in^3 array was specified as being towed at 12 m depth (following typical usage observed by NMFS through review of LOA applications), while the other arrays are assumed to use an 8-m tow depth (assumptions regarding source specifications were made by BOEM as part of its original petition for rulemaking). The depth at which a source is placed influences the interference pattern caused by the direct and sea-surface reflected paths (the ''Lloyd's mirror'' effect). The destructive interference from the sea-surface reflection is generally greater for shallow tow depths compared to deeper tow depths. In addition, interactions between source depth, beam pattern geometry, source frequency content, the environment (*e.g.,* bathymetry and sound velocity profile), and different animat seeding depths and behaviors can give unexpected results. For example, while the larger array may have the longest range for a particular isopleth (sound contour), the overall sound field coverage area was found to have greater asymmetry as a result of the above-mentioned interactions.

While the larger array did produce greater predicted exposures for all species, with the exception of Rice's whales, the differences between predicted exposure estimates for the two larger arrays were not as great as may have been expected on the basis of total array volume alone. The 5,110- and 8,000-in^3 arrays were often similar in terms of predicted exposures, although the beam patterns were quite different. For arrays of airgun sources, the chamber volume or the total array volume is not the only meaningful variable. Although it is true that a source with a larger volume is generally louder, in practice this only applies largely to single sources or small arrays of sources and was not the case for the considered arrays. As discussed above, array configuration, tow depth, and bathymetry were significant factors. For example, the 8,000-in^3 array generally had a more directional beam pattern than the 4,130- or 5,110-in^3 arrays. The vertical structure of the sound field combined with different species' dive depth and surface intervals was important as well. Differences in estimated take numbers for the 2021 final rule and this rule, *i.e.,* differences between tables 5 and 6, are shown in table 7.

Table 7 -- Differences in Estimated Take Numbers, 2021 Final Rule to 2023 Final Rule[1]

Species	Year 1	Year 2	Year 3	Year 4	Year 5	Mean annual take
Rice's whale	17	18	15	19	23	18
Sperm whale	(3,207)	(2,997)	(2,540)	(1,370)	(2,261)	(2,475)
Kogia spp.[2] (Level A)	(179)	(165)	(145)	(91)	(150)	(146)
Kogia spp. (Level B)	(3,111)	(3,012)	(2,438)	(1,657)	(2,542)	(2,552)
Beaked whale	(162,151)	(135,346)	(134,777)	(94,108)	(119,869)	(129,250)
Rough-toothed dolphin	7,895	6,854	6,361	5,670	6,154	6,586
Bottlenose dolphin	(319,283)	(554,695)	(316,155)	(561,890)	(318,583)	(414,121)
Clymene dolphin	(55,909)	(44,667)	(47,629)	(29,954)	(39,170)	(43,466)
Atlantic spotted dolphin	(91,219)	(149,577)	(78,994)	(157,152)	(87,399)	(112,868)
Pantropical spotted dolphin	(185,100)	(176,216)	(147,475)	(122,169)	(159,336)	(158,060)
Spinner dolphin	(71,335)	(67,417)	(57,394)	(45,628)	(60,256)	(60,405)
Striped dolphin	23,224	22,348	18,983	17,313	21,028	20,580
Fraser's dolphin	9,977	8,500	8,389	6,107	7,663	8,127
Risso's dolphin	(13,713)	(11,828)	(11,431)	(7,904)	(10,458)	(11,067)
Blackfish[3]	(12,608)	(11,504)	(10,142)	(6,470)	(9,684)	(10,081)
Short-finned pilot whale	(715)	(130)	(809)	(227)	(225)	(421

[1]Parentheses indicate negative values.

[2]Level A harassment is not predicted to occur for any species other than the *Kogia* spp.

[3]Values presented for blackfish represent the difference between the estimated take number presented in this rule for this group generically and the sum of the species-specific values evaluated in the 2021 final rule.

NMFS cautions against interpretation of the changes presented in table 7 at face value for a variety of reasons. First, reasons for the differences in the take estimates are difficult to interpret due to the confounding nature of the different factors discussed in this section. Second, the meaning of the differences in terms of impacts to the affected

species or stocks is similarly not as straightforward as the magnitude and direction of the differences may imply. Differences in estimated take are, in part, the result of the introduction of new density data, which also provides new model-predicted abundance estimates. Our evaluation under the MMPA of the expected impacts of the predicted take events is substantially reliant on comparisons of the expected take to the predicted abundance. See discussion of our evaluation of severity of impact (one prong of analysis) in Negligible Impact Analysis and Determinations. The severity of the predicted taking is understood through the estimates' relationship to predicted zone-specific abundance values, and so the absolute differences presented in table 7 are not, alone, informative in that regard.

Overall, NMFS has determined, to the extent possible, that aside from the confounding effect of BOEM's calculation errors, differences between the current and prior results for the 8,000-in^3 array are primarily attributable to differences in species density along with changes in the species behavior files, in particular minimum and maximum animat seeding depths.

Level B Harassment

NMFS has determined the values shown in table 6 are a reasonable estimate of the maximum potential instances of take that may occur in each year of the regulations based on projected effort (more specifically, each of these ''takes'' represents a day in which one individual is exposed above the Level B harassment criteria, even if only for minutes). However, these take numbers do not represent the number of individuals expected to be taken, as they do not consider the fact that certain individuals may be exposed above harassment thresholds on multiple days. Accordingly, as described in the 2018 notice of proposed rulemaking, NMFS developed a ''scalar ratio'' approach to inform two important parts of the analyses: understanding a closer approximation of the number of individuals of each species or stock that may be taken within a survey, and understanding the degree to which individuals of each species or stock may be more likely to be repeatedly taken across multiple days within a year.

In summary, comparing the results of modeling simulations that more closely match longer survey durations (30 days) to the results of 24-hour take estimates scaled up to 30 days (as the instances of take in table 6 were calculated) provides the comparative ratios of the numbers of individuals taken/calculated (within a 30-day survey) to instances of take, in order to better understand the comparative distribution of exposures across individuals of different species. These products are used to inform a better understanding of the nature in which individuals are taken across the multiple days of a longer duration survey given the different behaviors that are represented in the animat modeling and may appropriately be used in combination with the calculated instances of take to predict the number of individuals taken for surveys of similar duration, in order to support evaluation of take estimates in requests for LOAs under the ''small numbers'' standard, which is based on the number of individuals taken. A detailed discussion of this approach was provided in the 2018 notice of proposed rulemaking. As NMFS retains without change this ''scalar ratio'' approach to approximating the number of individuals taken, both here (see Negligible Impact Analysis and Determinations) and in support of the necessary small numbers determination on an LOA-specific basis, we do not repeat the discussion but refer the reader to previous **Federal Register** notices. Application of the scaling method reduced the overall magnitude of modeled takes for all species by a range of slightly more than double up to tenfold (table 8).

These adjusted take numbers, representing a closer approximation of the number of individuals taken (shown in table 8), provide a more realistic basis upon which to evaluate severity of the expected taking. Please see the Negligible Impact Analysis and Determinations section later in this document for additional detail. It is important to recognize that while these scaled numbers better reflect the number of individuals likely to be taken within a single 30-day survey than the number of instances in table 6, they will still overestimate the number of individuals taken across the aggregated GOM activities, because they do not correct for (*i.e.,* further reduce take to account for) individuals exposed to multiple surveys or fully correct for individuals exposed to surveys significantly longer than 30 days.

As noted in the beginning of this section and in the Small Numbers section, using modeled instances of take (table 6) and the method used here to scale those numbers allows one to more accurately predict the number of individuals that will be taken as a result of exposure to one survey and, therefore, these scaled predictions are more appropriate to consider in requests for LOAs to assess whether a resulting LOA would meet the small numbers standard. However, for the purposes of ensuring that the total taking authorized pursuant to all issued LOAs is within the scope of the analysis conducted to support the negligible impact finding in this rule, authorized instances of take (which are the building blocks of the analysis) also must be assessed. Specifically, reflecting table 6 and what has been analyzed, the total instances of take that may be authorized for any given species or stock over the course of the 5 years covered under these regulations must not, and is not expected to, exceed the sum of the 5 years of take indicated for the 5 years in that table. Additionally, in any given year, the instances of take of any species must not, and are not expected to, exceed the highest annual take listed in table 6 for any of the 5 years for a given species.

Table 8 -- Expected Total Take Numbers, Scaled[1]

Species	Year 1	Year 2	Year 3	Year 4	Year 5
Rice's whale	5	5	4	5	6
Sperm whale	5,583	4,741	4,679	3,437	4,284
Kogia spp.	2,334	2,022	1,959	1,470	1,854
Beaked whale	2,971	2,722	2,379	1,748	2,329
Rough-toothed dolphin	11,060	9,723	9,253	7,258	8,430
Bottlenose dolphin	81,613	120,160	72,269	126,098	71,424
Clymene dolphin	8,587	6,672	7,431	4,987	6,087
Atlantic spotted dolphin	10,642	9,798	9,507	9,856	6,861
Pantropical spotted dolphin	84,203	74,571	69,996	54,285	67,919
Spinner dolphin	1,325	1,279	1,063	903	1,177
Striped dolphin	16,301	14,816	13,437	10,748	13,513
Fraser's dolphin	4,161	3,543	3,496	2,535	3,191
Risso's dolphin	2,403	2,047	2,002	1,426	1,822
Blackfish	19,915	16,818	16,774	12,032	15,086
Short-finned pilot whale	4,227	2,860	3,787	2,134	2,576

[1]Scalar ratios were applied to values in table 6 as described in the 2018 notice of proposed rulemaking to derive scaled take numbers shown here.

Mitigation

''Least Practicable Adverse Impact'' Standard

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the LPAI on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses, often referred to in shorthand as ''mitigation.'' NMFS does not have a regulatory definition for LPAI. However, NMFS' implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the LPAI upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)). In the Mitigation section of the 2021 final rule, NMFS included a detailed description of our interpretation of the LPAI standard (including its relationship to the negligible impact standard) and how the LPAI standard is implemented (86 FR 5322, 5407, January 19, 2021). We refer readers to the full LPAI discussion in the 2021 final rule, but repeat the discussion on implementation here to facilitate understanding of the analyses that follow.

NMFS' evaluation of potential mitigation measures includes consideration of two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation; and

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on activities, personnel safety, and practicality of implementation.

While the language of the LPAI standard calls for minimizing impacts to affected species or stocks and their habitat, NMFS recognizes that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been improvements in understanding the process by which disturbance effects are translated to the population. With recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may often be inferred given a detailed understanding of the activity, the environment, and the affected species or stocks. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects (or the risk thereof) to species or stocks. NMFS also acknowledges that there is always the potential that new information, or a new recommendation that had not previously been considered, becomes available and necessitates re-evaluation of mitigation measures (which may be addressed through adaptive management) to see if further reductions of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability) and are carefully considered to determine the types of mitigation that are appropriate under the LPAI standard. Analysis of how a potential mitigation measure may

reduce adverse impacts on a marine mammal stock or species and practicability of implementation are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability, can vary widely. For example, a time-area restriction could be of very high value for reducing the potential for, or severity of, population-level impacts (*e.g.,* avoiding disturbance of feeding females in an area of established biological importance) or it could be of lower value (*e.g.,* decreased disturbance in an area of high productivity but of less firmly established biological importance). Regarding practicability, a measure might involve restrictions in an area or time that impede the operator's ability to acquire necessary data (higher impact), or it could mean incremental delays that increase operational costs but still allow the activity to be conducted (lower impact). A responsible evaluation of LPAI will consider the factors along these realistic scales. Expected effects of the activity and of the mitigation as well as status of the stock all weigh into these considerations. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to the species or stock or their habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure, and vice versa. Consideration of these factors is discussed in greater detail below.

1. *Reduction of adverse impacts to marine mammal species or stocks and their habitat.*[9]

The emphasis given to a measure's ability to reduce the impacts on a species or stock considers the degree, likelihood, and context of the anticipated reduction of impacts to individuals (and how many individuals) as well as the status of the species or stock.

The ultimate impact on any individual from a disturbance event (which informs the likelihood of adverse species- or stock-level effects) is dependent on the circumstances and associated contextual factors, such as duration of exposure to stressors. Though any proposed mitigation needs to be evaluated in the context of the specific activity and the species or stocks affected, measures with the following types of effects have greater value in reducing the likelihood or severity of adverse species- or stock-level impacts: avoiding or minimizing injury or mortality; limiting interruption of known feeding, breeding, mother/young, or resting behaviors; minimizing the abandonment of important habitat (temporally and spatially); minimizing the number of individuals subjected to these types of disruptions; and limiting degradation of habitat. Mitigating these types of effects is intended to reduce the likelihood that the activity will result in energetic or other types of impacts that are more likely to result in reduced reproductive success or survivorship. It is also important to consider the degree of impacts that are expected in the absence of mitigation in order to assess the added value of any potential measures. Finally, because the LPAI standard gives NMFS discretion to weigh a variety of factors when determining appropriate mitigation measures and because the focus of the standard is on reducing impacts at the species or stock level, the LPAI standard does not compel mitigation for every kind of take, or every individual taken, if that mitigation is unlikely to meaningfully contribute to the reduction of adverse impacts on the species or stock and its habitat, even when practicable for implementation by the applicant.

The status of the species or stock is also relevant in evaluating the appropriateness of potential mitigation measures in the context of LPAI. The following are examples of factors that may (either alone, or in combination) result in greater emphasis on the importance of a mitigation measure in reducing impacts on a species or stock: the stock is known to be decreasing or status is unknown, but believed to be declining; the known annual mortality (from any source) is approaching or exceeding the PBR level; the affected species or stock is a small, resident population; or the stock is involved in a UME or has other known vulnerabilities, such as recovering from an oil spill.

Habitat mitigation, particularly as it relates to rookeries, mating grounds, and areas of similar significance, is also relevant to achieving the standard and can include measures such as reducing impacts of the activity on known prey utilized in the activity area or reducing impacts on physical habitat. As with species- or stock-related mitigation, the emphasis given to a measure's ability to reduce impacts on a species or stock's habitat considers the degree, likelihood, and context of the anticipated reduction of impacts to habitat. Because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat.

NMFS considers available information indicating the likelihood of any measure to accomplish its objective. If evidence shows that a measure has not typically been effective nor successful, then either that measure should be modified or the potential value of the measure to reduce effects should be lowered.

2. *Practicability.*

Factors considered may include those costs, impact on activities, personnel safety, and practicality of implementation.

Application of the LPAI Standard in this Action

In carrying out the MMPA's mandate for this action, NMFS applies the context-specific balance between the manner in which and the degree to which measures are expected to reduce impacts to the affected species or stocks and their habitat and practicability for operators. See NMFS' notice of issuance for the 2021 final rule (January 19, 2021, 86 FR 5322, 5405). The effects of concern (*i.e.,* those with the potential to adversely impact species or stocks and their habitat) include auditory injury, severe behavioral reactions, disruptions of critical behaviors, and to a lesser degree, masking and impacts on acoustic habitat. These effects were addressed previously in the Potential Effects of the Specified Activity on Marine Mammals and Their Habitat and Anticipated Effects on Marine Mammal Habitat sections of the 2018 notice of proposed rulemaking (June 22, 2018, 83 FR 29212, 29233, 29241).

Our rulemaking for the 2021 final rule focused on measures with proven or reasonably presumed ability to avoid or reduce the intensity of acute exposures that have potential to result in these anticipated effects. To the extent of the information available to NMFS, we considered practicability concerns, as well as potential undesired consequences of the measures, *e.g.,* extended periods using the acoustic source due to the need to reshoot lines. NMFS recognized that instantaneous protocols, such as shutdown requirements, are not capable of avoiding all acute effects, are not

[9] NMFS recognizes the LPAI standard requires consideration of measures that will address minimizing impacts on the availability of the species or stocks for subsistence uses where relevant. Because subsistence uses are not implicated for this action, we do not discuss them. However, a similar framework would apply for evaluating those measures, taking into account both the MMPA's directive that we make a finding of no unmitigable adverse impact on the availability of the species or stocks for taking for subsistence, and the relevant implementing regulations.

suitable for avoiding many cumulative or chronic effects, and do not provide targeted protection in areas of greatest importance for marine mammals. Therefore, in addition to a basic suite of seismic mitigation protocols, we also evaluated time-area restrictions that would avoid or reduce both acute and chronic impacts of surveys, including potential restrictions that were removed from consideration in the final rule as a result of BOEM's change to the scope of the action.

NMFS' 2021 rule included a suite of basic mitigation protocols that are required regardless of the status of a stock. Additional or enhanced protections were required for species whose stocks are in particularly poor health and/or are subject to some significant additional stressor that lessens that stock's ability to weather the effects of the specified activities without worsening its status. NMFS' evaluation process was described in detail in the 2018 proposed rule (83 FR 29212, June 22, 2018), and mitigation requirements included in the incidental take regulations at 50 CFR 217.180 *et seq.* were fully described in the notice of issuance for the final rule (86 FR 5322, 5411, January 19, 2021).

For this current rulemaking, NMFS' evaluation built off the existing mitigation requirements from the 2021 final rule, which will remain in effect, and considered additional mitigation under the LPAI standard as it relates to Rice's whales, in light of the species' status, increase in take estimates relative to the 2021 final rule, and other new information. In addition to other potential changes to mitigation requirements suggested by public commenters and addressed in the Comments and Responses section of this rule, we evaluated (1) a potential restriction on survey activities within the small portion of the Rice's whale ''core distribution area'' that overlaps the geographic scope of the specified activity covered by this rule (see discussion of the core distribution area earlier in Description of Marine Mammals in the Area of the Specified Activities) and (2) the potential for a restriction on survey activity in other areas between 100–400 m in depth throughout the geographic area covered by the rule,[10] also for Rice's whales. As described below, we determined that the requirements in the current regulations promulgated under the 2021 final rule satisfy the LPAI standard and therefore make no changes to those regulations. Because the mitigation requirements for this action are the same as those described in the final rule (86 FR 5322, 5409, January 19, 2021), we do not repeat the description of the required mitigation.

For all other species, although there are slight increases in estimated take (for three species) and increases in evaluated risk (for other species) relative to the 2021 final rule (see Negligible Impact Analysis and Determinations), there are no known specific areas of particular importance to consider for time-area restrictions, and no changes to our prior analysis for the sufficiency of the existing standard operational mitigation requirements to effect the LPAI on the affected species or stocks and their habitat. (We also note that NMFS' 2018 proposed rule made this determination even in the context of significantly higher takes, as well as evaluated risk.)

Rice's Whale—We first provide a summary of baseline information relevant to our consideration of mitigation for Rice's whales. Rice's whales have a small population size, are restricted to the GOM, and were determined by the status review team to be ''at or below the near-extinction population level'' (Rosel *et al.,* 2016). While various population abundance estimates are available (*e.g.,* Garrison *et al.,* 2020, 2023; Hayes *et al.,* 2020; Roberts *et al.,* 2016; Dias and Garrison, 2016), all are highly uncertain because targeted surveys have not been conducted throughout the Rice's whale's range. The most recent statistically-derived abundance estimate, from 2017–2018 surveys in the northeastern GOM, is 51 individuals (20–130 95% Confidence Interval (CI)) (Garrison *et al.,* 2020). There may be fewer than 100 individuals throughout the GOM (Rosel *et al.,* 2016). In addition, the population exhibits very low levels of genetic diversity (Rosel and Wilcox, 2014; Rosel *et al.,* 2021). The small population size, restricted range, and low genetic diversity alone place these whales at significant risk of extinction (IWC, 2017). This risk has been exacerbated by the effects of the DWH oil spill, which was estimated to have exposed up to half the population to oil (DWH NRDA Trustees, 2016; DWH MMIQT, 2015). In addition, Rice's whales face a significant suite of anthropogenic threats, including noise produced by airgun surveys (Rosel *et al.,* 2016). Additionally, Rice's whale dive and foraging behavior places them at heightened risk of being struck by vessels and/or entangled in fishing gear (Soldevilla *et al.,* 2017).

Of relevance here, the reduced geographic scope of the specified activity for this rule (and the 2021 final rule) in relation to the 2018 proposed rule excludes the eastern GOM through removal of the GOMESA area (see Figure 2). This reduced scope effectively minimizes potential impacts to Rice's whales and their core habitat (as recognized by the 2016 status review team) relative to the impacts considered through NMFS' 2018 proposed rule. Thus, although potential takes considered herein are higher relative to those analyzed in the 2021 final rule (maximum of 30 annual incidents of take (Level B harassment only) compared with 10, respectively), they remain significantly under the take numbers evaluated in the 2018 proposed rule (maximum of 572 annual incidents of take by Level B harassment with additional take by Level A harassment).

It is in the aforementioned context that our 2023 proposed rule evaluated two potential measures for additional Rice's whale mitigation: (1) restriction of survey activity within the 5 percent of the core distribution area (*i.e.,* the expanded area around northeastern GOM Rice's whale sightings and tagged whale locations created through application of a 30 km buffer) that is within the geographic scope of the specified activity; and (2) restriction of survey activity over a broad (but undefined) area of the central and/or western GOM within Rice's whale habitat in waters between the 100–400 m isobaths. There is no scientific information supporting a temporal component for either potential restriction nor any specific spatial definition for a central and/or western GOM restriction. Following the LPAI analysis produced in the 2023 proposed rule, the MMC recommended implementing restriction (1) above. Both the MMC and NRDC commented that some surveys should be restricted within habitat of the central and/or western GOM, but neither commenter provided recommendations regarding specific recommended spatial definition of such a restriction or specific metrics for defining which surveys should be restricted. All comments and recommendations were evaluated and responses are provided earlier. See Comments and Responses.

We reiterate that the amount of anticipated take of Rice's whales over the 5-year duration of the incidental take regulation is relatively low and

[10] Subsequent to publication of the 2023 proposed rule, NMFS proposed to designate the area in the GOM, between the U.S. EEZ off Texas east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council off of Florida, that consists of waters from the 100 m isobaths to the 400 m isobaths, as critical habitat for the Rice's whale (88 FR 47453, July 24, 2023).

limited to Level B harassment. The anticipated magnitude of impacts from any of these anticipated takes is considered to be relatively low, as we concluded that none of these takes are expected to impact the fitness of any individuals. See Negligible Impact Analysis and Determinations. We also note the robust shutdown measures required that utilize highly effective visual and passive acoustic detection methods to avoid marine mammal injury as well as minimize TTS and more severe behavioral responses.

For this rulemaking, NMFS independently examined each of the two area-based restrictions in the context of the LPAI standard to determine whether either restriction is warranted to minimize the impacts from seismic survey activities on the affected marine mammal species or stocks. This analysis is consistent with the consideration of the LPAI criteria described above when determining appropriateness of mitigation measures. These potential requirements were evaluated (see below) in the context of the proposed seismic survey activities (including the geographic scope of the rule) and the existing mitigation measures that would be implemented to minimize impacts on the affected marine mammal species or stocks from these activities.

To reiterate, the scope of the rule does not cover Rice's whale core habitat in the northeastern GOM, which is the area (absent buffering) that contains the highest known densities of Rice's whale and which has defined the movements of previously tagged Rice's whales. Thus, even though individual Rice's whales occurring outside of the core habitat area may experience harassment, this geographic scope likely precludes significant impacts to Rice's whales at the species level by avoiding takes of the majority of individuals and by avoiding impacts to the habitat that supports the highest densities of the species. This important context generally lessens the total number of takes, and means that the takes that do occur are expected to have lower potential to have negative energetic effects or deleterious effects on reproduction that could reduce the likelihood of survival or reproductive success. In addition, NMFS has required mitigation measures that would minimize or alleviate the likelihood of injury (PTS), TTS, and more severe behavioral responses (the 1,500-m shutdown zone). In addition, exposures to airgun noise would occur in open water areas where animals can more readily avoid the source and find alternate habitat relatively easily. The existing mitigation requirements are expected to be effective in ensuring that impacts are limited to lower-level responses with limited potential to significantly alter natural behavior patterns in ways that would affect the fitness of individuals and by extension the affected species.

As noted previously, in evaluating mitigation for species or stocks and their habitat, we consider the expected benefits of the mitigation measures for the species or stocks and their habitats against the practicability of implementation. This consideration includes assessing the manner in which, and the degree to which, the implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks (including through consideration of expected reduced impacts on individuals), their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the proposed activity's adverse impact (likelihood, scope, range); the likelihood that the measure will be effective if implemented; the likelihood of successful implementation. Practicability of implementing the measure is also assessed and may involve consideration of such things as cost and impact on operations (16 U.S.C. 1371(a)(5)(A)(iii)).

Taking into account the above considerations, NMFS' evaluation of the two potential survey restrictions is described below:

Core Distribution Area. NMFS' 2018 notice of proposed rulemaking considered restrictions on activity in a Rice's whale ''core habitat area'' in the eastern GOM identified between the 100- and 400-m isobaths from 87.5° W to 27.5° N, based on Rosel *et al.* (2016) (Figure 3). As discussed in the 2018 proposed rule, and above, a restriction on (or absence of) survey activity in the core habitat area would be expected to protect Rice's whales through the alleviation or minimization of a range of airgun effects, both acute and chronic, that could otherwise accrue to impact the reproduction or survival of individuals in the area considered to be of greatest importance to the species. The absence of survey activity in the species' core habitat area not only minimizes Level B harassment of Rice's whales, but also importantly minimizes other effects such as loss of communication space.

The significant concern that led NMFS to consider restrictions on survey activity in the core habitat area was largely alleviated through removal of GOMESA and the associated reduction in predicted take and impacts in a known area of important habitat. (Although predicted take numbers for this final rule are higher relative to the 2021 final rule (annual average Level B harassment events of 26 versus 8, respectively), they remain significantly lower than the annual average of 462 Level B harassment events considered in that 2018 analysis (plus some potential for Level A harassment to occur)—an almost 18-fold reduction.) Moreover, the functional absence of survey activity in the eastern GOM, and particularly within Rice's whale core habitat area, means that the anticipated protection afforded by the previously considered restriction was functionally achieved by virtue of the reduced scope for the 2021 final rule (which is unchanged for this action). Regardless, because the core habitat area was entirely located in the GOMESA moratorium area removed from the scope of the 2021 final rule, it was no longer relevant for consideration as mitigation.

More recently, Rosel and Garrison (2022) described a Rice's whale ''core distribution area'' (Figure 3). This core distribution area description included a precautionary 30-km buffer around the core habitat area to account for uncertainty associated with both the location of observed whales and the possible movement whales could make in any direction from an observed sighting. It is not the result of new information warranting an expansion of the previously considered core habitat area, but rather is the result of additional precaution in defining the area within which existing Rice's whale sightings and tag locations suggest that whales could occur. As a result of this buffer, approximately 5 percent of the polygon for the core distribution area described in Rosel and Garrison (2022) overlaps with the current geographic scope of the rule, which led us to consider whether additional mitigation is warranted under the LPAI standard.

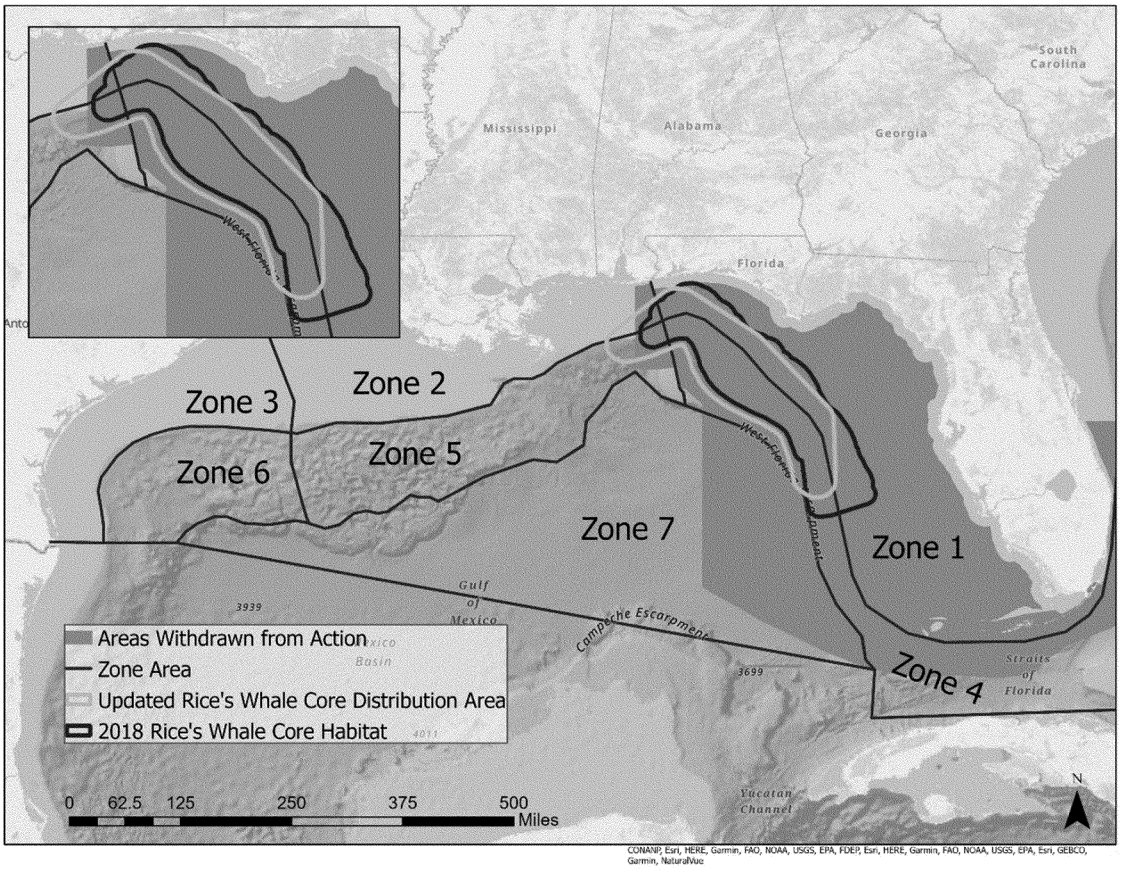

Figure 3 -- Rice's Whale Areas

The result of this precautionary approach is that areas shallower than 100 m and deeper than 400 m (*i.e.,* areas that are not known to support all of the Rice's whale life history stages; NMFS, 2023) are included in the core distribution area, most notably in the small portion overlapping with the scope of this rule, given the steep bathymetry there. Of the small portion of the core distribution area that overlaps the scope of this rule, 76 percent covers waters shallower than 100 m (36 percent) or deeper than 400 m (40 percent), *i.e.,* three-quarters of the area considered as a potential restriction area covers waters considered outside of most suitable Rice's whale habitat. We note that (1) NMFS' 2023 proposed designation of critical habitat (which is based on the same information we have considered) includes only waters between 100–400 m as the area containing physical or biological features essential for conservation and (2) no confirmed Rice's whale sightings have occurred in waters shallower than 100 m or waters deeper than 408 m.

Thus, we evaluate the potential mitigative benefits of a restriction on survey activity in the remaining approximately one-quarter of the considered area that is preferred habitat for Rice's whales. The absence of survey activity would avoid likely Level B harassment of any individuals that may occur in the area, but there is no information suggesting that the area is of particular importance relative to the remainder of GOM waters between 100–400 m that are outside the northeastern GOM core habitat, and Level B harassment that occurs to whales present outside the core habitat area may be expected to carry less potential for disruption of important behavior or significance to the affected individual. The amount of anticipated take is already low, and the existing mitigation requirements are expected with a high degree of confidence to minimize the duration and intensity of any instances of take that do occur. Therefore, we have low confidence that this potential restriction would meaningfully reduce impacts at the species or stock level. Regarding practicability, although the considered area is relatively small, it would have outsize impacts should any operator need to conduct new survey activity on existing interests in the area or inform developers' understanding of potential reserves in the area.

In summary, there is no information supporting identification of this area (*i.e.,* the 5 percent of the core distribution area overlapping the scope of this rule) as being of particular importance relative to Rice's whale habitat more broadly (*i.e.,* GOM waters between 100–400 m depth), and only 24 percent of the overlapping area actually covers Rice's whale habitat. The available information does not support a conclusion that such a restriction would contribute meaningfully to a reduction in adverse impacts to the Rice's whale or its habitat and, therefore, there is no rationale for incurring the associated practicability impacts. Because of these considerations, NMFS has determined that a restriction on survey activity within the portion of the core distribution area that occurs within scope of the rule is not warranted.

Central and Western GOM. New information regarding Rice's whale occurrence in the central and western GOM, largely based on passive acoustic detections (Soldevilla *et al.,* 2022;

2024), is now available. We acknowledge that some whales are likely to be present at locations outside the northeastern GOM core habitat area, and we considered whether other closure areas may be warranted, including central and western GOM areas within the same general 100–400 m depth range known to be occupied by Rice's whales in the northeastern GOM, and which have been proposed as designated critical habitat for the species (88 FR 47453, July 24, 2023). We provide discussion of this information and an evaluation of a potential broader restriction on survey effort in the following paragraphs.

As background, a NOAA survey reported observation of a Rice's whale in the western GOM in 2017 (NMFS, 2018). Genetic analysis of a skin biopsy that was collected from the whale confirmed it to be a Rice's whale. There had not previously been a genetically verified sighting of a Rice's whale in the western GOM, and given the importance of this observation, additional survey effort was conducted in an attempt to increase effort in the area. However, no additional sightings were recorded. (Note that there were two sightings of unidentified large baleen whales in 1992 in the western GOM, recorded as *Balaenoptera* sp. or Bryde's/sei whale (Rosel *et al.,* 2021).) Subsequently, during recent 2023 survey effort in the western GOM, a sighting of what has been described as a group of two probable Rice's whales was recorded (*https://www.fisheries.noaa.gov/science-blog/successful-final-leg-gulf-mexico-marine-mammal-and-seabird-vessel-survey*). In addition, there are occasional sightings by PSOs of baleen whales in the GOM that may be Rice's whales. Rosel *et al.* (2021) reviewed 13 whale sightings reported by PSOs in the GOM from 2010–2014 that were recorded as baleen whales. No sightings were close enough for the PSOs to see the diagnostic three lateral ridges on the whales' rostrums required to confirm them as Rice's whales. Rosel *et al.* ruled out five of the sightings as more likely being sperm whales based on water depth and descriptions of the whales' behavior. The remaining eight sightings may have been Rice's whales based on one or more lines of evidence (*i.e.,* photographs, behavioral description, and/or water depth consistent with Rice's whales). Of these sightings, three occurred in the northeastern GOM core habitat area, while the remaining five occurred along the GOM shelf break south of Louisiana. See Figure 4 for the location of confirmed Rice's whale sightings.

The acoustic detections provide significant evidence of year-round Rice's whale presence outside of the northeastern GOM core habitat area. Soldevilla *et al.* (2022) deployed autonomous passive acoustic recorders at 5 sites along the GOM shelf break in predicted Rice's whale habitat (Roberts *et al.,* 2016) for 1 year (2016–2017) to (1) determine if Rice's whales occur in waters beyond the northeastern GOM and, if so, (2) evaluate their seasonal occurrence and site fidelity at the 5 sites. Over the course of the 1-year study, sporadic, year-round recordings of calls assessed as belonging to Rice's whales were made south of Louisiana within approximately the same depth range (200–400 m), indicating that some Rice's whales occurred regularly in waters beyond the northeastern GOM core habitat area during the study period. Based on the detection range of the sonobuoys and acoustic monitors used in the study, actual occurrence could be in water depths up to 500 m (M. Soldevilla, pers. comm.), though the deepest confirmed Rice's whale sighting is at 408 m water depth. Data were successfully collected at four of the five sites; of those four sites, Rice's whale calls were detected at three. Detection of calls ranged from 1 to 16 percent of total days at the three sites. Calls were present in all seasons at two sites, with no obvious seasonality. It remains unknown whether animals are moving between the northwestern and the northeastern GOM or whether these represent different groups of animals (Soldevilla *et al.,* 2022).

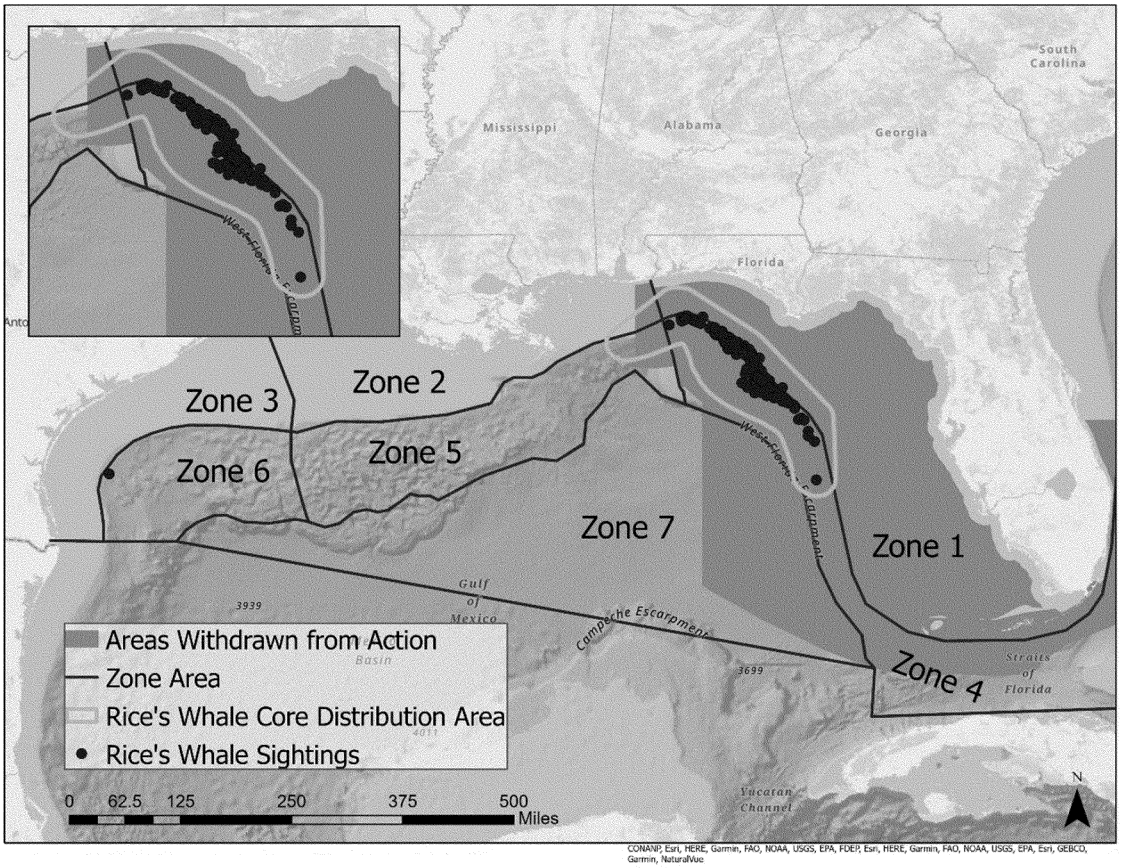

Figure 4 -- Confirmed Rice's Whale Sightings

A subsequent follow-up study (Soldevilla *et al.,* 2024) similarly involved deployment of autonomous passive acoustic recorders for approximately one year (2019–2020) at two shelf break sites, including one central GOM site included in the previous study and one new site further west, offshore Corpus Christi, Texas. (Recorders were also deployed at a site in Mexican waters for almost 2 years (2020–2022).) The study objectives were to (1) determine if Rice's whales occur in Mexican waters and to (2) evaluate how frequently they occur at all three sites. Rice's whale calls were detected on 33 and 25 percent of days at the central and western GOM sites, respectively, with calls recorded throughout the year, though no distinct seasonality was detected. These findings reflect an increase in the frequency and number of detections at the central GOM site compared with the 2016–2017 study. The authors note that these findings highlight persistence of Rice's whale detections at this site over multiple years, as well as variability among years (Soldevilla *et al.,* 2024). Rice's whale calls were also detected at the site in Mexican waters. See Soldevilla *et al.* (2024) for additional discussion. The authors also describe differences in Rice's whale call types recorded in the eastern GOM compared with those recorded in the western GOM, suggesting that whales may indeed have a broader distribution than the northeastern GOM (Soldevilla *et al.,* 2024).

The rate of call detections throughout the year is considerably higher in the eastern GOM than at the central/western GOM site where calls were most commonly detected, with at least 8.3 calls/hour among four eastern GOM sites within the core habitat area over 110 deployment days (Rice *et al.,* 2014) compared to 0.27 calls/hour over the 299-day deployment at the central/western GOM site where calls were detected most frequently in the 2016–2017 study. Approximately 2,000 total calls were detected at the central/western GOM site over 10 months in 2016–2017, compared to more than 66,000 total detections at the eastern GOM deployment site over 11 months (*i.e.,* approximately 30 times more calls were detected at the eastern GOM site) (Soldevilla *et al.,* 2022). Although ambient noise conditions were higher at the central/western GOM site, thus influencing maximum detection range, accounting for this difference in conditions would be expected to result in only 4–8 times as many call detections if all other factors (including presence and number of whales) were consistent (versus 30 times as many detections). Overall, Soldevilla *et al.* (2022) assessed that there seem to be fewer whales or more sparsely spaced whales in the central/western GOM compared to the eastern GOM, with calls present on fewer days, lower call detection rates, and far fewer call detections in the central/western GOM.

The passive acoustic data discussed above provide evidence that waters 100–400 m deep in the central and western GOM are Rice's whale habitat and are being used by Rice's whales in all seasons. This could imply that the population size is larger than previously estimated, or it could indicate that some individual Rice's whales have a broader distribution in the GOM than previously understood (Soldevilla *et al.,* 2024). Either way, the acoustic findings,

combined with the low numbers of visual sightings in the central and western GOM, suggest that density and abundance of Rice's whales in the central and western GOM are less than in the core habitat in the northeastern GOM. Therefore, while we expect that some individual Rice's whales occur outside the core habitat area and/or that whales from the northeastern GOM core habitat area occasionally travel outside the area, the currently available data are not sufficient to make inferences about Rice's whale density and abundance in the central and western GOM. More research is needed to answer key questions about Rice's whale density, abundance, habitat use, demography, and stock structure in the central and western GOM.

While these acoustic data and few confirmed sightings support the presence of Rice's whales in western and central GOM waters (within the 100–400 m water depth), the information is consistent with the predictions of Rice's whale density modeling, on which basis NMFS already anticipated and evaluated the potential for and effects of takes of Rice's whale in western and central GOM waters, even without these new data. Little is known about the number of whales that may be present, the nature of these individuals' use of the habitat, or the timing, duration, or frequency of occurrence for individual whales. Conversely, the importance of northeastern GOM waters to Rice's whale recovery is very clear (Rosel *et al.,* 2016). Ongoing efforts to target and manage human impacts in the northeastern core habitat are justified, accordingly. A comparison of acoustic and sightings data from the central/western and eastern GOM, even acknowledging the limitations of those data, suggests that occurrence of whales in the northeastern GOM core habitat is significantly greater and that the area provides the habitat of greatest importance to the species.

Restricting survey activity in central/western GOM waters from 100–400 m depth would avoid likely Level B harassment of any individuals that may occur in the area, but aside from the very large area within the 100–400 m isobaths throughout the GOM generally, there is no information supporting further delineation of any specific area within which a restriction on survey activity might be expected to provide targeted reductions in adverse impacts to Rice's whales or their habitat, and no such information was provided through public comment. Further, Level B harassment that may occur in the central/western GOM may be expected to have lower potential for meaningful consequences relative to Level B harassment events that occur in the northeastern GOM core habitat area, where important behavior may be more likely disrupted, and where greater numbers of Rice's whale are expected to occur. The relatively low level of take predicted for Rice's whales in the geographic scope for the specified activity under this final rule, as well as the existing mitigation measures (including expanded shutdowns for Rice's whales), which are expected with a high degree of confidence to minimize the duration and intensity of any instances of take that do occur, factor into NMFS' consideration of the potential benefits of any restriction on survey effort in central and western GOM waters 100–400 m depth.

Practicability—NMFS produced a draft RIA in support of the 2018 proposed rule, which evaluated potential costs associated with a range of area-based activity restrictions (available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*). Although that analysis did not directly evaluate the impacts of area-based restrictions for Rice's whales in the central and western GOM, it did consider the impacts of other potential area-based restrictions, including seasonal and year-round restrictions in the northeastern GOM core habitat area for Rice's whales, and in so doing provided a useful framework for considering practicability of area-based restrictions considered in this current rulemaking. The analysis suggested that the analyzed seasonal and year-round area closures would have the potential to generate reductions in leasing, exploration, and subsequent development activity. Although the 2018 draft RIA cautioned that its conclusions were subject to substantial uncertainty, it provided several factors that the likelihood of ultimate impacts to oil and gas production as a result of delays in data collection could be expected to depend upon: (1) oil and gas market conditions; (2) the relative importance of the closure area to oil and gas production; (3) the state of existing data covering the area; and (4) the duration of the closure. For this current rulemaking, NMFS cannot predict factor (1) and does not have complete information regarding factor (3) (though the 2018 draft RIA provides that new surveys are expected to be required to facilitate efficient exploration and development decisions). We can, however, more adequately predict the effects of factors (2) and (4) on the impact of any closure.

Habitat that supports all of the Rice's whale life-history states is generally considered to consist of the aforementioned strip of continental shelf waters within the 100–400 m isobaths throughout the U.S. GOM (Roberts *et al.,* 2016; Garrison *et al.* 2023; NMFS, 2023). Salinity and surface water velocity are likely predictive of potential Rice's whale occurrence (Garrison *et al.,* 2023), but these more dynamic variables are less useful in delineating a potential area of importance than the static depth variable. Within this GOM-wide depth range, we focus on the area where Soldevilla *et al.* (2022; 2024) recorded Rice's whale calls as being of interest for a potential restriction. This area lies within the central GOM, where the vast majority of seismic survey effort during NMFS' experience implementing the 2021 rule has occurred. The 2018 proposed rule draft RIA considered the economic impacts of a prospective closure area in deeper waters of the central GOM. The evaluated area was designed to benefit sperm whales and beaked whales, which are found in deep water, and more activity is projected to occur in deep water than in the shelf-break waters where Rice's whale habitat occurs. As such, the 2018 draft RIA analysis likely overestimates the potential impacts of a central or western GOM closure within a portion of the shelf waters considered to be Rice's whale habitat. However, the draft RIA analysis of deep-water closures in the central GOM suggests that a central GOM closure for Rice's whales could cause significant economic impacts. A key consideration in this finding relates to factor (4), as the analyzed closure for sperm whales and beaked whales was year-round. Similarly, there is no information to support a temporal component to design of a potential Rice's whale restriction and, therefore, a restriction would appropriately be year-round. As operators have no ability to plan around a year-round restriction, this aspect exacerbates the potential for effects on oil and gas production in the GOM.

We also considered data available specifically for the area under consideration (Rice's whale habitat in the central and western GOM). While Rice's whale habitat (*i.e.,* water depths of 100–400 m on the continental shelf break) contains less oil and gas industry infrastructure than do shallower, more mature waters, and have been subject to less leasing activity than deeper waters with greater expected potential reserves, central and western GOM waters 100–

400 m nevertheless host significant industry activity. BOEM provides summary information by water depth bin, including water depths of 201–400 m (see *https://www.data.boem.gov/Main/Default.aspx*). The area covering those depths overlaps 33 active leases, with 17 active platforms and over 1,200 approved applications to drill. In the past 20 years, over 500 wells have been drilled in water depths of 100–400 m. These data confirm that there is substantial oil and gas industry activity in this area and, therefore, the inability to collect new seismic data could affect oil and gas development given that the oil and gas industry typically uses targeted seismic to refine geologic analyses before drilling a well. During implementation of the existing rule, NMFS has issued (at the time of writing) 5 LOAs in association with surveys that partially overlapped the central GOM 100–400 m depth band (88 FR 68106, September 29, 2023; 88 FR 23403, April 17, 2023; 87 FR 55790, October 1, 2022; 87 FR 43243, July 20, 2022; 87 FR 42999, July 19, 2022). These surveys support a conclusion that a year-round closure would likely substantially affect future GOM oil and gas activity.

In summary, the foregoing supports that (1) we are unable to delineate specific areas of Rice's whale habitat in the central and western GOM where restrictions on survey activity would be appropriate because there is currently uncertainty about Rice's whale density, abundance, habitat usage patterns and other factors in the central and western GOM; and (2) there is high likelihood that closures or other restrictions on survey activity in all waters of 100–400 m depth in the central and western GOM would have significant economic impacts. Therefore, while new information regarding Rice's whale presence in areas of the GOM outside of the northeastern core habitat suggests that a restriction on survey effort may be expected to reduce adverse impacts to the species, there is a lack of information supporting the importance of or appropriately specific timing or location of such a restriction and an unclear understanding of the importance of particular areas to individual whales or the population as a whole. On the other hand, information regarding the potential for economic impacts resulting from a year-round restriction broadly in the 100–400 m area supports our conclusion that there are significant practicability concerns. As a result, NMFS has determined that no additional mitigation is warranted to effect the LPAI on the species.

NMFS has reevaluated the suite of mitigation measures required through the 2021 final regulations and considered other measures in light of the new information considered in this rule. Based on our evaluation of these measures, we have affirmed that the required mitigation measures contained in the current regulations provide the means of effecting the LPAI on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS' MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104 (a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

We have made no changes to the current LOA reporting requirements, which have been sufficient to date. Accordingly, the monitoring and reporting requirements for this rule remain identical to the 2021 final rule and ITR, and we refer readers back to that document (86 FR 5322, January 19, 2021) for the discussion.

Negligible Impact Analysis and Determinations

NMFS' implementing regulations define negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base a negligible impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the type of take, the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality).

For each potential activity-related stressor, NMFS considers the potential effects to marine mammals and the likely significance of those effects to the species or stock as a whole. Potential risk due to vessel collision in view of the related mitigation measures, as well as potential risk due to entanglement and contaminant spills, were addressed in the Proposed Mitigation and Potential Effects of the Specified Activity on Marine Mammals sections of the 2018 and 2021 notices of proposed and final rulemaking and are not discussed further, as there are minimal risks expected from these potential stressors.

The ''specified activity'' for this rule continues to be a broad program of geophysical survey activity that could occur at any time of year in U.S. waters of the GOM, within the same specified geographical region as the 2021 final rule (*i.e.,* updated from the 2018 proposed rule to exclude the former GOMESA leasing moratorium area) and for the same 5-year period. The acoustic exposure modeling used for the 2021 rulemaking and for this rule provides marine mammal noise exposure estimates based on BOEM-provided projections of future survey effort and best available modeling of sound propagation, animal distribution, and animal movement. This information provides a best estimate of potential acute noise exposure events that may result from the described suite of activities.

Systematic Risk Assessment Framework—In recognition of the broad geographic and temporal scale of this activity, in support of the issuance of the 2021 rule, we applied an explicit, systematic risk assessment framework to evaluate potential effects of aggregated discrete acoustic exposure events (*i.e.,* geophysical survey activities) on marine mammals, which is in turn used in the negligible impact analysis. This risk assessment framework was described by Southall *et al.* (2017) (available online at: *https://www.fisheries.noaa.gov/*

national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas) and discussed in detail in the 2018 notice of proposed rulemaking. That risk assessment framework, as refined in our 2021 final rule in response to public comment on the 2018 proposed rule and in consideration of the updated scope of the activity, was utilized for this rulemaking.

In summary, the systematic risk assessment framework uses the modeling results to put into biologically-relevant context the level of potential risk of injury and/or disturbance to marine mammals. The framework considers both the aggregation of acute effects and the broad temporal and spatial scales over which chronic effects may occur. Generally, this approach is a relativistic risk assessment that provides an interpretation of the exposure estimates within the context of key biological and population parameters (*e.g.,* population size, life history factors, compensatory ability of the species, animal behavioral state, aversion), as well as other biological, environmental, and anthropogenic factors. This analysis was performed on a species-specific basis within each modeling zone (Figure 2), and the end result provides an indication of the biological significance of the evaluated exposure numbers for each affected marine mammal stock (*i.e.,* yielding the severity of impact and vulnerability of stock/population information), and forecasts the likelihood of any such impact. This result is expressed as relative impact ratings of overall risk that couple (1) potential severity of effect on a stock, and (2) likely vulnerability of the population to the consequences of those effects, given biologically relevant information (*e.g.,* compensatory ability).

Spectral, temporal, and spatial overlaps between survey activities and animal distribution are the primary factors that drive the type, magnitude, and severity of potential effects on marine mammals, and these considerations are integrated into both the severity and vulnerability assessments. The risk assessment framework utilizes a strategic approach to balance the weight of these considerations between the two assessments, specifying and clarifying where and how the interactions between potential disturbance and species within these dimensions are evaluated.

This risk assessment framework is one component of the negligible impact analysis. As we explain more below, overall risk ratings from that assessment are then considered in conjunction with the required mitigation (and any additional relevant contextual information) to ultimately inform our negligible impact determinations. Elements of this approach are subjective and relative within the context of this program of projected survey activity and, overall, the analysis necessarily requires the application of professional judgment. Please review the 2018 proposed and 2021 final rule notices, as well as Southall *et al.* (2017), for further detail.

As shown in tables 5 and 6, estimated take numbers for most species have decreased relative to those evaluated in the notice of issuance for the 2021 final rule. We note that this includes the blackfish guild (consisting of the false killer whale, pygmy killer whale, melon-headed whale, and killer whale), for which species-specific take information is not available. Both the annual maximum and 5-year total take numbers for the group have decreased relative to the sum of the previous species-specific values (annual maxima and 5-year totals) evaluated in the 2021 final rule.

As elements of the risk assessment framework are dependent on information related to stock abundance, we revisited the risk assessment methodology for all species and present updated information below. Specifically, as discussed below, severity ratings are the product of comparison between estimated take numbers and modeled population abundance, on a zone-specific basis. As the zone-specific modeled population abundance values have been updated through new density modeling (Garrison *et al.,* 2023), we re-examined all severity ratings. The vulnerability assessment component is less directly dependent on population abundance information, but does incorporate certain species population information, including a trend rating and population size, as well as a factor related to species habitat use. With publication of new SARs information for all species, we revisited the former components of the vulnerability assessment, whereas the aforementioned updated density modeling effort provides new zone-specific abundance values that inform the assessment of habitat use in each zone (*i.e.,* proportion of GOM-wide estimated population in each zone).

Estimated take numbers increased (relative to the 2021 final rule) for only 4 species: Rice's whale, Fraser's dolphin, rough-toothed dolphin, and striped dolphin (we note that overall relative risk ratings remained static for Rice's whale and Fraser's dolphin). The change in estimated take numbers for each of the 4 species within the blackfish category relative to the take estimates for those 4 species in the 2021 final rule is unknown under NMFS' approach to estimating take numbers. However, overall relative risk ratings increased slightly for most species. Of the species for which estimated take decreased, relative risk ratings remained static (or declined) for the sperm whale, beaked whales, bottlenose dolphins, and spinner dolphin. No new information is available for these four taxa that would suggest that the existing negligible impact analyses should be revisited. Therefore, we rely on the previous negligible impact analyses for the sperm whale, all beaked whale species, all bottlenose dolphin stocks, and the spinner dolphin. Please see the notice of issuance for the 2021 final rule (86 FR 5322, January 19, 2021) for analysis related to these species and stocks, which we incorporate here by reference.

For those species for which evaluated take numbers increased and/or for which the assessed relative risk rating increased, our negligible impact analyses begin with the risk assessment framework, which comprehensively considers the aggregate impacts to marine mammal populations from the specified activities in the context of both the severity of the impacts and the vulnerability of the affected species. However, it does not consider the effects of the mitigation required through the regulations in identifying risk ratings for the affected species. In addition, while the risk assessment framework comprehensively considers the spatial and temporal overlay of the activities and the marine mammals in the GOM, as well as the number of predicted takes, there are details about the nature of any ''take'' anticipated to result from these activities that were not considered directly in the framework analysis that warrant explicit consideration in the negligible impact determination.

Accordingly, following the description of the framework analysis presented below, NMFS highlights a few factors regarding the nature of the predicted ''takes,'' then synthesizes the results of implementation of the framework, the additional factors regarding the nature of the predicted takes, and the anticipated effects of the mitigation to consider the negligible impact determination for each of the species considered here. The risk assessment analysis below is performed for 2 representative years, one representing a relatively high-effort scenario (Year 1 of the effective period of rule) and the other representing a moderate-effort scenario (Year 4 of the rule). Please see table 1 for details

regarding BOEM's level of effort projections.

Severity of Effect

Severity ratings consider the scaled Level B harassment takes relative to zone-specific population abundance to evaluate the severity of effect. As described above in Estimated Take, a significant model assumption was that populations of animals were reset for each 24-hour period. Exposure estimates for the 24-hour period were then aggregated across all assumed survey days as completely independent events, assuming populations turn over completely within each large zone on a daily basis. In order to evaluate modeled daily exposures and determine more realistic exposure probabilities for individuals across multiple days, we used information on species-typical movement behavior to determine a species-typical offset of modeled daily exposures, summarized under Estimated Take (and discussed in further detail in the 2021 notice of issuance for the final rule). Given that many of the evaluated survey activities occur for 30-day or longer periods, particularly some of the larger surveys for which the majority of the modeled exposures occur, this scaling process is appropriate to evaluate the likely severity of the predicted exposures. (For consideration of LOA applications, scaling is appropriate to estimate take and estimate the numbers of individual marine mammals likely to be taken (although, for surveys significantly longer than 30 days, the take numbers with this scaling applied would still be expected to overestimate the number of individuals, given the greater degree of repeat exposures that would be expected the longer the survey goes on)). This scaling output was used in a severity assessment. This approach is also discussed in more detail in the Southall *et al.* (2017) report.

The scaled Level B harassment takes were then rated through a population-dependent binning system used to evaluate risk associated with behavioral disruption across species—a simple, logical means of evaluating relative risk across species and areas. See the notice of issuance for the 2021 final rule for more detail regarding the definition of relative risk ratings. Results of the reassessed severity ratings are shown in table 9.

Level A harassment (including PTS) is not expected to occur for any of the species evaluated here, with the exception of *Kogia* spp. Estimated takes by Level A harassment for *Kogia* spp., which are discussed in further detail below, declined relative to what was evaluated in the 2021 final rule. See tables 5 and 6.

Table 9 -- Severity Assessment Rating

Species	Zone 1[1]		Zone 2		Zone 3		Zone 4[1]		Zone 5		Zone 6		Zone 7	
	H	M	H	M	H	M	H	M	H	M	H	M	H	M
Rice's whale	VL	VL	VL	VL	VL	VL	VL	VL	VL	VL	VL	VL	n/a	n/a
Sperm whale	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	L
Kogia spp.	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	M	M	L	L	VL
Beaked whales	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	VH	VH	VL	VL	VL	VL
Rough-toothed dolphin	VL	VL	L	M	VL	VL	VL	VL	H	H	M	L	L	L
Bottlenose dolphin	VL	VL	L	M	VL	VL	VL	VL	M	M	L	VL	n/a	n/a
Clymene dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Atlantic spotted dolphin	VL	VL	M	H	VL	VL	VL	VL	H	M	M	L	n/a	n/a
Pantropical spotted dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Spinner dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	n/a	n/a	VL	VL
Striped dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Fraser's dolphin	VL	VL	VL	VL	VL	VL	VL	VL	H	H	M	L	L	L
Risso's dolphin	n/a	n/a	VL	VL	n/a	n/a	VL	VL	H	M	M	L	L	VL
Short-finned pilot whale	n/a	n/a	VL	VL	VL	VL	VL	VL	H	M	M	L	VL	VL
Blackfish	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	L

H = Year 1 (representative high effort scenario); M = Year 4 (representative moderate effort scenario)
n/a = less than 0.05 percent of GOM-wide population predicted in zone
VL = very low; L = low; M = moderate; H = high; VH = very high
[1]No activity would occur in Zone 1, and no activity is projected in Zone 4 under the high effort scenario. With no activity in a zone, severity is assumed to be very low.

Vulnerability of Affected Population

Vulnerability rating seeks to evaluate the relative risk of a predicted effect given species-typical and population-specific parameters (*e.g.,* species-specific life history, population factors) and other relevant interacting factors (*e.g.,* human or other environmental stressors). The assessment includes consideration of four categories within two overarching risk factors (species-specific biological and environmental risk factors). These values were selected to capture key aspects of the importance of spatial (geographic), spectral (frequency content of noise in relation to species-typical hearing and sound communications), and temporal relationships between sound and receivers. Explicit numerical criteria for identifying scores were specified where possible, but in some cases qualitative judgments, based on a reasonable interpretation of given aspects of the

specified activity and how it relates to the species in question and the environment within the specified area, were required. The vulnerability assessment includes factors related to population status, habitat use and compensatory ability, masking, and other stressors. These factors were detailed in Southall *et al.* (2017) and discussed in further detail in the notice of issuance for the 2021 final rule. Please see that notice for further detail regarding these aspects of the framework and for definitions of vulnerability ratings. Note that the effects of the DWH oil spill are accounted for through a non-noise chronic anthropogenic risk factor, while the effects to acoustic habitat and on individual animal behavior via masking are accounted for through the masking and chronic anthropogenic noise risk factors. The results of reassessed species-specific vulnerability scoring are shown in table 10. Note that, as there are certain species-specific elements of the vulnerability assessment, we evaluated each of the four species contained within the blackfish group. For purposes of evaluating relative risk, we assume that the greatest vulnerability (assessed for melon-headed whale) applies to each species in the blackfish group.

Table 10 -- Vulnerability Assessment Ratings

Species	Zone						
	1	2	3	4	5	6	7
Rice's whale	H	H	M	H	H	H	n/a
Sperm whale	n/a	n/a	n/a	M	H	M	M
Kogia spp.	n/a	n/a	n/a	L	L	L	L
Beaked whale	n/a	n/a	n/a	L	L	L	L
Rough-toothed dolphin	L	L	L	L	L	L	L
Bottlenose dolphin	L	L	L	VL	L	VL	n/a
Clymene dolphin	n/a	n/a	n/a	L	L	L	L
Atlantic spotted dolphin	M	M	L	L	L	L	n/a
Pantropical spotted dolphin	n/a	n/a	n/a	L	L	L	L
Spinner dolphin	n/a	n/a	n/a	L	L	n/a	L
Striped dolphin	n/a	n/a	n/a	L	L	L	L
Fraser's dolphin	L	L	VL	L	L	L	L
Risso's dolphin	n/a	L	n/a	M	M	M	L
Melon-headed whale	n/a	n/a	n/a	L	M	L	L
Pygmy killer whale	n/a	n/a	n/a	L	L	L	L
False killer whale	n/a	n/a	n/a	L	L	L	L
Killer whale	n/a	n/a	n/a	L	L	L	L
Short-finned pilot whale	n/a	M	L	M	M	M	L

n/a = less than 0.05% of GOM-wide population predicted in zone
VL = very low; L = low; M = moderate; H = high; VH = very high

Risk Ratings

In the final step of the framework, severity and vulnerability ratings are integrated to provide relative impact ratings of overall risk, *i.e.,* relative risk ratings. Severity and vulnerability assessments each produce a numerical rating (1–5) corresponding with the qualitative rating (*i.e.,* very low, low, moderate, high, very high). A matrix is then used to integrate these two scores to provide an overall risk assessment rating for each species. The matrix is shown in table 2 of Southall *et al.* (2017).

Table 11 provides relative impact ratings for overall risk by zone and activity effort scenario (high and moderate), and table 12 provides GOM-wide relative impact ratings for overall risk for representative high and moderate effort scenarios.

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Table 11 -- Overall Evaluated Risk by Zone and Activity Scenario

Species	Zone 1[1]		Zone 2		Zone 3		Zone 4[1]		Zone 5		Zone 6		Zone 7	
	H	M	H	M	H	M	H	M	H	M	H	M	H	M
Rice's whale	L	L	L	L	L	L	L	L	L	L	L	L	n/a	n/a
Sperm whale	n/a	n/a	n/a	n/a	n/a	n/a	L	L	VH	VH	M	L	L	L
Kogia spp.	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	M	M	L	L	VL
Beaked whale	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	VH	VH	VL	VL	VL	VL
Rough-toothed dolphin	VL	VL	L	M	VL	VL	VL	VL	H	H	M	L	L	L
Bottlenose dolphin	VL	VL	L	M	VL	VL	VL	VL	H	M	M	VL	n/a	n/a
Clymene dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Atlantic spotted dolphin	L	L	M	H	VL	VL	VL	VL	H	M	M	L	n/a	n/a
Pantropical spotted dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Spinner dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	n/a	n/a	VL	VL
Striped dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	L
Fraser's dolphin	VL	VL	VL	VL	VL	VL	VL	VL	H	H	M	L	L	L
Risso's dolphin	n/a	n/a	VL	VL	n/a	n/a	L	L	H	H	M	L	L	VL
Short-finned pilot whale	n/a	n/a	L	L	VL	VL	L	L	H	M	M	L	VL	VL
Blackfish	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	L

H = Year 1 (representative high effort scenario); M = Year 4 (representative moderate effort scenario)
n/a = less than 0.05 percent of GOM-wide population predicted in zone
VL = very low; L = low; M = moderate; H = high; VH = very high
[1]No activity would occur in Zone 1, and no activity is projected in Zone 4 under the high effort scenario. With no activity in a zone, severity is assumed to be very low.

Table 12 -- Overall Evaluated Risk by Projected Activity Scenario, GOM-wide[1]

Species	High effort scenario (Year 1)	Moderate effort scenario (Year 4)
Rice's whale	Low (0)	Low (0)
Sperm whale	Low/Moderate[2] (0)	Low (0)
Kogia spp.	Low/Moderate[2] (+0.5)	Very Low/Low[2] (+0.5)
Beaked whales	Very Low (-2.5)	Very Low (-1.5)
Rough-toothed dolphin	Low (+1)	Low (+1)
Bottlenose dolphin (shelf/coastal)	Very low (0)	Very low (0)
Bottlenose dolphin (oceanic)	Very low (0)	Very low (0)
Clymene dolphin	Low/Moderate[2] (+0.5)	Very Low/Low[2] (0)
Atlantic spotted dolphin	Low/Moderate[2] (+0.5)	Low (0)
Pantropical spotted dolphin	Low/Moderate[2] (+0.5)	Very Low/Low[2] (+0.5)
Spinner dolphin	Very low (0)	Very low (0)
Striped dolphin	Low/Moderate[2] (+0.5)	Low (+1)
Fraser's dolphin	Very low (0)	Very low (0)
Risso's dolphin	Low (+1)	Low (+1)
Short-finned pilot whale	Low (0)	Low (+0.5)
Blackfish[3]	Low/Moderate (+1.5)	Low (+1)

[1]Changes from 2021 final rule (in numerical terms) are indicated in parentheses for each scenario.
[2]For these ratings, the median value across zones for the scenario fell between two ratings.
[3]In the 2021 final rule, the 4 blackfish species were each independently evaluated as having "very low" relative risk.

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In order to characterize the relative risk for each species across their entire range in the GOM, we used the median of the seven zone-specific risk ratings for each activity scenario (high and moderate effort), not counting those in which less than 0.05 percent of the GOM-wide abundance occurred (''n/a'' in table 11), to describe a GOM-wide risk rating for each of the representative activity scenarios (table 12).

As noted above, for sperm whale, beaked whales, bottlenose dolphins, and spinner dolphin, estimated take numbers decreased and relative risk ratings remained static (or decreased) compared with the 2021 final rule. Therefore, we rely on the analysis provided in the notice of issuance for the 2021 final rule for those species and stocks, which are not discussed further here.

Overall, the results of the risk assessment show that (as expected) risk is highly correlated with effort and density. Areas where little or no survey activity is predicted to occur or areas within which few or no animals of a particular species are believed to occur generally have very low or no potential risk of negatively affecting marine mammals, as seen across activity scenarios in Zones 1–4 (no activity will occur in Zone 1, which was entirely removed from scope of the rule, and less than 2 percent of Zone 4 remains within scope of the rule). Fewer species are expected to be present in Zones 1–3, where only bottlenose and Atlantic spotted dolphins occur in meaningful numbers. Areas with consistently high projected levels of effort (Zones 5–7) are generally predicted to have higher overall evaluated risk across all species. In Zone 7, animals are expected to be subject to less other chronic noise and non-noise stressors, which is reflected in the vulnerability scoring for that zone. Therefore, despite consistently high levels of projected effort, overall rankings for Zone 7 are lower than for Zones 5 and 6.

A ''high'' level of relative risk due to behavioral disturbance was identified in Zone 5 under both scenarios for most of the species evaluated further below (excepting Rice's whale (both scenarios) and *Kogia* spp., Atlantic spotted dolphin, and short-finned pilot whale (moderate effort scenario only)). ''High'' relative risk was not identified under either scenario in any other zone for any

species (and ''very high'' relative risk was not identified under either scenario in any zone for any of the species evaluated further below). Overall, the greatest relative risk across species is generally seen in Zone 5 (both scenarios) and in Zone 6 (under the high effort scenario).

Changes to relative risk ratings may be seen by comparing table 12 above with table 15 from the 2021 final rule, and changes (in numerical terms) are indicated in parentheses for each scenario. All increases to assessed relative risk represent minor changes, *i.e.,* if considered as a numerical scale (with ''very low'' = 1 and ''very high'' = 5), with one exception, there was no risk rating increase greater than one point. As noted above, despite increases in estimated take numbers, relative risk ratings for Rice's whale and Fraser's dolphin remained static. In the 2021 final rule, all 4 species comprising the blackfish group were individually assessed as having ''very low'' relative risk under both scenarios. In this analysis, the blackfish as a group are assessed as having relative risk between ''low'' and ''moderate'' under the high effort scenario (representing the lone example of a 1.5 point increase) and ''low'' under the moderate effort scenario.

Although the scores generated by the risk assessment framework and further aggregated across zones (as described above) are species-specific, additional stock-specific information is also considered in our analysis, where appropriate, as indicated in the Description of Marine Mammals in the Area of the Specified Activity, Potential Effects of the Specified Activity on Marine Mammals and Their Habitat, and Mitigation sections of the 2018 notice of proposed rulemaking, 2021 final rule, 2023 notice of proposed rulemaking, and this action.

Duration of Level B Harassment Exposures

In order to more fully place the predicted amount of take into meaningful context, it is useful to understand the duration of exposure at or above a given level of received sound, as well as the likely number of repeated exposures across days. While any exposure above the criteria for Level B harassment counts as an instance of take, that accounting does not make any distinction between fleeting exposures and more severe encounters in which an animal may be exposed to that received level of sound for a longer period of time. Yet, this information is meaningful to an understanding of the likely severity of the exposure, which is relevant to the negligible impact evaluation and not directly incorporated into the risk assessment framework. Each animat modeled has a record or time history of received levels of sound over the course of the modeled 24-hour period. For example, for the 4 blackfish species exposed to noise from 3D WAZ surveys, the 50th percentile of the cumulative distribution function indicates that the time spent exposed to levels of sound above 160 dB rms SPL (*i.e.,* the 50 percent midpoint for Level B harassment) would range from only 1.4 to 3.3 minutes—a minimal amount of exposure carrying little potential for significant disruption of behavioral activity. We provide summary information for the species evaluated here regarding the total average time in a 24-hour period that an animal would spend with received levels above 160 dB (the threshold at which 50 percent of the exposed population is considered taken) and between 140 and 160 dB (where 10 percent of the exposed population is considered taken) in table 13. This information considered is unchanged from the 2021 final rule.

Additionally, as we discussed in the Estimated Take section of the 2018 notice of proposed rulemaking for Test Scenario 1 (and summarized above), by comparing exposure estimates generated by multiplying 24-hour exposure estimates by the total number of survey days versus modeling for a full 30-day survey duration for 6 representative species, we were able to refine the exposure estimates to better reflect the number of individuals exposed above threshold within a single survey. Using this same comparison and scalar ratios described above, we are able to predict an average number of days each of the representative species modeled in the test scenario were exposed above the Level B harassment thresholds within a single survey. As with the duration of exposures discussed above, the number of repeated exposures is important to an understanding of the severity of effects. For example, the ratio for dolphins indicates that the 30-day modeling showed that approximately 29 percent as many individual dolphins (compared to the results produced by multiplying average 24-hour exposure results by the 30-day survey duration) could be expected to be exposed above harassment thresholds. However, the approach of scaling up the 24-hour exposure estimates appropriately reflects the instances of exposure above threshold (which cannot be more than 1 in 24 hours), so the inverse of the scalar ratio suggests the average number of days in the 30-day modeling period that dolphins are exposed above threshold is approximately 3.5. It is important to remember that this is an average within a given survey, and that it is more likely some individuals would be exposed on fewer days and some on more. table 13 reflects the average days exposed above threshold for the indicated species after the scalar ratios were applied.

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Table 13 -- Time in Minutes (Per Day) Spent Above Thresholds (50th Percentile) and Average Number of Days Individuals Taken During 30-day Survey

Species	Survey type and time (min/day) above 160 dB rms (50% take)				Survey type and time (min/day) above 140 dB rms (10% take)				Average number of days "taken" during 30-day survey
	2D	3D NAZ	3D WAZ	Coil	2D	3D NAZ	3D WAZ	Coil	
Rice's whale	7.6	18.2	6.8	21.4	61.7	163.5	55.4	401.1	5.3
Sperm whale	5.2	10.3	4.0	20.7	12.0	31.8	10.7	25.2	2.4
Kogia spp.	3.2	7.9	2.8	15.3	7.6	19.0	6.7	13.9	3.1
Beaked whale	6.0	12.4	4.4	24.0	16.2	39.7	14.1	31.1	9.9
Rough-toothed dolphin	3.0	6.3	2.5	11.4	11.2	27.6	10.2	20.9	3.5
Bottlenose dolphin	4.5	11.7	4.0	16.8	22.0	54.6	19.7	53.2	3.5
Clymene dolphin	1.8	3.9	1.6	8.7	8.0	21.1	7.2	20.4	3.5
Atlantic spotted dolphin	7.0	16.0	6.5	25.7	23.4	58.1	20.9	49.3	3.5
Pantropical spotted dolphin	1.8	4.1	1.6	8.7	8.1	21.0	7.1	22.2	3.5
Spinner dolphin	3.2	8.5	2.7	16.4	12.4	31.0	10.8	22.8	3.5
Striped dolphin	1.8	4.0	1.6	8.5	8.0	21.0	7.2	21.3	3.5
Fraser's dolphin	2.8	6.4	2.4	13.8	9.4	24.2	8.4	24.0	3.5
Risso's dolphin	3.4	8.4	2.9	15.3	13.8	37.7	12.2	31.5	3.5
Melon-headed whale	2.6	5.9	2.2	13.1	9.3	24.2	8.3	24.0	3.4
Pygmy killer whale	1.8	3.6	1.4	7.1	7.3	18.5	6.6	17.3	3.4
False killer whale	2.4	4.9	1.9	9.3	8.8	22.0	8.0	17.8	3.4
Killer whale	2.7	6.1	3.3	12.0	16.8	46.1	14.9	73.6	3.4
Short-finned pilot whale	3.3	8.1	2.9	17.5	10.9	27.4	9.8	20.8	3.4

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Loss of Hearing Sensitivity

In general, NMFS expects that noise-induced hearing loss as a result of airgun survey activity, whether temporary (temporary threshold shift, equivalent to Level B harassment) or permanent (PTS, equivalent to Level A harassment), is only possible for low-frequency and high-frequency cetaceans. The best available scientific information indicates that low-frequency cetacean species (*i.e.,* mysticete whales, including the Rice's whale) have heightened sensitivity to frequencies in the range output by airguns, as shown by their auditory weighting function, whereas high-frequency cetacean species (including *Kogia* spp.) have heightened sensitivity to noise in general (as shown by their lower threshold for the onset of PTS) (NMFS, 2018). However, no instances of Level A harassment are predicted to occur for Rice's whales, and none may be authorized in any LOAs issued under this rule.

Level A harassment is predicted to occur for *Kogia* spp. (as indicated in table 6). However, the degree of injury (hearing impairment) is expected to be mild. If permanent hearing impairment occurs, it is most likely that the affected animal would lose a few dB in its hearing sensitivity, which in most cases would not be expected to affect its ability to survive and reproduce. Hearing impairment that occurs for these individual animals would be limited to at or slightly above the dominant frequency of the noise sources. In particular, the predicted PTS resulting from airgun exposure is not likely to affect their echolocation performance or communication, as *Kogia* spp. likely produce acoustic signals at frequencies above 100 kHz (Merkens *et al.,* 2018), well above the frequency range of airgun noise. Further, modeled exceedance of Level A harassment criteria typically resulted from being near an individual source once, rather than accumulating energy from multiple sources. Overall, the modeling indicated that exceeding the SEL threshold for PTS is a rare event, and having 4 vessels close to each other (350 m between tracks) did not cause appreciable accumulation of energy at the ranges relevant for injury exposures. Accumulation of energy from independent surveys is expected to be negligible. This is relevant for *Kogia* spp. because based on their expected sensitivity, we expect that aversion may play a stronger role in avoiding exposures above the peak pressure PTS threshold than we have accounted for.

Some subset of the individual marine mammals predicted to be taken by Level B harassment may incur some TTS. For Rice's whales, TTS may occur at frequencies important for communication. However, any TTS incurred would be expected to be of a relatively small degree and short duration. This is due to the low likelihood of sound source approaches of the proximity or duration necessary to cause more severe TTS, given the fact that both sound source and marine mammals are continuously moving, the anticipated effectiveness of shutdowns, and general avoidance by marine mammals of louder sources.

For these reasons, and in conjunction with the required mitigation, NMFS does not believe that Level A harassment (here, PTS) or Level B harassment in the form of TTS will play a meaningful role in the overall degree

of impact experienced by marine mammal populations as a result of the projected survey activity. Further, the impacts of any TTS incurred are addressed through the broader analysis of Level B harassment.

Impacts to Habitat

Potential impacts to marine mammal habitat, including to marine mammal prey, were discussed in detail in the 2018 notice of proposed rulemaking as well as in the 2021 notice of issuance for the final rule, including in responses to comments concerning these issues (83 FR 29212, 29241, June 22, 2018; 86 FR 5322, 5335, January 19, 2021). There is no new information that changes that assessment, and we rely on the assessment provided in those documents and reiterated below.

Regarding impacts to prey species such as fish and invertebrates, NMFS' review of the available information leads to a conclusion that the most likely impact of survey activity would be temporary avoidance of an area, with a rapid return to pre-survey distribution and behavior, and minimal impacts to recruitment or survival anticipated. Therefore, the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to prey species are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Regarding potential impacts to acoustic habitat, NMFS provided a detailed analysis of potential cumulative and chronic effects to marine mammals (found in the Cumulative and Chronic Effects report, available online at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*). See also 83 FR 29212, 29242 (June 22, 2018) for detailed discussion of acoustic habitat. That analysis focused on potential effects to the acoustic habitat of sperm whales and Rice's whales via an assessment of listening and communication space. The analysis performed for sperm whales (which provides a useful proxy for other mid- and high-frequency cetaceans evaluated here) shows that the survey activities do not significantly contribute to the soundscape in the frequency band relevant for their lower-frequency slow-clicks and that there will be no significant change in communication space for sperm whales. Similar conclusions may be assumed for other mid- and high-frequency cetacean species.

Implications for acoustic masking and reduced communication space resulting from noise produced by airgun surveys in the GOM are expected to be particularly heightened for animals that actively produce low-frequency sounds or whose hearing is attuned to lower frequencies (*i.e.,* Rice's whales). The strength of the communication space approach used here is that it evaluates potential contractions in the availability of a signal of documented importance. In this case, losses of communication space for Rice's whales were estimated to be higher in western and central GOM canyons and shelf break areas. In contrast, relative maintenance of listening area and communication space was seen within the Rice's whale core habitat area in the northeastern GOM. The result was heavily influenced by the projected lack of survey activity in that region, which underscores the importance of maintaining the acoustic soundscape of this important habitat for the Rice's whale. In light of BOEM's 2020 update to the scope of the specified activity, no survey activity will occur under this rule within the Rice's whale core habitat area or within the broader eastern GOM. See Figures 3–4. In deepwater areas where larger amounts of survey activity were projected, significant loss of low-frequency listening area and communication space was predicted by the model, but this finding was discounted because Rice's whales are less likely to occur in deeper waters of the central and western GOM.

Species-Specific Negligible Impact Analysis Summaries

In this section, for the species evaluated herein (*i.e.,* all but sperm whale, beaked whales, bottlenose dolphin, and spinner dolphin, for which, as described previously, we incorporate by reference the analysis conducted in the 2018 rule), we consider the relative impact ratings described above in conjunction with the required mitigation and other relevant contextual information in order to produce a final assessment of impact to the species or stocks, *i.e.,* the negligible impact determinations. The effects of the DWH oil spill are accounted for through the vulnerability scoring (table 10).

Although Rice's whale core habitat in the northeastern GOM is not the subject of restrictions on survey activity, as the scope of the specified activity does not include the area (see Figures 3–4), the beneficial effect for the species remains the same. The absence of survey activity in the eastern GOM (see Figure 2) benefits GOM marine mammals by reducing the portion of a stock likely exposed to survey noise and avoiding impacts to certain species in areas of importance for them. Habitat areas of importance in the eastern GOM are discussed in detail in the Proposed Mitigation section of the 2018 notice of proposed rulemaking.

Rice's Whale

The risk assessment analysis, which evaluated the relative significance of the aggregated impacts of the survey activities across seven GOM zones in the context of the vulnerability of each species, concluded that the GOM-wide risk ratings for Rice's whales are low, regardless of activity scenario. We note that, although the evaluated severity of take for Rice's whales is very low in all zones where take could occur, vulnerability for the species is assessed as high in 5 of the 6 zones where the species occurs (vulnerability is assessed as moderate in Zone 3, where less than 1 percent of GOM-wide abundance is predicted to occur). When integrated through the risk framework described above, overall risk for the species is therefore assessed as low for both the high and moderate effort scenarios. The evaluated risk rating is the same as what was considered in the 2021 notice of issuance of the final rule, despite increased take numbers (see tables 5–6). In the context of what remain relatively low predicted take numbers, the relative risk ratings for the species remain driven by the assessed vulnerability.

We further consider the likely severity of any predicted behavioral disruption of Rice's whales in the context of the likely duration of exposure above Level B harassment thresholds. Specifically, the average modeled time per day spent at received levels above 160 dB rms (the threshold at which 50 percent of the exposed population is considered taken) ranges from 6.8–21.4 minutes for deep penetration survey types. The average time spent exposed to received levels between 140 and 160 dB rms (where 10 percent of the exposed population is considered taken) ranges from 55–164 minutes for 2D, 3D NAZ, and 3D WAZ surveys, and 401 minutes for coil surveys (which comprise approximately 10 percent of the total activity days).

Importantly, no survey activity will occur within the eastern GOM pursuant to this rule. Although there is new evidence of Rice's whale occurrence in the central and western GOM from passive acoustic detections (Soldevilla *et al.,* 2022; 2024), the highest densities of Rice's whales remain confined to the northeastern GOM core habitat (see

Figures 3–4). Moreover, the number of individuals that occur in the central and western GOM and nature of their use of this area is poorly understood. Soldevilla *et al.* (2022) suggest that more than one individual was present on at least one occasion, as overlapping calls of different call subtypes were recorded in that instance, but also state that call detection rates suggest that either multiple individuals are typically calling or that individual whales are producing calls at higher rates in the central/western GOM. Soldevilla *et al.* (2024) provide further evidence that Rice's whale habitat encompasses all 100–400 m depth waters encircling the entire GOM (including Mexican waters), but they also note that further research is needed to understand the density of whales in these areas, seasonal changes in whale density, and other aspects of habitat usage.

This new information does not affect the prior conclusion that the absence of survey activity in the eastern GOM benefits Rice's whales and their habitat by minimizing a range of potential effects of airgun noise, both acute and chronic, that could otherwise accrue to impact the reproduction or survival of individuals in this area, and that the absence of survey activity in the eastern GOM will minimize disturbance of the species in the place most important to them for critical behaviors such as foraging and socialization. The absence of survey activity in this area and significant reduction in associated exposures of Rice's whales to seismic airgun noise is expected to eliminate the likelihood of auditory injury of Rice's whales. Finally, the absence of survey activity in the eastern GOM will reduce chronic exposure of Rice's whales to higher levels of anthropogenic sound and the associated effects including masking, disruption of acoustic habitat, long-term changes in behavior such as vocalization, and stress.

As described in the preceding *Loss of Hearing Sensitivity* section, we have analyzed the likely impacts of potential temporary hearing impairment and do not expect that they would result in impacts on reproduction or survival of any individuals. The extended shutdown zone for Rice's whales (1,500 m)—to be implemented in the unlikely event that a Rice's whale is encountered—is expected to further minimize the severity of any hearing impairment incurred as well as reduce the likelihood of more severe behavioral responses.

The estimated take numbers for Rice's whale in this final rule are higher than those considered in the 2021 final rule (see tables 5–6). Accordingly, NMFS re-evaluated the relative risk rating for Rice's whale (tables 11–12), and considered other relevant information for the species. As discussed above, the risk ratings did not change from those assessed in the 2021 final rule, and new information considered herein does not affect the determinations previously made in that analysis. No mortality of Rice's whales is anticipated or authorized. It is possible that Rice's whale individuals, if encountered, will be taken briefly on one or more days during a year of activity by one type of survey or another and some subset of those exposures above thresholds may be of comparatively long duration within a day. However, the amount of take remains low (annual average of 26, with a maximum in any year of 30), and the significant and critical functional protection afforded through the absence of survey activity in the species' northeastern GOM core habitat and the extended shutdown requirement means that the impacts of the expected takes from these activities are not likely to impact the reproduction or survival of any individual Rice's whales, much less adversely affect the species through impacts on annual rates of recruitment or survival. Accordingly, we conclude the taking from the specified activity will have a negligible impact on Rice's whales as a species.

Kogia spp.

The risk assessment analysis, which evaluated the relative significance of the aggregated impacts of the survey activities across seven GOM zones in the context of the vulnerability of each species, concluded that the GOM-wide risk ratings for *Kogia* spp. were between low and moderate (for the high effort scenario) and between very low and low (for the moderate effort scenario). Evaluated risk is slightly increased from the 2021 final rule, with modeled decreases in zone-specific population abundance offsetting decreases in estimated take. We further consider the likely severity of any predicted behavioral disruption of *Kogia* spp. in the context of the likely duration of exposure above Level B harassment thresholds. Specifically, the average modeled time per day spent at received levels above 160 dB rms (where 50 percent of the exposed population is considered taken) ranges from 2.8–7.9 minutes for 2D, 3D NAZ, and 3D WAZ surveys and up to 15.3 minutes for coil surveys (which comprise less than 10 percent of the total projected activity days), and the average time spent between 140 and 160 dB rms (where 10 percent of the exposed population is considered taken) is 6.7–19 minutes.

Odontocetes echolocate to find prey, and while there are many different strategies for hunting, one common pattern, especially for deeper diving species, is to conduct multiple repeated deep dives within a feeding bout, and multiple bouts within a day, to find and catch prey. While exposures of the short durations noted above could potentially interrupt a dive or cause an individual to relocate to feed, such a short-duration interruption would be unlikely to have significant impacts on an individual's energy budget and, further, for these species and this open-ocean area, there are no specific known reasons (*i.e.,* these species range GOM-wide beyond the continental slope and there are no known biologically important areas) to expect that there would not be adequate alternate feeding areas relatively nearby, especially considering the anticipated absence of survey activity in the eastern GOM. Importantly, the absence of survey activity in the eastern GOM will reduce disturbance of *Kogia* spp. in places of importance to them for critical behaviors such as foraging and socialization and, overall, help to reduce impacts to the species as a whole.

NMFS has analyzed the likely impacts of potential hearing impairment, including the estimated upper bounds of permanent threshold shift (Level A harassment) that could be authorized under the rule and do not expect that they would result in impacts on reproduction or survival of any individuals. As described in the previous section, the degree of injury for individuals would be expected to be mild, and the predicted PTS resulting from airgun exposure is not likely to affect echolocation performance or communication for *Kogia* spp. Additionally, the extended distance shutdown zone for *Kogia* spp. (1,500 m) is expected to further minimize the severity of any hearing impairment incurred and also to further reduce the likelihood of, and minimize the severity of, more severe behavioral responses.

Of note, due to their pelagic distribution, small size, and cryptic behavior, pygmy sperm whales and dwarf sperm whales are rarely sighted during at-sea surveys and difficult to distinguish when visually observed in the field. Accordingly, abundance estimates in NMFS SARs are recorded for *Kogia* spp. only, density and take estimates in this rule are similarly lumped for the two species, and there is no additional information by which NMFS could appropriately apportion impacts other than equally/proportionally across the two species.

No mortality of *Kogia* spp. is anticipated or authorized. While it is likely that the majority of the individuals of these two species will be impacted briefly on one or more days during a year of activity by one type of survey or another, based on the nature of the individual exposures and takes, as well as the aggregated scale of the impacts across the GOM, and in consideration of the mitigation discussed here, the impacts of the expected takes from these activities are not likely to impact the reproduction or survival of any individuals, much less adversely affect the GOM stocks of dwarf or pygmy sperm whales through impacts on annual rates of recruitment or survival. Accordingly, we conclude the taking from the specified activity will have a negligible impact on GOM stocks of dwarf or pygmy sperm whales.

Other Stocks

In consideration of the similarities in the nature and scale of impacts, we consider the GOM stocks of the following species together in this section: rough-toothed dolphin, Clymene dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, striped dolphin, Fraser's dolphin, Risso's dolphin, melon-headed whale, pygmy killer whale, false killer whale, killer whale, and short-finned pilot whale. With the exception of Fraser's dolphin, rough-toothed dolphin, and striped dolphin, estimated (and allowable) take of these stocks (including both the maximum annual take and the total take over 5 years) is lower as compared to the 2021 final rule.

The risk assessment analysis, which evaluated the relative significance of the aggregated impacts of the survey activities across seven GOM zones in the context of the vulnerability of each species, concluded that the GOM-wide risk ratings for high and moderate effort scenarios ranged from very low to between low and moderate for these species. For the Fraser's dolphin, evaluated risk is the same as what was considered in the 2021 final rule, despite increased take numbers (see tables 5–6).

We further considered the likely severity of any predicted behavioral disruption of the individuals of these species in the context of the likely duration of exposure above Level B harassment thresholds. Specifically, the average modeled time per day spent at received levels above 160 dB rms (where 50 percent of the exposed population is considered taken) ranges from 1.4–11.7 minutes for 2D, 3D NAZ, and 3D WAZ surveys and up to 25.7 minutes for coil surveys (which comprise less than 10 percent of the total projected activity days). The average time per day spent between 140 and 160 dB rms for individuals that are taken is from 8–58.1 minutes, with the one exception of killer whales exposed to noise from coil surveys, which average 73.6 minutes (though we note that the overall risk rating for the blackfish group, including killer whales, is low).

Odontocetes echolocate to find prey, and there are many different strategies for hunting. One common pattern for deeper-diving species is to conduct multiple repeated deep dives within a feeding bout, and multiple bouts within a day, to find and catch prey. While exposures of the shorter durations noted above could potentially interrupt a dive or cause an individual to relocate to feed, such a short-duration interruption would be unlikely to have significant impacts on an individual's energy budget and, further, for these species and this open-ocean area, there are no specific known reasons (*i.e.,* these species range GOM-wide beyond the continental slope and there are no known biologically important areas) to expect that there would not be adequate alternate feeding areas relatively nearby, especially considering the anticipated absence of survey activity in the eastern GOM. For those species that are more shallow feeding species, it is likely that the noise exposure considered herein would result in minimal significant disruption of foraging behavior and, therefore, the corresponding energetic effects would similarly be minimal.

Of note, the Atlantic spotted dolphin is expected to benefit (via lessening of both number and severity of takes) from the coastal waters time-area restriction developed to benefit bottlenose dolphins, and several additional species can be expected to benefit from the absence of survey activity in important eastern GOM habitat.

No mortality or Level A harassment of these species is anticipated or authorized. It is likely that the majority of the individuals of these species will be impacted briefly on one or more days during a year of activity by one type of survey or another. Based on the nature of the individual exposures and takes, as well as the very low to low aggregated scale of the impacts across the GOM and considering the mitigation discussed here, the impacts of the expected takes from these activities are not likely to impact the reproduction or survival of any individuals, much less adversely affect the GOM stocks of any of these 12 species through impacts on annual rates of recruitment or survival. Accordingly, we conclude the taking from the specified activity will have a negligible impact on GOM stocks of these 12 species.

Determination

Based on the analysis contained herein, and the analysis presented in the 2021 final rule for the other species and stocks for which take is authorized (table 6), of the likely effects of the specified activities on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and related monitoring measures, NMFS finds that the total marine mammal take from the specified activities for the 5-year period of the regulations will have a negligible impact on all affected marine mammal species and stocks.

Small Numbers

For reference, we summarize how NMFS interprets and applies the small numbers standard, which is substantively unchanged from the full discussion provided in the 2018 notice of proposed rulemaking. Additional discussion was provided in the Comments and Responses section of the notice of issuance for the 2021 final rule to address specific comments, questions, or recommendations received from the public.

In summary, when quantitative take estimates of individual marine mammals are available or inferable through consideration of additional factors, and the number of animals taken is one-third or less of the best available abundance estimate for the species or stock, NMFS considers it to be of small numbers. For additional discussion, please see NMFS' notice of issuance for the 2021 final rule (86 FR 5322, January 19, 2021; see 86 FR 5363, 86 FR 5438). NMFS may also appropriately find that one or two predicted group encounters will result in small numbers of take relative to the range and distribution of a species, regardless of the estimated proportion of the abundance.

Our 2021 final rule also concluded that NMFS may appropriately elect to make a ''small numbers'' finding based on the estimated annual take in individual LOAs issued under the rule. This approach does not affect the negligible impact analysis for a rule, which is the biologically relevant inquiry and based on the total annual estimated taking for all activities the regulations will govern over the 5-year period. NMFS determined this approach is a permissible interpretation of the relevant MMPA provisions.

For this rule, as in the 2021 final rule, up-to-date species information is available, and sophisticated models have been used to estimate take in a manner that will allow for quantitative comparison of the take of individuals versus the best available abundance estimates for the species or guilds. Specifically, while the modeling effort utilized for this rule enumerates the estimated instances of takes that will occur across days as the result of the operation of certain survey types in certain areas, the modeling report also includes the evaluation of a test scenario that allows for a reasonable modification of those generalized take estimates to better estimate the number of individuals that will be taken within one survey (as discussed under Estimated Take). Use of modeling results from the rule allows one to reasonably approximate the number of marine mammal individuals taken in association with survey activities. The estimated take of marine mammals for each species or guild will then be compared against the best available abundance estimate as determined, and estimates that do not exceed one-third of that estimate will be considered small numbers.

Our 2021 final rule contained a fuller explanation of this interpretation and application of ''small numbers'' and explained how small numbers would be evaluated under the rule. We make no changes to our treatment of the small numbers standard in this rule, as the new information considered herein has no bearing on those discussions. See the Small Numbers section of the 2021 final rule at 86 FR 5438–5440 and responses to comments on small numbers at 86 FR 5363–5368 (January 19, 2021).

Adaptive Management

The regulations governing the take of marine mammals incidental to geophysical survey activities contain an adaptive management component. We make no changes here. The comprehensive reporting requirements (described in detail in the Monitoring and Reporting section of NMFS' notice of issuance for the 2021 final rule (86 FR 5322, January 19, 2021)) are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the LOA-holders regarding practicability) on a regular (*e.g.,* annual or biennial) basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggest that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammal species or stocks or their habitat and if the measures are practicable. The adaptive management process and associated reporting requirements would serve as the basis for evaluating performance and compliance. As no changes to the existing adaptive management process have been made, we do not repeat discussion provided in the notice of issuance of the final rule. Please see that document for further detail.

Under this rule, NMFS plans to continue to implement an annual adaptive management process including BOEM, the Bureau of Safety and Environmental Enforcement (BSEE), industry operators (including geophysical companies as well as exploration and production companies), and others as appropriate. Industry operators may elect to be represented in this process by their respective trade associations. NMFS, BOEM, and BSEE (*i.e.,* the regulatory agencies) and industry operators who have conducted or contracted for survey operations in the GOM in the prior year (or their representatives) will provide an agreed-upon description of roles and responsibilities, as well as points of contact, in advance of each year's adaptive management process. The foundation of the adaptive management process is the annual comprehensive reports produced by LOA-holders (or their representatives), as well as the results of any relevant research activities, including research supported voluntarily by the oil and gas industry and research supported by the Federal government.

All reporting requirements have been complied with under the rule to date. NMFS has received two annual reports compiled by industry trade associations in order to comply with the comprehensive reporting requirements. These reports, which consider LOA-specific reports received during the first and second years of implementation of the rule, are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*.

Monitoring Contribution Through Other Research

NMFS' MMPA implementing regulations require that applicants for incidental take authorizations describe the suggested means of coordinating research opportunities, plans, and activities relating to reducing incidental taking and evaluating its effects (50 CFR 216.104 (a)(14)). Such coordination can serve as an effective supplement to the monitoring and reporting required pursuant to issued LOAs and/or incidental take regulations. NMFS expects that relevant research efforts will inform the annual adaptive management process described above, and that levels and types of research efforts will change from year to year in response to identified needs and evolutions in knowledge, emerging trends in the economy and available funding, and available scientific and technological resources. In the 2018 notice of proposed rulemaking, NMFS described examples of relevant research efforts (83 FR 29300–29301, June 22, 2018). We do not repeat that information here, but refer the reader to that notice for more information. The described efforts may not be predictive of any future levels and types of research efforts. Research occurring in locations other than the GOM may be relevant to understanding the effects of geophysical surveys on marine mammals or marine mammal populations or the effectiveness of mitigation. NMFS also refers the reader to the industry Joint Industry Program (JIP) website (*https://www.soundandmarinelife.org*), which hosts a database of available products funded partially or fully through the JIP, and to BOEM's Environmental Studies Program (ESP), which develops, funds, and manages scientific research to inform policy decisions regarding outer continental shelf resource development (*https://www.boem.gov/studies*).

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by these actions. Therefore, as with the 2021 final rule, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7 of the ESA requires Federal agencies to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their designated critical habitat. Federal agencies must consult with NMFS for actions that may affect such species under NMFS' jurisdiction or critical habitat designated for such species. At the conclusion of consultation, the consulting agency provides an opinion stating whether the Federal agency's

action is likely to jeopardize the continued existence of ESA-listed species or destroy or adversely modify designated critical habitat.

On March 13, 2020, NMFS' Office of Protected Resources, ESA Interagency Cooperation Division, issued a Biological Opinion (BiOp) on federally regulated oil and gas program activities in the Gulf of Mexico, including NMFS' issuance of the ITR and subsequent LOAs (as well as all BOEM and Bureau of Safety and Environmental Enforcement approvals of activities associated with the OCS oil and gas program in the GOM). The 2020 BiOp concluded that NMFS' proposed action was not likely to jeopardize the continued existence of sperm whales or Rice's whales. Of note, that BiOp evaluated the larger scope of survey activity originally contemplated for the rule, before BOEM revised the scope of its activity to remove the GOMESA area in the eastern GOM. The take estimates evaluated for this rule are, therefore, within the scope of take considered in the BiOp and do not reveal effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered. Thus, for this rule to consider corrected take estimates and other newly available information, NMFS has determined that re-initiation of consultation is not triggered under 50 CFR 402.16, although NMFS does anticipate amending the incidental take statement to reflect the corrected take estimates.

National Environmental Policy Act

In 2017, BOEM produced a final PEIS to evaluate the direct, indirect, and cumulative impacts of geological and geophysical survey activities in the GOM, pursuant to requirements of the National Environmental Policy Act. These activities include geophysical surveys, as are described in the MMPA petition submitted by BOEM to NMFS. The PEIS is available online at: *https://www.boem.gov/Gulf-of-Mexico-Geological-and-Geophysical-Activities-Programmatic-EIS/.* NOAA, through NMFS, participated in preparation of the PEIS as a cooperating agency due to its legal jurisdiction and special expertise in conservation and management of marine mammals, including its responsibility to authorize incidental take of marine mammals under the MMPA.

In 2020, NMFS prepared a Record of Decision (ROD): (1) to adopt BOEM's Final PEIS to support NMFS' analysis associated with issuance of incidental take authorizations pursuant to section 101(a)(5)(A) or (D) of the MMPA and the regulations governing the taking and importing of marine mammals (50 CFR part 216); and (2) in accordance with 40 CFR 1505.2, to announce and explain the basis for NMFS' decision to review and potentially issue incidental take authorizations under the MMPA on a case-by-case basis, if appropriate.

The Council on Environmental Quality (CEQ) regulations state that agencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (40 CFR 1502.09(c)). NMFS has considered CEQ's ''significance'' criteria at 40 CFR 1508.27 and the criteria relied upon for the 2020 ROD to determine whether any new circumstances or information are ''significant,'' thereby requiring supplementation of the 2017 PEIS.

NMFS has not made any changes to the proposed action relevant to environmental concerns. For this rulemaking, NMFS reevaluated its findings related to the MMPA negligible impact standard and the LPAI standard governing its regulations in light of the corrected take estimates and other relevant new information. Based on that evaluation, NMFS reaffirms its negligible impact determinations and determined that the existing regulations prescribe the means of effecting the LPAI on the affected species or stocks and their habitat, and therefore made no changes to the regulations.

NMFS also considered whether there are any significant new circumstances or information that are relevant to environmental concerns and have a bearing on this action or its impacts. Our rulemaking was conducted specifically to address errors in the take estimates that provided a basis for our 2021 final rule. We considered updated take estimates that corrected the errors and incorporated other new information, *e.g.,* modeling of a more representative airgun array, updated marine mammal density information. We also consulted scientific publications from 2021–24, data that were collected by the agency and other entities after the PEIS was completed, field reports, and other sources (*e.g.,* updated NMFS Stock Assessment Reports (SAR), reports produced under the BOEM-funded Gulf of Mexico Marine Assessment Program for Protected Species (GoMMAPPS) project (see *https://www.boem.gov/gommapps*)). The new circumstances and information are related to updated information on Rice's whales in the action area (population abundance, mortality and sources of mortality, distribution and occurrence) and any new data, analysis, or information on the effects of geophysical survey activity on marine mammals and relating to the effectiveness and practicability of measures to reduce the risk associated with impacts of such survey activity. Based on our review applying those criteria, NMFS has determined that supplementation of the 2017 PEIS is not warranted.

Letters of Authorization

Under the incidental take regulations in effect for this specified activity, industry operators may apply for LOAs (50 CFR 217.186). We have made no changes to the regulations for obtaining an LOA. LOAs may be issued for any time period that does not exceed the effective period of the regulations, provided that NMFS is able to make the relevant determinations (50 CFR 217.183). Because the specified activity does not provide actual specifics of the timing, location, and survey design for activities that would be the subject of issued LOAs, such requests must include, at minimum, the information described at 50 CFR 216.104(a)(1) and (2), and should include an affirmation of intent to adhere to the mitigation, monitoring, and reporting requirements described in the regulations. The level of effort proposed by an operator will be used to develop an LOA-specific take estimate based on the results of Weirathmueller *et al.* (2022). These results will be based on the appropriate source proxy (*i.e.,* either 90-in^3 single airgun or 4,130-, 5,110-, or 8,000-in^3 airgun array).

If applicants do not use the modeling provided by the rule, NMFS may publish a notice in the **Federal Register** soliciting public comment, if the model or inputs differ substantively from those that have been reviewed by NMFS and the public previously. Additional public review is not needed unless the model or inputs differ substantively from those that have been reviewed by NMFS and the public previously.

Technologies continue to evolve to meet the technical, environmental, and economic challenges of oil and gas development. The use of technologies other than those described herein will be evaluated on a case-by-case basis and may require public review. Some seemingly new technologies proposed for use by operators are often extended applications of existing technologies and interface with the environment in essentially the same way as well-known or conventional technologies. NMFS

will evaluate such technologies accordingly and as described in the notice of issuance for the 2021 final rule. Please see that document for further detail.

Classification

Introduction

Due to errors in the estimated take numbers provided by BOEM in support of its petition for the 2021 rule, the allowable amount of incidental take of marine mammals in the GOM is generally lower than the amount expected based on BOEM's projected activity levels. As a result, NMFS' ability to issue LOAs for take of marine mammals incidental to surveys related to oil and gas activities in the GOM has been limited, relative to what was intended under the rule for the specified activities. This rule corrects the estimated take numbers, allowing for the issuance of LOAs as intended under the 2021 rule. In addition, NMFS has incorporated newly available scientific data regarding marine mammal density in the GOM, and introduced new acoustic source configurations that provide more flexibility to applicants in terms of more accurately reflecting the anticipated effects of actual survey effort. The adjustments to allowable take under this final rule, relative to the 2021 final rule, have potential implications for oil and gas industry survey activity, associated oil and gas exploration and development, and marine mammals.

Surveys and Oil and Gas Exploration and Development

If applicants cannot receive LOAs, either within the requested year or at all, due to the annual maximum or five-year maximum take allowable under the 2021 final rule for certain species, surveys may be delayed. To date, NMFS has issued approximately 70 LOAs, which is fewer than expected based on BOEM's projected levels of activity. Some of this discrepancy may be attributed to the aforementioned limitations on NMFS' ability to authorize take of certain species under the 2021 final rule and/or to generally increased regulatory uncertainty stemming from those limitations. In the absence of this rule, NMFS would anticipate continuing limitations on its ability to issue LOAs over the remaining period of effectiveness for the 2021 rule, though specific impacts would be dependent on demand and difficult to predict with precision. Delays could result in reductions in exploration and development activities in the GOM. This correction removes these unintended restrictions, averting the potential economic losses from delay.

Marine Mammals

If NMFS is unable to issue some LOAs for the specified activities as a result of the erroneous take estimates analyzed for the 2021 rule, restrictions on incidental take may result in fewer incidences of harassment of marine mammals relative to those initially anticipated in 2021. This final rule, which is based on corrected take estimates and other updated information for the same specified activities, may allow for more take of four species than would occur without this rule, though the updated take estimates (and thus allowable take) for all other species has decreased in reflection of updated density information. The corrections to allowable take may result in more actual take of some marine mammal species than has occurred under the rule to date, as a result of increased ability to issue requested LOAs. This final rule allows for the authorization of marine mammal take incidental to the same level of survey activities intended in the 2021 rule and is issued in accordance with the same applicable negligible impact standard.

To the extent that some number of surveys that would not have been able to move forward in compliance with the MMPA under the 2021 rule might now occur under this corrected rule, there may be effects on tourism, ecosystem services, and non-use valuations. NMFS describes each of these values below.

Tourism

Marine mammal populations generate economic activity in the GOM and, more broadly, in the U.S. For example, the U.S. leads the world in whale watcher participation, with an estimated 4.9 million trips taken in 2008, or 38 percent of global whale watching trips. In 2013, the tourism and recreation sector of ocean-related activities in the GOM region (inclusive of all counties bordering the GOM) generated nearly $6.2 billion in wages and employed 310,000 individuals at 17,300 establishments, for a total GDP contribution of approximately $13 billion. Much of that ocean-related tourism is reliant on the diverse and abundant marine mammal and other marine wildlife populations.

The presence of marine mammals generates regional income and employment opportunities most directly through businesses that conduct marine mammal watching tours and other marine wildlife-related operations, such as educational and environmental organizations. Whale watching activities alone support hundreds of jobs and tens of millions in regional income in the GOM. In addition, tourists drawn to the region to participate in these tours and activities spend money on goods and services in the regional economy, for example for meals, accommodations, or transportation to and from the whale watching destination. According to a 2009 report, the number of whale watchers in the GOM states increased to over 550,000 in 2008, nearly an order of magnitude increase over a ten year time period (Exhibit 5–1). Direct revenues from sales of whale watching tickets was $14.1 million that year, and the overall regional spending related to whale watching was nearly $45 million. An estimated 625 full-time equivalent jobs were directly involved in marine mammal recreation across all GOM states in 2008.

Table 14 -- Whale Watching Statistics in GOM States

Year	Number of Whale Watchers	Direct Expenditure[1] (Millions 2016$)	Total Expenditure[2] (Millions 2016$)
1998	61,000	Not reported	Not reported
2008	550,653	$14.10	$44.70

[1]Direct expenditure is defined here as expenditure on tickets and items directly related to the whale watching trip itself. It excludes costs such as accommodation, transport, and food not included in the trip ticket price.

[2]Total expenditure includes both direct and indirect expenditures.
Source: O'Connor *et al.*, 2009. Whale Watching Worldwide: Tourism numbers, expenditures and expanding economic benefits, a special report from the International Fund for Animal Welfare, Yarmouth, MA, USA, prepared by Economists at Large.

Florida is the leading state for cetacean-based tourism in the country. Bottlenose dolphin viewing constitutes the majority of Florida's marine mammal-related tourism with average ticket prices of approximately $43 for boat-based trips and $95 for swim-with tours. Elsewhere in the GOM, in Alabama and Texas, average ticket prices are $11 to $22. Commercial whale watching activity is minimal in Mississippi and Louisiana.

Ecosystem Services

Large whales provide ecosystem services, which are benefits that society receives from the environment. The services whales provide include contributing to sense of place, education, research, and they play an important role in the ecosystem. Large whales are considered ecosystem engineers, given their potential for trophic influence on their ecosystems. Their presence can reduce the risk of trophic cascades, which have previously affected smaller species when whale populations suffered historic declines. As large consumers, whales heavily impact food-web interactions and can promote primary productivity. Large whales may contribute to enhanced ocean productivity via a concept commonly known as the ''whale-pump.'' The ''whale-pump'' refers to whales' contribution to vertical mixing, horizontal transfer, and the recycling of limiting nutrients in the ocean as they dive, migrate, and release fecal plumes and urine (Roman *et al.,* 2014). Whales also play an important role in carbon cycling in the oceans. They accumulate carbon in their bodies over a lifetime and following death, can sequester tons of carbon in the deep sea (Pershing *et al.,* 2010; Roman *et al.,* 2014). Carbon stored in the deep sea reduces carbon in the atmosphere, which, in turn, can help fight against climate change. Chami *et al.* (2020) estimated that for the southern right whales, the average annual services value could be $2.2 million.

Non-Use Benefits

The protection and restoration of populations of endangered whales may also generate non-use benefits. Economic research has demonstrated that society places economic value on environmental assets, whether or not those assets are ever directly exploited. For example, society places real (and potentially measurable) economic value on simply knowing that large whale populations are flourishing in their natural environment (often referred to as ''existence value'') and will be preserved for the enjoyment of future generations. Using survey research methods, economists have developed several studies of non-use values associated with protection of whales or other marine mammals (table 15).

In each study in table 15, researchers surveyed individuals on their willingness to pay (WTP) for programs that would maintain or increase marine mammal populations. One of the studies (Wallmo and Lew, 2012) employed a stated preference method to estimate the value of recovering or down-listing eight ESA-listed marine species, including the North Atlantic right whale. Through a survey of 8,476 households, the authors estimated an average WTP (per household per year, for a 10-year period) of $71.62 for recovery of the species which, if extrapolated nationwide, suggests Americans are willing to pay approximately $4.38 billion for right whale recovery. While the other studies noted do not focus specifically on the North Atlantic right whale, they do demonstrate that individuals derive significant economic value from the protection of marine mammals. As noted, the value of whales might not be adequately captured by non-use values of this kind. Death or suffering of whales might be believed to be intrinsically bad, because it is a welfare loss in itself.

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Table 15 -- Studies of Non-use Value Associated with Marine Mammals

Author	Title	Findings
Lew, D. K. (2023)	Aggregating social benefits of endangered species protection: the case of the Cook Inlet beluga whale	This study surveyed responses from 1,747 Alaska households. It estimated that the mean household WTP values for Cook Inlet beluga whale recovery ranged from $221 to $409. The preferred model estimate was $395.
Schwarzmann *et al*. (2021)	Whale Watching in Channel Islands National Marine Sanctuary: A Stated Preference Study of Passengers' Willingness to Pay for Marine Life Improvements	Respondents' WTP values for large baleen whales ranged from $181 to $121 per household, depending on the amount of marine life improvements.
Lew (2015)	Willingness to Pay for Threatened and Endangered Marine Species: A Review of the Literature and Prospects for Policy Use	Comprehensive literature review on the methods and case studies on WTP for threatened and endangered marine species.
Wallmo and Lew (2012)	Public Willingness to Pay for Recovering and Downlisting Threatened and Endangered Marine Species	Per-household mean WTP annually over 10 years for increase in North Atlantic right whale populations estimated to be $71.62 (for recovery) and $38.79 (for down-listing to threatened status) (2010 dollars).
Giraud *et al*. (2002)	Economic Benefit of the Protection of the Steller Sea Lion	Estimated WTP for an expanded Steller sea lion protection program. The average WTP for the entire nation amounted to roughly $61 per person.
Loomis and Larson (1994)	Total Economic Values of Increasing Gray Whale Populations: Results from a Contingent Valuation Survey of Visitors and Households	Mean WTP of U.S. households for an increase in gray whale populations estimated to be $16.18 for a 50 percent increase and $18.14 for a 100 percent increase.
Samples and Hollyer (1990)	Contingent Valuation of Wildlife Resources in the Presence of Substitutes and Complements	Respondents' average WTP (lump sum payment) to protect humpback whales in Hawaii ranged from $125 to $142 (1986 dollars).
Samples *et al*. (1986)	Information Disclosure and Endangered Species Valuation	Estimated individual WTP for protection of humpback whales of $39.62 per year.
Day (1985), cited in Rumage (1990)	The Economic Value of Whalewatching at Stellwagen Bank. The Resources and Uses of Stellwagen Bank	Non-use value of the presence of whales in the Massachusetts Bays system estimated to be $24 million.
Hageman (1985)	Valuing Marine Mammal Populations: Benefit Valuations in a Multi-Species Ecosystem	Per-household WTP for gray and blue whales, bottlenose dolphins, California sea otters, and northern elephant seals estimated to be $23.95, $17.73, $20.75, and $18.29 per year, respectively (1984 dollars).

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Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. This rule makes no changes to the existing regulations. Upon receiving updated information following the discovery that the estimates of incidental take of marine mammals anticipated from the activities analyzed for the January 19, 2021, final rule were erroneous, NMFS undertook this action to analyze the updated information and underlying take estimates and decide whether revisions to the January 19, 2021, final rule were warranted. NMFS has found that revisions to the regulations are not warranted. There are no changes to the specified activities, the specified geographical region in

which those activities would be conducted, the original 5-year period of effectiveness, or to the current mitigation and monitoring requirements implemented by the January 19, 2021, final rule. Because there have been no changes to the existing regulations, there are no economic impacts on small entities. A regulatory flexibility analysis therefore is not required, and none has been prepared. No comments were received that would change this determination.

Note that NMFS prepared a final regulatory flexibility analysis (FRFA), as required by Section 603 of the Regulatory Flexibility Act, for the regulations issued under the January 19, 2021, final rule. That FRFA described the economic effects on small entities. A copy of the FRFA is available as Appendix B to the RIA that accompanied the January 19, 2021, final rule. No changes have been made to the 2021 regulations that would affect the findings of that FRFA, which were summarized in the notice of issuance for the 2021 final rule (86 FR 5443, January 19, 2021).

This rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements continue to apply under the following OMB Control Number(s): 0648–0151.

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.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: April 12, 2024.

Samuel D. Rauch III,

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

As described above, because NMFS does not find that new mitigation measures are required, this rule does not amend the current applicable regulations at 50 CFR part 217 Subpart S (§§ 217.180 through 217.189). Thus, no amendatory instructions are necessary.

[FR Doc. 2024–08257 Filed 4–23–24; 8:45 am]

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Part V

Department of the Interior

Bureau of Ocean Energy Management

30 CFR Parts 550, 556, and 590
Risk Management and Financial Assurance for OCS Lease and Grant Obligations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550, 556, and 590

[Docket No. BOEM–2023–0027]

RIN 1010–AE14

Risk Management and Financial Assurance for OCS Lease and Grant Obligations

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (the Department or DOI), acting through the Bureau of Ocean Energy Management (BOEM), is amending its risk management and financial assurance regulations. This final rule revises criteria for determining whether oil, gas, and sulfur lessees, right-of-use and easement (RUE) grant holders, and pipeline right-of-way (ROW) grant holders are required to provide financial assurance above the current minimum bonding levels to ensure compliance with their Outer Continental Shelf Lands Act (OCSLA) obligations. This final rule streamlines the criteria for evaluating the financial health of lessees and grantees, codifies the use of the Bureau of Safety and Environmental Enforcement's (BSEE) probabilistic estimates of decommissioning costs in setting the level of demands for supplemental financial assurance, removes restrictive provisions for third-party guarantees and decommissioning accounts, adds new criteria for cancelling supplemental financial assurance, and clarifies bonding requirements for RUEs serving Federal leases. BOEM estimates that a total of $6.9 billion in new supplemental financial assurance will be required from lessees and grant holders under this final rule to cover potential costs of decommissioning activities. This final rule significantly increases the amount of financial assurance available to the U.S. Government in the case of a lessee default and meaningfully reduces the risk to the government and consequently to the U.S. taxpayer. This final rulemaking does not apply to renewable energy activities.

DATES: This final rule is effective on June 24, 2024. You may make comments on the information collection (IC) burden in this rulemaking and the Office of Management and Budget (OMB) and BOEM must receive such comments on or before May 24, 2024. The IC burden comment opportunity does not affect the final rule effective date.

ADDRESSES: BOEM has established a docket for this action under Docket No. BOEM–2023–0027. All documents in the docket are listed on the *https://www.regulations.gov* website and can be found by entering the Docket No. in the ''Enter Keyword or ID'' search box and clicking ''search''.

You may submit comments on the IC to OMB's desk officer for the Department of the Interior through *https://www.reginfo.gov/public/do/PRAMain.* From this main web page, you can find and submit comments on this particular information collection by proceeding to the boldface heading ''Currently under Review—Open for Public Comments,'' selecting ''Department of the Interior'' in the ''Select Agency'' pull down menu, clicking ''Submit,'' then, checking the box ''Only Show ICR for Public Comment'' on the next web page, scrolling to this final rule, and clicking the ''Comment'' button at the right margin. Additionally, you may use the search function to locate the IC request related to the rule on the main web page. Please provide a copy of your comments to the Information Collection Clearance Officer, Office of Regulations, BOEM, Attention: Anna Atkinson, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0006 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Kelley Spence, Office of Regulations, BOEM, 45600 Woodland Road, Sterling, Virginia 20166, at email address *Kelley.Spence@boem.gov* or at telephone number (984) 298–7345; and Karen Thundiyil, Chief, Office of Regulations, BOEM, 1849 C Street NW, Washington, DC 20240, at email address *Karen.Thundiyil@boem.gov* or at telephone number (202) 742–0970. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting the contacts listed in this section. These services are available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. 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: *Preamble acronyms and abbreviations.* Multiple acronyms are included in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, BOEM explains the following acronyms here:

ANCSA Alaska Native Claims Settlement Act
BOEM Bureau of Ocean Energy Management
BSEE Bureau of Safety and Environmental Enforcement
CFR Code of Federal Regulations
CRA Congressional Review Act
DOI Department of the Interior (or Department)
E.O. Executive Order
FDIC Federal Deposit Insurance Corporation
FR Federal Register
FSLIC Federal Savings and Loan Insurance Corporation
GAO Government Accountability Office
GOMESA Gulf of Mexico Energy Security Act of 2006
IBLA Interior Board of Land Appeals
IC Information Collection
INC Incident of Non-Compliance
IRFA Initial Regulatory Flexibility Analysis
mmboe Million barrels of oil equivalents
MMS Minerals Management Service
NAICS North American Industry Classification System
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
NRSRO Nationally Recognized Statistical Rating Organization
NTL Notice to Lessees
OCS Outer Continental Shelf
OCSLA Outer Continental Shelf Lands Act
OIRA Office of Information and Regulatory Affairs (a component of OMB)
OMB Office of Management and Budget
ONRR Office of Natural Resources Revenue
PRA Paperwork Reduction Act
RIA Regulatory Impact Analysis
RFA Regulatory Flexibility Act
RUE Right-of-Use and Easement
ROW Right-of-Way
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act
SEC Securities and Exchange Commission
S&P Standard and Poor's
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
U.S. EPA United States Environmental Protection Agency

Background information. On June 29, 2023, the Department proposed revisions to the regulations for risk management and financial assurance for Outer Continental Shelf (OCS) lease and grant obligations. The comments received regarding the proposed rule, some of which resulted in regulatory changes, and their corresponding responses are summarized in this preamble. A detailed summary of all public comments on the proposal and their corresponding responses are available in the memorandum titled,

Risk Management and Financial Assurance for OCS Lease and Grant Obligations: Response to Public Comments Received on the June 29, 2023, Notice of Proposed Rulemaking in the docket for this rulemaking (Docket No. BOEM–2023–0027). A ''track changes'' version of the regulatory language that identifies the changes in this action compared to the current regulations is also available in the docket.

Organization of this document. The information in this preamble is organized as follows:

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I. General Information

A. Executive Summary

1. Purpose of This Regulatory Action

The purpose of this final regulatory action is to address concerns regarding BOEM's financial assurance program. This rule finalizes amendments to the existing provisions to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development, such as environmental remediation. Additionally, this final rule provides regulatory clarity to OCS lessees regarding their financial obligations by codifying requirements in the Code of Federal Regulations (CFR).

Since 2009, more than 30 corporate bankruptcies have occurred involving offshore oil and gas lessees that did not have sufficient financial assurance to cover their decommissioning liabilities. These bankruptcies have highlighted a weakness in BOEM's current supplemental financial assurance program. BOEM's existing program has, at times, been unable to forecast financial distress of these lessees and grantees that have not previously provided supplemental financial assurance and, as a result, BOEM has not had sufficient time to require and receive supplemental financial assurance prior to a declaration of bankruptcy. Additionally, challenges arising from bankruptcy proceedings, including the inability to sell less valuable assets that fail to generate new buyers at auction, can result in unplugged wells and orphaned infrastructure, potentially resulting in the American taxpayer paying to plug those wells and decommission that abandoned infrastructure. The amendments finalized in this rulemaking under section 5 of OCSLA (43 United States Code (U.S.C.) 1334) and Secretary's Order 3299 strengthen BOEM's financial assurance program to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development.

2. Summary of Major Provisions

The following major provisions are included in this final rule:

- streamlining the criteria used for evaluating the financial health of lessees and grantees,
- codifying the use of the BSEE probabilistic estimates of decommissioning cost for determining the amount of supplemental financial assurance required,
- removing restrictive provisions for third-party guarantees and decommissioning accounts,
- adding new criteria under which a bond or third-party guarantee that was provided as financial assurance may be canceled, and
- clarifying financial assurance requirements for RUEs serving Federal leases.

With this rulemaking, the Department is finalizing an amendment to revise the criteria used to evaluate the need for supplemental financial assurance from the existing five criteria—financial capacity, projected financial strength, business stability, reliability in meeting obligations based on credit rating or trade references, and record of compliance with laws, regulations, and lease terms—to one of two criteria: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. Specifically, the Department is finalizing the use of an investment grade credit rating threshold (or proxy credit rating equivalent) and a minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves to determine if a lessee is required to provide supplemental financial assurance. If a current lessee meets one of these criteria, it will not be required to provide supplemental financial assurance. These amendments codify a forward-looking analysis for determining the need for supplemental financial assurance and strengthen BOEM's financial assurance program by providing a more accurate method for analyzing a lessee's financial health.

The Department is also finalizing the use of the BSEE probabilistic estimates of decommissioning cost for determining the amount of supplemental financial assurance required. The new estimates are based on industry-reported decommissioning costs pursuant to the notice-to-lessees (NTL) requiring the submittal of such data. Previously, BSEE provided a single algorithm-based deterministic estimate for OCS facilities for determining decommissioning cost estimates. Based on the reported data, BSEE has developed three probabilistic estimates (*i.e.,* P-values) of decommissioning costs for each OCS facility on any given lease. These values represent the likelihood of covering the full cost of decommissioning a facility as a percentage; for example, P70 represents a 70 percent likelihood of covering the full cost of decommissioning a facility. The Department is finalizing, as proposed, the use of the P70 decommissioning estimate value to determine the amount of supplemental financial assurance required from a current lessee that does not meet the financial waiver criteria. If probabilistic estimates are not available, then BOEM will use the available deterministic values. BOEM also notes that the use of the BSEE P70 value only reflects the amount of supplemental financial assurance that may be required to meet decommissioning obligations and does not reflect the total cost of corrective action that may be required to bring a lease or grant into compliance.

The Department's goal for BOEM's financial assurance program continues to be the protection of the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production at a competitive disadvantage. The Department acknowledges that the new regulations could have a significant financial impact on affected companies, and for that reason, the Department is finalizing the amendment, as proposed, to phase in the new financial assurance requirements over a 3-year period for existing leaseholders.

3. Costs and Benefits

The regulatory amendments in this rulemaking are expected to increase the total amount of financial assurance required from OCS lessees and grant holders. Those lessees that do not meet the updated criteria to avoid providing financial assurance will realize an increased compliance cost in the form of bonding premiums. BOEM has drafted a Regulatory Impact Analysis (RIA) detailing the estimated impacts of the respective provisions of this final rule and has included it in the docket. The impacts reflect both monetized and non-monetized impacts; the costs and benefits of the non-monetized impacts are discussed qualitatively in the document. The table below summarizes BOEM's monetized estimate of the cost of increased bonding premiums paid by lessees over a 20-year period. Additional information on the estimated transfers, costs, and benefits can be found in the RIA available in the docket for this rulemaking (Docket No. BOEM–2023–0027).

NET TOTAL ESTIMATED COMPLIANCE COST OF THE RULE
[2024–2043, 2023, $ millions]

2024–2043	Discounted at 3%	Discounted at 7%
Net Total Compliance Cost	$8,525	$5,923
Annualized Compliance Cost	573.0	559.0

This final rule affects holders of oil, gas, and sulfur leases, ROW grants, and RUE grants on the OCS. The analysis shows that this includes roughly 391 companies with ownership interests in OCS leases and grants. Entities that operate under this rule are classified primarily under North American Industry Classification System (NAICS) codes 211120 (Crude Petroleum Extraction), 211130 (Natural Gas Extraction), and 486110 (Pipeline Transportation of Crude Oil and Natural Gas). For NAICS classifications 211120 and 211130, the Small Business Administration (SBA) defines a small business as one with fewer than 1,250 employees; for NAICS code 486110, it is a business with fewer than 1,500 employees. Based on this criterion, approximately 271 (69 percent) of the businesses operating on the OCS subject to this rule are considered small; the remaining businesses are considered large entities. All the operating businesses meeting the SBA classification are potentially impacted; therefore, BOEM expects that the rule will affect a substantial number of small entities.

BOEM has estimated the annualized increase in compliance costs to lessees and RUE and ROW grant holders and allocated those to small and large entities based on their decommissioning liabilities. BOEM's analysis estimates small companies could incur $421 million (7 percent discounting) in annualized compliance costs from its changes. The Bureau recognizes that there will be incremental cost burdens to most affected small entities and has included a 3-year, phased compliance approach to reduce burden associated with the transition to the requirements of this rule. The changes are designed to balance the risk of non-performance with the compliance burdens that are associated with the requirement to provide supplemental financial assurance. Additional information about these conclusions can be found in the RIA for this rule.

B. Does this action apply to me?

Entities potentially affected by this final action are holders of oil, gas, and sulfur leases, ROW grants, and RUE grants on the OCS.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, BOEM will post an electronic copy of the documents related to this final action at: *https://www.boem.gov/regulations-and-guidance.*

BOEM's full response to comments on the June 29, 2023, notice of proposed rulemaking (NPRM), including any comments not discussed in this preamble, can be found in the memorandum titled, *Risk Management and Financial Assurance for OCS Lease and Grant Obligations: Response to Public Comments Received on the June 29, 2023, Notice of Proposed Rulemaking,* available in the docket (Docket No. BOEM–2023–0027).

II. Background

A. BOEM Statutory and Regulatory Authority and Responsibilities

Section 5 of OCSLA (43 U.S.C. 1334), authorizes the Secretary of the Interior (Secretary) to issue regulations to administer OCS leasing for mineral development. Section 5(a) of OCSLA (43 U.S.C. 1334(a)) authorizes the Secretary to ''prescribe such rules and regulations as may be necessary to carry out [provisions of OCSLA]'' related to leasing on the OCS. Section 5(b) of OCSLA (43 U.S.C. 1334(b)) provides that ''compliance with regulations issued under'' OCSLA must be a condition of ''[t]he issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of'' OCSLA. Section 18 of OCSLA (43 U.S.C. 1344) states that, ''Management of the [OCS] shall be conducted in a manner which considers economic, social, and environmental values of the renewable

and nonrenewable resources contained in the [OCS]. . .''.

The Secretary, in Secretary's Order 3299 (as amended), established BOEM and delegated to it the authority to carry out conventional energy- (*e.g.,* oil and gas) and renewable energy-related functions on the OCS, including, but not limited to, activities involving resource evaluation, planning, and leasing under the provisions of OCSLA. As such, BOEM is responsible for managing development of the Nation's offshore energy and mineral resources in an environmentally and economically responsible way. Secretary's Order 3299 also established BSEE and delegated to it the authority to, among other things, enforce an oil and gas lessee's obligation to perform decommissioning. BSEE provides estimates to BOEM to inform the financial assurance needed to cover the cost to perform decommissioning, thereby protecting the American taxpayer from incurring financial loss. When a current lessee is unable to perform its obligations, the Department's regulations at 30 CFR 556.604(d) and 556.605(e) hold current co-lessees responsible for all decommissioning obligations and predecessor lessees responsible for those decommissioning obligations that had accrued before they assigned their interests to others. See Section III.B for more detail on joint and several liability requirements. While BOEM also has program oversight for the financial assurance requirements set forth in 30 CFR parts 551, 581, 582, and 585, this final rule pertains only to the financial assurance requirements for oil and gas or sulfur leases under part 556, RUE grants and ROW grants under part 550, and appeals of supplemental financial assurance demands under part 590.

For more information on the statutory authority for this rule, see the preamble to the proposed rule at 88 FR 42138, June 29, 2023.

B. History of Bonding Regulations and Guidance

The Minerals Management Service (MMS), BOEM's predecessor, published the existing financial assurance requirements for oil, gas, and sulfur leases and pipeline ROW grants on May 22, 1997 (62 FR 27948). These regulations required lease-specific or area-wide base bonds in prescribed amounts, depending on the level of activity on a lease, and provided the authority to require additional supplemental financial assurance for leases above the base bonds depending on the financial health of the lessee. Additionally, MMS published the existing financial assurance requirements for RUE grants on December 28, 1999 (64 FR 72756). These regulations did not dictate a specific bond amount for a RUE but did provide the authority to require bonding if necessary. BOEM employs the same criteria for RUE and ROW grants as it does for leases to determine whether supplemental financial assurance is required, because specific criteria pertaining to supplemental financial assurance for grants do not exist in the current regulations.

The current bonding regulations at 30 CFR 556.901(d) provide five criteria that the Regional Director uses to determine whether a lessee's potential inability to carry out present and future decommissioning obligations warrants a demand for supplemental financial assurance; however, the current bonding regulations do not specifically describe how the criteria are weighted. To provide guidance, MMS issued a Notice to Lessees (NTL) effective December 28, 1998, which provided details on how it would apply the five criteria (NTL No. 98–18N). This NTL was superseded by NTL No. 2003–N06, effective June 17, 2003, and that NTL was later superseded by NTL No. 2008–N07, which was effective August 28, 2008. Most recently, NTL No. 2008–N07 was superseded on September 12, 2016, with NTL No. 2016–N01, which was later rescinded in February of 2020.

In December 2015, the Government Accountability Office (GAO) reviewed BOEM's supplemental financial assurance procedures and issued a report titled ''Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities.'' (GAO Report). While acknowledging BOEM's ongoing efforts to update its policies, the GAO Report recommended, inter alia, that ''BOEM complete its plan to revise its supplemental financial assurance procedures, including the use of alternative measures of financial strength.'' *See https://www.gao.gov/products/gao-16-40.*

On October 16, 2020, DOI issued a notice of proposed rulemaking (85 FR 65904) to revise certain BSEE policies concerning decommissioning orders and the Department's financial assurance regulations that are administered by BOEM. In the joint proposed rule, the Department proposed to adjust the supplemental financial assurance criteria to reflect the risk mitigation already provided by the joint and several liability of financially stable co-lessees and predecessor lessees. The Department's regulations hold predecessors responsible for some or all of the decommissioning when a current lessee is unable to perform its obligations. In the 2020 proposed rule, the Department proposed to consider the financial stability of predecessor lessees by waiving supplemental financial assurance requirements for a current lessee when there is a financially strong predecessor lessee. The Department also proposed to change the methodology for measuring financial strength to focus on credit rating and the value of proved oil and gas reserves and to apply the credit rating methodology to RUE grants and ROW grants as well.

On April 18, 2023, DOI finalized the BSEE-administered provisions of the 2020 proposal (88 FR 23569). The Department's 2023 final rule implements provisions of the 2020 proposed rule to clarify decommissioning responsibilities of RUE grant holders and to formalize BSEE's policies regarding performance by predecessors ordered to decommission OCS facilities.

On June 29, 2023, the Department proposed a new rule in lieu of finalizing the BOEM provisions of the 2020 joint proposal. The new proposed rule provided recommended revisions to the regulations concerning risk management and financial assurance for OCS lease and grant obligations. This final action addresses the public comments received on the June 29, 2023, proposal and finalizes amendments to those regulations. For more details on the history of the bonding regulations, see the preamble to the proposed rule at 88 FR 42138.

C. Purpose of Rulemaking

The purpose of this rulemaking is to finalize amendments to address concerns regarding BOEM's financial assurance program. This rule finalizes amendments to the existing provisions to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development, such as environmental remediation. This rule also provides regulatory clarity to OCS lessees regarding their financial obligations by codifying requirements in the CFR.

As discussed in the preamble to the proposed rule (88 FR 42140), the GAO identified three main shortcomings in the Department's prior approach to financial assurance: (1) the Department faced challenges in determining actual decommissioning liabilities due to data system limitations and inaccurate data; (2) the Department did not require sufficient financial assurance to cover liabilities, primarily due to the practice

of waiving supplemental bonding requirements, resulting in financial assurance coverage (such as bonds) for less than 8% of an estimated $38.2 billion in decommissioning liabilities; and (3) the Department's criteria for assessing lessees' financial strength did not provide accurate and timely information about their ability to cover future decommissioning costs. As the GAO report indicated, the existing regulatory structure is inadequate, introduces needless financial risk, and is unsustainable.

Importantly, relatively few major facilities have been decommissioned (relative to the number installed) because the vast majority of facilities are or were recently actively producing. As more facilities reach the end of their useful life, however, decommissioning will be required on a larger scale. Accordingly, previously low losses to the government are not a reliable indicator for future losses. The GAO has in fact asserted the opposite and has notified Congress that the current program must be revised to avoid putting the government in an untenable situation.

On February 20, 2024, the GAO issued a new report titled *Offshore Oil and Gas: Interior Needs to Improve Decommissioning Enforcement and Mitigate Related Risks* (GAO–24–106229) that provided four recommendations to DOI to strengthen BSEE's and BOEM's decommissioning oversight and enforcement. Recommendation 3 specifically stated the ''Secretary of the Interior should ensure the BOEM Director completes planned actions to further develop, finalize, and fully implement changes to financial assurance regulations and procedures that reduce financial risks, including by (1) requiring higher levels of supplemental bonding, and (2) addressing other known weaknesses.'' The measures BOEM described in the proposed rule and finalized here will, as a practical matter, address this GAO recommendation.

Since 2009, more than 30 corporate bankruptcies have occurred involving offshore oil and gas lessees with decommissioning liabilities that were not covered by financial assurance. The fact that bankruptcies have involved decommissioning liabilities without sufficient supplemental financial assurance demonstrates that the waiver criteria in NTL No. 2008–N07 were inadequate to protect the public from potential responsibility for OCS decommissioning liabilities, especially during periods of low oil and gas prices. For example, ATP Oil & Gas was a mid-sized company with a supplemental financial assurance waiver when it filed for bankruptcy in 2012. Similarly, Bennu Oil & Gas LLC, had a waiver at the time of its bankruptcy filing, and Energy XXI, Ltd. and Stone Energy Corporation obtained waivers less than a year before filing for bankruptcy. While most OCS leases affected by the bankruptcies were ultimately sold or retained by the companies reorganized under chapter 11 of the U.S. Bankruptcy Code, these bankruptcies highlighted the weakness in BOEM's supplemental financial assurance program. BOEM's existing program has, at times, been unable to forecast financial distress of these lessees and grantees that have not previously provided supplemental financial assurance and, as a result, BOEM has not had sufficient time to require and receive supplemental financial assurance prior to a declaration of bankruptcy.

Additionally, challenges arising in bankruptcy proceedings, including the inability to sell less valuable assets that fail to generate new buyers at auction, can result in unplugged wells and orphaned infrastructure. This could result in the American taxpayer paying the cost to plug those wells and decommission that abandoned infrastructure. The amendments finalized in this rulemaking strengthen BOEM's financial assurance regulations to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development.

D. Summary of the June 29, 2023, Proposed Rulemaking

On June 29, 2023, DOI published an NPRM in the **Federal Register** at 88 FR 42136, which proposed amendments to 30 CFR parts 550, 556, and 590. This NPRM proposed to streamline the criteria used for evaluating the financial health of lessees, codify the use of the BSEE probabilistic estimates of decommissioning cost for determining the amount of supplemental financial assurance required, remove restrictive provisions for third-party guarantees and decommissioning accounts, add criteria for which a bond or third-party guarantee that was provided as supplemental financial assurance may be canceled, and clarify bonding requirements for RUEs serving Federal leases. Specifically, the Department proposed to revise the criteria used to evaluate the need for supplemental financial assurance from lessees from the existing five criteria—financial capacity, projected financial strength, business stability, reliability in meeting obligations based on credit rating or trade references, and record of compliance with laws, regulations, and lease terms—to one of two criteria: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. The Department proposed the use of an investment grade credit rating threshold (or proxy credit rating equivalent) and a minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves to determine if a lessee is required to provide supplemental financial assurance.

After examining the financial assurance costs in conjunction with risk coverages derived from using different P-values for decommissioning costs over different time periods for the full implementation of this rule, BOEM proposed that an adequate balance between OCS development and financial risk level on the OCS is achieved by the combination of a P70 value and a phase-in period of 3 years. The proposed phased-in approach allows the lessee, grant holder, or operator to submit the amount due over 3 fiscal years, which is specifically designed to mitigate the disruptive impact of large, immediate financial assurance demands. BOEM notes that poorly-capitalized companies with end-of-life assets may declare bankruptcy at the P70 level, but that bankruptcy would also be a risk under a P90 or a P50 level threshold. It was BOEM's conclusion that a P70 threshold with a 3-year phase-in achieves an adequate balance between the level of protection against the risks that the proposed rule intends to manage with a reasonable period of time to fully implement the costs derived from these policy changes. Details regarding each of the specific proposal provisions are discussed in section III of this preamble.

III. Summary of the Final Rule and Public Comments

For each topic, this section provides a description of what the Department proposed, what the Department is finalizing, and a summary of key comments and responses for each proposal provision. BOEM's full response to comments on the June 29, 2023, NPRM, including any comments not discussed in this preamble, can be found in the memorandum titled, *Risk Management and Financial Assurance for OCS Lease and Grant Obligations: Response to Public Comments Received on the June 29, 2023, Notice of Proposed Rulemaking* available in the docket (Docket No. BOEM–2023–0027) (hereinafter *Response to Public Comments*).

A. Revisions to BOEM Supplemental Financial Assurance Requirements

The Department proposed and is finalizing revisions to the supplemental financial assurance requirements for oil, gas, and sulfur leases, RUE grants, and pipeline ROW grants, as discussed in the subsections below.

1. Leases

In the June 29, 2023, NPRM, the Department proposed changes to the lease financial assurance requirements to (1) modify the evaluation process for requiring supplemental financial assurance by clarifying and streamlining the evaluation criteria, and (2) remove restrictive provisions for third-party guarantees and decommissioning accounts. The proposed rule would allow the Regional Director to require supplemental financial assurance when a lessee or grant holder poses a substantial risk of becoming financially unable to carry out its obligations under its lease or grant, or when the property may not have sufficient value to be sold to another company that could assume those obligations. In the former case, the risk that the taxpayer might have to take on the financial obligations of a lessee or grant holder is mitigated when there is a co-lessee or co-grant holder that has sufficient financial capacity to carry out the obligations. These proposed provisions, the key public comments received on the provisions, and the Department's final amendments are discussed in the following subsections. A summary of all comments received regarding revisions to lease financial assurance provisions and BOEM's corresponding responses can be found in section 3 of the *Response to Public Comments.*

Additionally, DOI also proposed to use the costs of decommissioning resulting from BSEE's new methodology, which provides probabilistic costs using a database of reported decommissioning costs on the OCS, to determine the amount of supplemental financial assurance required, as discussed in section III.B of this preamble.

a. Evaluation of Co-Lessees

Lessees are jointly and severally liable for the lease decommissioning obligations that accrue during their ownership, as well as those that accrued prior to their ownership, which means that each current co-lessee is liable for the full obligation and BSEE may pursue full performance from any individual current lessee. See, *e.g.,* 30 CFR 556.604(d). In addition, a lessee that transfers its interest to another party continues to be liable for any unperformed decommissioning obligations that accrued prior to, or during, the time that lessee owned an interest in the lease. See, *e.g.,* 30 CFR 556.710. This transferor liability applies, however, only to those obligations existing at the time of transfer. New facilities, or additions to existing facilities, that were not in existence at the time of any lease transfer are not obligations of a predecessor company but are only considered obligations of the party that built such new facilities and its co- and successor lessees.

BOEM's existing supplemental financial assurance evaluation process, contained in 30 CFR 556.901(d), is not clear to what extent co-lessee financial capacity is to be considered. The Department proposed to codify in 30 CFR 556.901(d)(3) that this process includes an evaluation of the ability of a co-lessee to carry out present and future obligations. This proposed amendment recognizes that all current owners are benefiting from ongoing operations and are jointly and severally liable for compliance with DOI requirements. All current co-lessees are equally liable for present nonmonetary obligations and such future obligations that accrue while they are co-lessees. As proposed, BOEM would not require supplemental financial assurance for properties where at least one co-lessee meets the credit rating threshold. A summary of the comments received is provided here.

Comment: Several commenters expressed support for DOI's proposal to not require supplemental financial assurance on leases where at least one co-lessee meets the credit rating threshold.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), that the evaluation for determining whether supplemental financial assurance is required includes an evaluation of the ability of a co-lessee to carry out present and future obligations. This amendment recognizes that all current owners are benefiting from ongoing operations and are jointly and severally liable for compliance with DOI requirements. As proposed, the Department is finalizing the provision that it will not require supplemental financial assurance from properties where at least one co-lessee meets the credit rating threshold.

Comment: Several commenters expressed opposition to DOI's proposal, asserting that any co-lessee that does not maintain an investment grade credit rating (or equivalent proxy credit rating) should be required to provide supplemental financial assurance. Commenters recommended that the Department require supplemental financial assurance for their respective working interest shares from all co-lessees that do not maintain an investment grade credit rating for leases that are not exempt based on the reserve analysis. An additional commenter recommended the financial assurance evaluation be extended to sublessees when a company can provide evidence that the sublessee was one of the original installers/owners of the lease facilities.

Response: BOEM acknowledges the commenters' recommendations that the Department should require financial assurance from all co-lessees that do not maintain an investment grade credit rating for their respective working interests but concludes that it is impractical to evaluate co-lessees and operating rights owners since each co-lessee is liable for the total obligation and not their proportional share. DOI is finalizing, as proposed in 30 CFR 556.901(d), to not require supplemental financial assurance for leases where at least one co-lessee meets the credit rating threshold. This amendment recognizes that all current owners are benefiting from ongoing operations and are jointly and severally liable for compliance with DOI requirements. All current co-lessees are equally liable for present nonmonetary obligations and such future obligations that accrue while they are co-lessees.

b. Evaluation Criteria

The Department proposed to revise the criteria in 30 CFR 556.901(d) used to evaluate the need for supplemental financial assurance from lessees from the five criteria—financial capacity, projected financial strength, business stability, reliability in meeting obligations based on credit rating or trade references, and record of compliance with laws, regulations, and lease terms—to a simpler analysis of one of two criteria: (1) credit rating or (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. As discussed in the preamble to the proposed rule at 88 FR 42142–42144, the Department proposed to eliminate the ''business stability'' and the ''record of compliance'' criteria, to replace the ''financial capacity'' and ''reliability'' criteria with issuer credit rating or proxy credit rating, and to replace the ''projected financial strength'' criterion with a ratio of the value of proved oil and gas reserves on a lease to the decommissioning liability associated with those reserves.

Specifically, DOI proposed the following in 30 CFR 556.901(d) to determine whether supplemental financial assurance on a lease may be required: (1) a credit rating, either from an Nationally Recognized Statistical Rating Organization (NRSRO), as identified by the United States Securities and Exchange Commission (SEC) pursuant to its grant of authority under the Credit Rating Agency Reform Act of 2006 and its implementing regulations at 17 CFR parts 240 and 249, or a proxy credit rating determined by BOEM based on a company's audited financial statements; or (2) a minimum ratio of the value of proved oil and gas reserves on a lease to the decommissioning liability associated with those reserves. For discussion of the justification of the credit rating selected and the minimum reserves to decommissioning liabilities ratio selected, see section III.D of this preamble.

These proposed criteria better align BOEM's evaluation process with accepted financial risk evaluation methods used by the banking and finance industry. As discussed in the preamble to the proposed rule (88 FR 42142), eliminating subjective or less precise criteria—such as the length of time in operation to determine business stability or trade references to determine reliability in meeting obligations—will simplify the process and remove criteria that often do not accurately or consistently predict financial distress. Additionally, the Department solicited comments on any other appropriate criteria for use in evaluating the need for supplemental financial assurance from OCS lessees.

Comment: Multiple commenters generally supported the streamlining of the evaluation criteria, particularly the use of credit ratings as a more appropriate criterion than financial capacity, projected financial strength, and business stability.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), the replacement of the prior five criteria with the two criteria: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. This amendment codifies a forward-looking analysis for determining the need for supplemental financial assurance, which is simpler to evaluate for both the Department and lessees, in lieu of a backward-looking analysis.

Comment: Several commenters recommended that the Department completely remove the evaluation to determine if supplemental financial assurance is required. One commenter specifically asked the Department to eliminate this step entirely and to simply require all OCS leaseholders, regardless of financial strength, to provide supplemental financial assurance. An additional commenter urged the Department to require every lessee to post supplemental financial assurance to ensure decommissioning costs are covered and eliminate consideration of proxy credit ratings and the value of proved oil reserves associated with a given lease.

Response: BOEM is the agency within DOI responsible for managing development of the nation's offshore resources in an environmentally and economically responsible way. BOEM must balance OCS development with protection of both the taxpayer and the environment and concludes that this rule achieves an acceptable balance of objectives. BOEM does not believe requiring all entities to provide supplemental financial assurance can be justified by the potential risk to the taxpayer, because financially strong entities are highly unlikely to file for bankruptcy and are highly likely to be able to cover their decommissioning obligations. Additionally, requiring those entities with little likelihood of default to provide supplemental financial assurance would reduce funds available for other capital expenditures. Accordingly, the Department is finalizing, as proposed in 30 CFR 556.901(d), the two evaluation criteria for lessees: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. The purpose of financial assurance is not to prevent problems; it is to ensure there is money to fix them. As such, criteria that do not relate to financial capacity do not target the companies for which the financial assurance is needed. Using the revised criteria simplifies the evaluation process, streamlining the Department's evaluation without compromising the risk to taxpayers. Indeed, the two new criteria are more protective than the existing criteria, as evidenced by the significant increase in the amount of financial assurance that will be required using the updated criteria.

Comment: Commenters who objected to the removal of the record of compliance criterion urged BOEM to be more attentive to past safety performance, deny waivers to any company with idle iron, stipulate that owners with decommissioning obligations for abandoned or idle wells would not be eligible for new leases, and develop a scoring system to grade companies on various safety and environmental metrics to incorporate into the financial assurance analysis.

Response: While commenters offered a conceptual argument to retain the record of compliance criterion, they provided no new data to suggest a correlation between financial strength of a company and its record of compliance. As discussed in the preamble to the proposed rule at 88 FR 42142, BOEM examined the number of incidents of non-compliance (INCs) issued by BSEE, their severity, and the relationship between INCs and financial health/strength of companies and found that the data was not a reliable indicator of financial strength. The data show that the number of incidents is correlated with the number of structures a lessee has on the OCS, and not necessarily to the financial health of the lessee. Additionally, BOEM's financial assurance program is not in and of itself designed to promote safety or compliance (there are other Department regulations addressing these matters), but to assure that a lessee can financially bring a noncompliant lease into compliance. The Department's forward-looking approach, which is being finalized here, allows time for BOEM to demand financial assurance, rather than waiting for inspections and corresponding incidents to occur and then determining that supplemental financial assurance is needed because of the number of INCs.

The Department is finalizing the replacement of the five criteria in 30 CFR 556.901(d) with two criteria for lessees: (1) credit rating and (2) the ratio of the value of proved reserves to decommissioning liability associated with those reserves. This amendment codifies a forward-looking analysis for determining the need for supplemental financial assurance in lieu of the backward-looking analysis that resulted from the use of the five criteria or that would result from using INCs as an indicator. For a summary of all comments received regarding the streamlining of the evaluation criteria, including the removal of the record of compliance criterion, and BOEM's corresponding responses, see sections 3.1 through 3.6 of the *Response to Public Comments.*

2. Right-of-Use and Easement Grants

In the June 29, 2023, NPRM, the Department proposed changes to the RUE financial assurance requirements to clarify the financial assurance requirement for RUEs serving Federal leases, which is not explicitly addressed in the existing regulations. These proposed provisions, the public

comments received on the provisions, and DOI's final amendments are discussed in the following subsections.

a. Base Financial Assurance

The Department proposed to revise 30 CFR 550.166 to provide that any RUE grant holder must provide base financial assurance in a specific amount, regardless of whether the RUE serves a State lease or a Federal OCS lease and proposed a Federal RUE base financial assurance requirement matching the existing $500,000 base financial assurance requirement for State RUEs. For a summary of all comments received regarding revisions to base financial assurance provisions for RUEs and BOEM's corresponding responses, see section 4 of the *Response to Public Comments.*

Comment: Commenters supported the proposal to require a RUE grant holder to provide financial assurance in a specific amount, regardless of whether the RUE serves a State lease or Federal OCS lease, but asserted that BOEM should update the base financial assurance value because it was determined in 1993, was based on costs in relatively shallow waters, and significant inflation has occurred since the last revision.

Response: BOEM agrees with the commenters' assertion that the initial base bond amount was determined many years ago and acknowledges that this value should be reevaluated. Because BOEM did not propose a new value in the NPRM and, therefore, cannot revise it in the final rule, BOEM plans to evaluate the specific values of the base supplemental financial assurance for RUEs, ROWs, and leases in a future rulemaking.

With this rulemaking, the Department is finalizing 30 CFR 550.166, as proposed, that provides that any RUE grant holder must provide base financial assurance of $500,000, regardless of whether the RUE serves a State lease or a Federal OCS lease, to match the existing base financial assurance requirements for State RUEs.

b. Area-Wide Financial Assurance

The Department proposed in 30 CFR 550.166(a) a $500,000 area-wide base financial assurance for RUE grant holders, which would satisfy the base financial assurance requirement for any RUE holder that owns one or more RUEs within the same OCS area, regardless of whether the RUE serves a State or Federal lease. Additionally, the Department proposed in 30 CFR 550.166(a)(1) to allow any lessee that has previously posted area-wide lease financial assurance (pursuant to 30 CFR 556.900(a)(1) or 556.901(a)(2) or (b)(2) for the areas specified in 30 CFR 556.900(a)(2)) to modify that lease financial assurance to also cover any RUE(s) in the area owned by that lessee. The ability to use area-wide lease financial assurance to cover the RUE base financial assurance obligation would be subject to the requirement that the area-wide lease financial assurance be in an amount equal to or greater than the RUE base financial assurance requirement (*i.e.,* equal to or greater than $500,000).

Comment: A commenter asserted that there was no need for a new requirement for area-wide financial assurance for RUEs, as it would solely cover RUE rentals. They suggested that this aspect should already be sufficiently covered under the existing area-wide financial assurance for leases provided by lessees. The commenter also noted that, presently, ''BSEE does not permit transfers of RUEs.'' To address this, the commenter recommended that both BOEM and BSEE should mandate complete ownership filings for all co-owners of the respective ROW and RUE for the Department's approval. They asserted that this approach would appropriately distribute the risk among all co-owners.

Response: BOEM disagrees with the commenter's assertion that there ''is no need for'' area-wide financial assurance requirements for RUEs. RUE holders have decommissioning responsibility and not just that of paying rentals. Area-wide coverage is not being required but being offered as an alternative to separately bonding each RUE. In response to the suggestion that BOEM and BSEE should mandate complete ownership filings for ROW and RUEs, we note that is outside the scope of this rulemaking.

As discussed in the preamble to the proposed rule at 88 FR 42144, the proposed rule at 30 CFR 550.166(a)(1) would allow any lessee that has already posted area-wide lease financial assurance to modify that lease surety bond to also cover any RUE(s) in the area owned by the same lessee. The ability to use the area-wide lease financial assurance to cover the RUE base financial assurance would be subject to the requirement that the area-wide lease financial assurance would be in an amount equal to or greater than the RUE base financial assurance requirement. For example, under the proposal, a lessee with a $3 million area-wide lease surety bond could establish or acquire any number of Federal or State RUEs in the area without having to post any additional financial assurance (other than, potentially, supplemental financial assurance), provided the lessee agrees to modify the terms of its area-wide lease surety bond to also cover any State or Federal RUEs that it owns or acquires. If the existing area-wide financial assurance is not modified, the lessee may satisfy the requirement by providing new financial assurance to cover its RUE(s). In the example, BOEM believes the $3 million area-wide lease surety bond is sufficient to cover the RUE $500,000 requirement. The Department is finalizing this provision as proposed, in addition to new supplemental financial assurance requirements for RUE grant-holders that do not maintain an investment grade credit rating. As discussed earlier in this preamble, BOEM plans to evaluate the specific values of the base supplemental financial assurance for RUEs, ROWs, and leases in a future rulemaking.

The Department is finalizing, as proposed in 30 CFR 550.166(a), the option to provide $500,000 area-wide RUE financial assurance, which will satisfy the base financial assurance requirement for any RUE holder that owns one or more RUEs within the same OCS area, regardless of whether the RUE serves a State or Federal lease. Lessees that have previously posted area-wide lease financial assurance will be able to modify that lease surety bond to also cover any RUE(s) in the area owned by the same lessee. The ability to use area-wide lease financial assurance to cover the RUE base financial assurance obligation will be subject to the requirement that, in addition to covering the lease financial assurance requirement, the area-wide lease financial assurance must include an amount equal to or greater than the RUE base financial assurance requirement (*i.e.,* equal to or greater than $500,000) in order to cover the financial assurance requirements for both the leases and RUEs.

c. Supplemental Financial Assurance

The Department proposed to replace the general statement in 30 CFR 550.160(c) that RUE grant holders ''must meet bonding requirements'' with the specific criteria governing financial assurance requirements found in proposed 30 CFR 556.900 through 556.902, and the applicable financial assurance requirements in 30 CFR 550.166 and 30 CFR part 556, subpart I. Similar to the proposed changes to the evaluation criteria for lease holders, DOI proposed in 30 CFR 550.166(b) to consider the credit rating or proxy credit rating of RUE co-grant holders to determine if a grantee must provide supplemental financial assurance. The

value of proved oil and gas reserves was not included in this evaluation because a RUE grant does not entitle the holder to any interest in oil and gas reserves. For a summary of all comments received regarding revisions to supplemental financial assurance provisions for RUEs and BOEM's corresponding responses, see section 4 of the *Response to Public Comments.*

Comment: Commenters supported the proposal to evaluate the financial health of RUE grant holders using the same criterion as was proposed for oil and gas lessees (*i.e.,* investment grade credit rating of grant holders or co-holders).

Response: BOEM acknowledges the commenters' support, and the Department is finalizing 30 CFR 550.160(c), as proposed, to replace the general statement that RUE grant holders ''must meet bonding requirements'' with the evaluation of a grant holder's financial health using a credit rating or a proxy credit rating to determine supplemental financial assurance demands.

Comment: A commenter suggested that the Department should not require supplemental bonding for RUEs that are servicing and associated with high value leases because some companies own interest in the reserves associated with a RUE granted to maintain a platform operational on an expired lease for servicing production on another lease.

Response: BOEM disagrees with the commenter's assertion that the Department should not require supplemental bonding for RUEs that are servicing and associated with high value leases. RUEs do not grant a holder an interest in reserves. While the same company may own reserves as a lessee, DOI would not be able to compel the grantee to sell the lease to cover the costs of grant decommissioning.

The Department is finalizing, as proposed, 30 CFR 550.160(c), which provides that a RUE grant-holder may be required to provide supplemental financial assurance if they do not maintain an investment grade issuer credit rating or proxy credit rating equivalent. This change is consistent with the evaluation of oil and gas lessees found in finalized 30 CFR 556.901(d). The Department is also finalizing, as proposed, that the value of proved oil and gas reserves will not be considered in this evaluation because a RUE grant does not entitle the holder to any interest in the associated oil and gas reserves.

3. Pipeline Right-of-Way Grants

Existing bonding requirements for pipeline ROW grants, contained in 30 CFR 550.1011, prescribe a $300,000 area-wide base surety bond that guarantees compliance with all the terms and conditions of the pipeline ROW grants held by a company in an OCS area. Additionally, existing 30 CFR 550.1011(a)(2) states that BOEM may require a pipeline ROW grant holder to provide supplemental financial assurance if the Regional Director determines that financial assurance in excess of $300,000 is needed but, unlike with leases, the regulation provides no factors for the Regional Director's consideration when making this determination. Similar to the proposed changes to the evaluation criteria for lease holders, DOI proposed in 30 CFR 550.1011(c) to consider the credit rating or proxy credit rating of ROW co-grant holders to determine if the grantee must provide supplemental financial assurance. The value of proved oil and gas reserves was not included in this evaluation because a ROW grant does not entitle the holder to any interest in the associated oil and gas reserves. For a summary of all comments received regarding revisions to ROWs and BOEM's corresponding responses, see section 5 of the *Response to Public Comments.*

Comment: Commenters supported the proposal to evaluate the financial health of pipeline ROW grant holders using the same criterion as was proposed for oil and gas lessees (*i.e.,* investment grade credit rating or proxy credit rating of grant holders or co-holders).

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 550.1011(c), to evaluate pipeline ROW grant-holders using the criterion proposed for lessees (*i.e.,* investment grade credit rating or proxy credit rating of grant holders or co-holders).

Comment: A commenter suggested that the Department should not require supplemental bonding for ROW pipelines that are servicing and associated with high value leases because some companies own an interest in the reserves that their ROW pipeline services.

Response: BOEM disagrees with the commenter's assertion that the Department should not require supplemental bonding for ROW pipelines that are servicing and associated with high value leases. ROWs do not grant a holder an interest in reserves. While the same company may own reserves as a lessee, DOI would not be able to compel the grantee to sell the lease to cover the costs of grant decommissioning.

Comment: A commenter requested that the Department rethink allowing oil and gas operators to decommission pipelines in place and should ensure that BSEE's decommissioning costs sufficiently meet the cost of removing all pipeline from the seafloor.

Response: Changes to the regulations allowing oil and gas operators to decommission pipelines in place is outside the scope of this rulemaking.

DOI is finalizing, as proposed, 30 CFR 550.1011, which provides for an evaluation of pipeline ROW grant-holders using the criterion proposed for lessees (*i.e.,* issuer credit rating or proxy credit rating). This will ensure that pipeline ROW grant-holders can demonstrate that they have the financial ability to meet their obligations of the ROW.

The Department is finalizing the use of an investment grade credit rating or proxy credit rating for pipeline ROW co-grant holders to determine if a grant holder must provide supplemental financial assurance, consistent with the evaluation of oil and gas lessees in 30 CFR 550.1011(a)(2). The value of proved oil and gas reserves will not be considered in this evaluation because a ROW grant does not entitle the holder to any interest in oil and gas reserves.

B. Use of BSEE's Probabilistic Estimates for Determining Decommissioning Costs

When determining the necessary amount of supplemental financial assurance, BSEE previously provided to BOEM a single, algorithm-based deterministic estimate for decommissioning costs of OCS facilities. In 30 CFR 556.901, the Department proposed to replace BSEE's former single, algorithm-based deterministic estimates for OCS facility decommissioning costs with the new BSEE methodology that provides probabilistic estimates (*i.e.,* P-values) based on decommissioning costs reported by industry pursuant to NTL 2016–N03—*Reporting Requirements for Decommissioning Expenditures on the OCS,* later superseded by NTL 2017–N02. These values represent the likelihood of covering the full cost of decommissioning a facility as a percentage; for example, P70 represents a 70 percent likelihood of covering the full cost of decommissioning a facility. Specifically, the Department proposed to use the P70 value to determine the amount of any required supplemental financial assurance and solicited comments on the use of other values (*i.e.,* P50 and P90) and the associated impacts. Additionally, if probabilistic estimates are not available, BOEM will use the available deterministic value.

BOEM received a wide range of comments on the use of the P70 value that are discussed generally below. A

summary of all comments received regarding the use of BSEE's decommissioning estimates and BOEM's corresponding responses can be found in section 3.7 of the *Response to Public Comments.*

Comment: Multiple commenters supported the use of the P70 value and recommended that BOEM adopt the P70 value in the final rule for consistency with the stated purpose of the proposed rule: to ensure that current lessees are financially able to perform their decommissioning obligations.

Response: BOEM acknowledges the commenters' support for the proposal of P70. The Department is finalizing in 30 CFR 556.901, as proposed, the use of P70 to determine the financial assurance required for properties where the current lessee does not have an investment grade credit rating or the ratio of the value of the proved reserves to decommissioning liabilities associated with those reserves is not greater than or equal to 3-to-1. This approach holds all current lessees that do not meet the credit rating or reserve criteria responsible for providing supplemental financial assurance unless there is an investment grade co-lessee associated with the same decommissioning obligations.

Comment: Conversely, several commenters asserted that the P70 value was not sufficiently conservative to protect other parties and the public in the event of default. They asserted that BOEM should use the P90 value to increase the probability of ensuring that all decommissioning obligations are covered by those operating on the OCS.

Response: BOEM disagrees with the commenters' assertion that the P70 estimate is not sufficiently conservative to protect other parties and the public in the event of a default. The P70 value should not be confused with a figure representing 70 percent of the cost of decommissioning of a particular facility. The statistical P-value relies on the quality and size of the data inputs, as well as the uncertainty existing in these costs.

BOEM's goal for its financial assurance program continues to be the protection of the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production at a competitive disadvantage. A P70 financial assurance level will reduce offshore decommissioning risk to taxpayers relative to previous BSEE deterministic decommissioning estimates, while attempting to reduce the burden on available capital for continued OCS investment that would be imposed by using P90. BOEM's use of the P70 decommissioning value balances the risk of being underfunded at lower financial assurance levels against the risk of setting a financial assurance level at higher P-values that would overstate the costs in a significant number of cases.

BOEM considered bonding at P90, which would result in the lowest risk of the proposed options to the taxpayer from underfunded offshore decommissioning liabilities. However, P90 would result in an approximately 40 percent chance of being over bonded. In addition, BOEM considered the cost of financing, which would generally (particularly in high interest rate environments) increase the risks of burdensome over bonding. BOEM's analysis concluded that the increased cost to lessees resulting from adopting P90 rather than P70 would be too high when compared to the additional risk reduction. As a result, BOEM concluded that P70 reflects a risk tolerance that is neither too aggressive nor too conservative, striking an appropriate balance between the risk of default to the taxpayer and the burden to the regulated community.

Comment: Other commenters asserted that the proposed rule did not include sufficient information and transparency about how the probabilistic estimates are derived.

Response: In response to commenters asserting that BOEM did not explain the development of the P-values, BOEM notes that the development of BSEE's probabilistic estimates was discussed in the preamble to the proposed rule at 88 FR 42143. The decommissioning cost estimates are developed as a distribution (*i.e.,* P50, P70, and P90) based on actual decommissioning expenditure data received from OCS operators since mid-2016. The data is available based on a lease, ROW, or RUE basis and also contains details on a well, platform, pipeline, and site clearance level. It does not consider which companies are jointly and severally liable for meeting decommissioning obligations. The new probabilistic estimates were developed using industry-reported decommissioning costs pursuant to NTL–2016–N03, *Reporting Requirements for Decommissioning Expenditures on the OCS,* later superseded by NTL–2017–N02. Based on this reported data, BSEE developed three probabilistic estimates of decommissioning costs for each OCS facility on a given lease. The lowest cost estimate would have a 50 percent likelihood of covering the full cost of decommissioning a facility and is thus referred to as ''P50.'' The second lowest cost estimate, P70, would have a 70 percent likelihood of covering the full cost of decommissioning a facility. The third and highest cost estimate considered, P90, would have a 90 percent likelihood of covering the full cost of decommissioning a facility. These estimates are based on what the government would expect to pay if an operator failed to perform decommissioning. The current estimates can be found here: *https://www.data.bsee.gov/Leasing/DecomCostEst/Default.aspx.*

Comment: Some commenters asserted that the P70 values, and sometimes even the P50 values, exceed their internal estimates for their decommissioning costs and that BOEM should allow the use of company-provided estimates. These commenters noted that these internal estimates were based on contractor bids and experience.

Response: BOEM acknowledges the commenters' concerns that the P70 estimates may be higher than the actual cost of decommissioning for specific platforms. In general, it can be more expensive for the government to decommission a facility than it is for an OCS operator to do so. Therefore, even if the P70 value is higher than company-derived values, it may be more aligned with the costs that the government would incur to perform the decommissioning, which is the relevant consideration when determining the cost to decommission a facility if the company fails to do so. The final rule establishes a procedure for submitting these issues for the consideration of the Regional Director for a reduction in the supplemental financial assurance demand.

Comment: Multiple commenters asserted that BOEM should focus on sole liability properties (*i.e.,* properties with no predecessors or co-lessees), claiming that those properties pose the most risk to the U.S. taxpayer.

Response: BOEM disagrees with the commenters' assertion that it should focus only on sole liability properties, an approach that would not sufficiently protect the taxpayer. As discussed in the RIA, there are approximately $14.6 billion in decommissioning liabilities associated with leases without an investment grade predecessor in the chain of title, of which only $460 million is associated with sole liability properties. Thus, the Department is finalizing an approach that holds all current lessees responsible for providing supplemental financial assurance unless they meet the waiver criteria or are

associated with an investment grade co-lessee. The Department is finalizing, as proposed, the use of P70 to determine the amount of supplemental financial assurance required for properties where the current lessee or co-lessee does not have an investment grade credit rating or the ratio of the value of the proved reserves to decommissioning liabilities associated with those reserves is not greater than or equal to 3-to-1.

Comment: Commenters also asserted that the proposed rule ignored joint and several liability, and that by creating a system that does not account for the financial strength of liable predecessors, the proposed rule insulates predecessor lessees from their liabilities and relieves them of the need to perform due diligence when selling their lease(s) to a subsequent lessee.

Response: Omitting the existence of predecessor lessees from the analysis of whether to waive the requirement of supplemental financial assurance for a current lessee—the approach being finalized here—addresses several associated issues. It ensures that the current lessees have the financial capability to fulfill their decommissioning obligations. It also eliminates the incentive to use joint and several liability as an excuse to delay setting aside funds to pay for predictable decommissioning costs. This approach does not change or undermine joint and several liability; it retains BOEM's and BSEE's authority to pursue predecessor lessees for the performance of decommissioning.

Comment: Other commenters asserted that BOEM must consider the obligations of the predecessors in the chain-of-title before seeking additional financial assurance from current lessees, otherwise the result is requiring ''double bonding.''

Response: Commenters appear to be claiming that private arrangements between assignors (predecessors) and assignees (successors) are sufficient to protect the government without a requirement for providing supplemental bonds to the government. That is only partially the case. In most cases, the government cannot call the bonds in question. Any duplication can be avoided by the private parties cancelling any private arrangements that are not needed in light of government requirements. It is DOI's obligation to set bottom line, public, and uniform thresholds to protect the U.S. and its taxpayers; private agreements are unrelated to the Department's obligations under OCSLA.

Comment: One commenter provided an updated analysis of burden, including a comparison of the three proposed decommissioning estimate values, which was referenced by multiple commenters in their comment submissions. The commenter's analysis asserted that the results across the liability levels ''are largely dependent on each company's 'portfolio' of decommissioning liabilities'' and stated that in any portfolio of uncertain results, some cost estimates will exceed their expected value, while some cost estimates will be less. Accordingly, the commenter asserted, percentile values are not additive, as actual variances from estimates would offset each other so that the P70 of the combined outcomes of the portfolio would approach the sum of the mean. The commenter stated that a better approach would be to sum the mean values or to conduct a portfolio analysis for each operator. According to the commenter, P50 is more representative of a log-normal distribution's statistical average. Additionally, the commenter provided a cost comparison for P70 to P90 that included the following estimates: decrease in capital expenditures over 10 years ($4.7 billion vs $5.565 billion), decrease in OCS production (55 million barrels of oil equivalents (mmboe) vs 64 mmboe), and decrease in industry jobs across the Gulf coast region (36,200 vs 43,300).

Response: BSEE is responsible for providing BOEM (and the public) estimated costs to perform decommissioning. Since BOEM conducts the company financial risk evaluation to determine the appropriate financial assurance amount required, BSEE provides BOEM a range of estimates associated with analyses of data collected under the authority found at 30 CFR 250.1704 (subpart Q) and guidance under NTL No. 2017–N02. These costs are considered a proxy for ''fair value'', *i.e.,* how much it would cost BSEE to cause near immediate decommissioning by contracting with a third-party services provider.

Actual expenditure data has been collected by regulation since April 2016 for wells and facilities, and since May 2017 for pipelines. To date, BSEE has collected about 2,050 data points for wells, 1,235 for facilities (including removal and site clearance and verification), and 1,020 for pipelines. This actual expenditure data collected shows a wide range of costs for similarly situated infrastructure, making a probabilistic approach preferred over a single deterministic estimate. When sufficient data exists for a particular subset of the sample (*e.g.,* dry trees on fixed structures in 400 feet of water), BSEE performs multivariate regression analyses to create distributions of cost outcomes.

Based on these distributions, BSEE posts P50, P70, and P90 estimates for each well, platform, or pipeline, and aggregated for each lease, ROW, or RUE.[1] When sufficient data does not exist (*e.g.,* dry trees on floating structures) a single deterministic (or point) estimate is provided. Note that the point estimate contains no information about its potential variability. Contrast this with probabilistic estimates where a P50 estimate implies that half of the reported values should be less than and half should be more than the P50 estimate. Likewise, the P70 and P90 estimates imply that that there is 30 percent and 10 percent chance, respectively, that the decommissioning cost will be higher than the estimate. Said another way, P70 and P90 values imply there is a 70 percent and a 90 percent chance, respectively, that the estimated cost will not be exceeded. The data does not take into consideration which companies are jointly and severally liable for meeting decommissioning obligations.

It would be inappropriate for BOEM to consider the liability distribution across a company's entire portfolio, as financial assurance for one lease cannot be used to cover an unassociated lease. Financial assurance provided to BOEM is generally structured to provide coverage at the lease level; even for companies with multiple leases, policy coverage is typically limited to only those associated facilities on the specified lease. For example, financial assurance at BSEE's P70 level provides risk mitigation in the event of a default of that lessee where any excess financial assurance resulting from facilities on the same lease whose decommissioning costs were below the P70-estimate would be available to cover associated lease facilities whose decommissioning costs exceed the P70 value. For lessees or grant-holders that can demonstrate decommissioning costs below BSEE's estimates, the Department has included in the final rule a provision in 30 CFR 556.901(g) allowing for the submission of decommissioning cost data for consideration by the Regional Director in potentially reducing the supplemental financial assurance demand. Such information could include, for example, an existing contract for decommissioning activities. BOEM will consult with BSEE on the

[1] There is not a technical support document in support of these calculations; the data used for these estimates is available at *https://www.data.bsee.gov/Leasing/DecomCostEst/Default.aspx.*

information received prior to deciding to reduce the required amount of supplemental financial assurance. BOEM did not select the P90 level because of the expected burdens it would place on the industry, such as the examples highlighted by the commenter.

BOEM's goal for its financial assurance program continues to be the protection of the American taxpayer from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage.

C. Revisions to Other Types of Supplemental Financial Assurance

The Department proposed and is finalizing revisions to the supplemental financial assurance requirements for third-party guarantees and decommissioning accounts, and prerequisites for transfers, as discussed in the subsections below.

1. Third-Party Guarantees

The Department proposed in 30 CFR 556.905(a) to evaluate a potential guarantor using the same credit rating or proxy credit rating criterion as was proposed for lessees. The value of proved oil and gas reserves of an associated lease would not be considered because that value is a characteristic of the lease belonging to the guaranteed lessee and not an asset belonging to the guarantor, and because liquid assets are needed to finance compliance or decommissioning. As discussed in the preamble to the proposed rule (88 FR 42145), the criteria to evaluate a guarantor provided in the existing regulations have proved difficult to apply. Using the same financial evaluation criterion, *i.e.,* issuer credit rating or proxy credit rating, to assess both guarantors and lessees as the most relevant measure of future capacity would provide consistency in evaluations and avoid overreliance on net worth. Using the same criterion also simplifies the evaluation process, making it more efficient without compromising the risk to taxpayers.

Additionally, to allow more flexibility in the use of third-party guarantees, the final rule allows a third-party guarantee to be used as supplemental financial assurance for a RUE or ROW grant as well as a lease. Most significantly, the amendment proposed in § 556.902(a)(3) would remove the requirement for a third-party guarantee to ensure compliance with the obligations of all lessees, operating rights owners, and operators on the lease, and, as agreed to by BOEM, would allow a guarantee limited to a specific amount or limited one or more specific lease obligations.

A summary of all comments received regarding third-party guarantees and BOEM's corresponding responses regarding the provisions to evaluate third-party guarantors can be found in section 6.1 of the *Response to Public Comments.*

Comment: Commenters generally supported the proposal to evaluate a potential guarantor using the same credit rating or proxy credit rating criterion as proposed for lessees.

Response: BOEM acknowledges the commenters' support for the proposal to evaluate a potential guarantor using the same credit rating or proxy credit rating criterion as proposed for lessees, and the Department is finalizing this provision in 30 CFR 556.905(a) as proposed.

Comment: Multiple commenters generally supported the proposal to allow limiting third-party guarantees to a specific amount.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing the ability to limit third-party guarantees to a specific amount or one or more specific lease obligations in 30 CFR 556.902(a)(3).

Comment: One commenter suggested that DOI modify its regulations to allow guarantors to limit their guarantees to specific obligations. They asserted this modification is consistent with the proposed rule and would ease pressure on the security market by removing any additional and unstated obligations from guarantees that are not included in a financial assurance demand order.

Response: The Department is finalizing the proposed amendment to § 556.902(a)(3), which will remove the requirement for a third-party guarantee to ensure compliance with the obligations of all lessees, operating rights owners, and operators on the lease, and will allow, as agreed to by BOEM, a guarantee limited to a specific amount or to one or more specific lease obligations. This change, to replace a requirement to cover all costs, parties, and obligations with permission to limit any of them, part of which BOEM is adding in response to public comments, allows a guarantor to limit its guarantee to a specific amount of the total financial assurance requirement. By allowing a third-party guarantor to guarantee only the obligations it wishes to cover, BOEM provides industry with the flexibility to use the guarantee to satisfy supplemental financial assurance requirements without forcing the guarantor to cover the risks associated with all parties on the lease or grant or operations in which the party they wish to guarantee has no interest and over which the guarantor may have limited influence. Moreover, BOEM's capacity to accept a third-party guarantee that is limited to the obligations of a specific party does not reduce BOEM's protection because if a limited guarantee is approved, the guaranteed party will be required to provide other supplemental financial assurance with respect to any of its liabilities left uncovered by the limited guarantee.

Comment: Other commenters opposed the proposal and asserted that third-party guarantors should not be excused from the requirement that guarantees cover all obligations of lessees, operating rights owners, and operators on the lease, but did not provide supporting reasoning for their assertions.

Response: BOEM believes that allowing third-party guarantors to limit their guaranteed obligations will ease the burden for entities required to provide additional supplemental financial assurance, while continuing to reduce the risk to taxpayers. DOI has added regulatory language in the final rule in 30 CFR 556.905(b) specifically allowing a third-party to limit its cumulative obligations to a fixed dollar amount or to covering the costs to perform one or more specific lease obligations (with no fixed dollar amount). In both scenarios, the value or the obligations to be covered must be agreed to by BOEM at the time the third-party guarantee is provided.

Additionally, to allow more flexibility in the use of third-party guarantees, the final rule will allow a third-party guarantee to be used as supplemental financial assurance for a RUE or ROW grant, as well as a lease.

BOEM acknowledges the commenters' opposition to allowing third-party guarantors to limit their guarantee and BOEM assumes the concern flows from a belief that the third-party guarantee may be insufficient. Contrary to this understanding, however, the lessee must still provide the total amount of the supplemental financial assurance demand through other financial assurance methods, even if a third-party guarantor limits the guarantee.

The proposed rule included amendments to allow BOEM to cancel a third-party guarantee under the same terms and conditions that apply to cancellation of other types of financial assurance, as provided in proposed § 556.906(d)(2). No comments were received on this provision. Therefore, the Department is finalizing, as

proposed, amendments to allow BOEM to cancel a third-party guarantee under the same terms and conditions that apply to cancellation of other types of financial assurance, as provided in proposed § 556.906(d)(2).

Finally, the existing regulation refers to both a ''guarantee'' and an ''indemnity agreement'' (which BOEM intended to mean the same thing), and the proposed rule clarified that the regulations contemplate only one agreement: the guarantee agreement. No comments were received on this proposed amendment; therefore, the Department is also finalizing the clarification that both a ''guarantee'' and an ''indemnity agreement'' contemplate the same guarantee agreement by removing all references to ''indemnity agreement'' in the regulatory text. This terminology is changed to clarify that the government is not required to incur the expenses of decommissioning before demanding compensation from the guarantor.

2. Decommissioning Accounts

The Department proposed to rename the lease-specific abandonment accounts in 30 CFR 556.904 as ''Decommissioning Accounts,'' the terminology used by the industry. This name change is intended to remove any perceived limitation that this type of account can apply to only a single lease, and to signify that these accounts may be used to ensure compliance with supplemental financial assurance requirements for a RUE and ROW grant, as well as a lease. To make these accounts more attractive to parties who may desire to use this method of providing supplemental financial assurance, the Department also proposed to remove the requirement in 30 CFR 556.904(d) to pledge Treasury securities to fund the account once the funds equal the maximum amount insurable by the Federal Deposit Insurance Corporation (FDIC)/Federal Savings and Loan Insurance Corporation (FSLIC), for which insurance is currently capped at $250,000.

No comments were received specifically on the proposed amendment to rename the lease-specific abandonment accounts in 30 CFR 556.904 as ''Decommissioning Accounts'' or the proposed amendment to remove the requirement to pledge Treasury securities to fund the account before the funds equal the maximum amount insurable by the FDIC/FSLIC. Therefore, the Department is finalizing 30 CFR 556.904, as proposed, to rename the lease-specific abandonment accounts as ''Decommissioning Accounts.'' The Department is also finalizing the removal of the requirement to pledge Treasury securities to fund the account before the funds equal the maximum amount insurable by the FDIC/FSLIC.

3. Transfers of Lease Interests to Other Lessees or Operating Rights Holders

The Department proposed amendments to update subparts G (30 CFR 556.704) and H (30 CFR 556.802) of the Department's existing part 556 regulations to clarify that BOEM will not approve the transfer of a lease interest, whether a record title interest or an operating rights interest, until the transferee complies with all applicable regulations and orders, including financial assurance requirements. As discussed in the preamble to the proposed rule (88 FR 42146), many of the facilities currently on the OCS have decommissioning obligations where the cost of performance greatly exceeds the amount of financial assurance currently available to DOI. To address this problem, the Department proposed to clarify that it may withhold approval of any transfer or assignment of any lease interest unless and until the financial assurance requirements have been satisfied.

A summary of all comments received regarding transfers and BOEM's corresponding responses regarding revisions to transfers can be found in section 6.2 of the *Response to Public Comments.*

Comment: Commenters generally supported the proposal to allow BOEM to withhold approval of any new transfer or assignment of any lease interest until financial assurance obligations are satisfied.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed, amendments to update subparts G (30 CFR 556.704) and H (30 CFR 556.802) of the Department's existing part 556 regulations to clarify that BOEM may withhold approval of the transfer of a lease interest, whether a record title interest or an operating rights interest, until the transferee complies with all applicable regulations and orders, including financial assurance requirements. As a result of these final amendments, BOEM may withhold approval of any new transfer or assignment of any lease interest unless and until financial assurance demands have been satisfied.

D. Evaluation Methodology

The Department proposed and is finalizing revisions to the financial evaluation criteria that will be used for determining supplemental financial assurance requirements for oil, gas, and sulfur leases, RUE grants, and pipeline ROW grants. The proposed evaluation methodology for the revised criteria, the public comments received, and DOI's final amendments are discussed in the subsections below. Summaries of all comments received regarding credit ratings, proxy credit ratings, and valuing proved oil and gas reserves and BOEM's corresponding responses can be found in section 7 of the *Response to Public Comments.*

1. Credit Ratings

a. Use of an ''Issuer Credit Rating''

The Department proposed to use an ''issuer credit rating'' to evaluate the financial health of OCS lessees, grant holders, and guarantors, and proposed to include the new term and corresponding definition in 30 CFR 550.105 and 556.105. As discussed in the preamble to the proposed rule (88 FR 42146), an issuer credit rating provides the rating agencies' opinions of the entity's ability to honor senior unsecured debt and debt-like obligations. The Department proposed to accept only issuer credit ratings from a Nationally Recognized Statistical Rating Organization (NRSRO), such as Standard and Poor's (S&P) Rating Services and Moody's Investors Service Incorporated (or any of their subsidiaries). General comments on issuer credit ratings are as follows:

Comment: Commenters generally supported the use of an issuer credit rating. Several commenters recommended that BOEM include Fitch Ratings in the definition as it is an NRSRO equivalent to S&P's and Moody's.

Response: BOEM acknowledges the commenters' support and agrees with the commenters' assertion that the intent of the proposed rule was to allow credit ratings from Fitch Ratings. The Department has included Fitch Ratings and its subsidiaries in the final rule in 30 CFR 556.105.

Comment: An additional commenter noted that BOEM should remove the term and definition of issuer credit rating from part 550 because it is not used in the part.

Response: The commenters' assertion is correct, and the Department is not finalizing the proposed addition of ''Issuer credit rating'' to 30 CFR part 550. In part 550, the existing regulatory text references 30 CFR part 556 to discuss the use of the issuer credit rating.

b. Credit Rating Threshold

As discussed in the proposed RIA, BOEM reviewed historical default rates

across the entire credit rating spectrum, as well as the credit profile of oil and gas sector bankruptcies arising from the commodity price downturn in 2014, to determine an appropriate level of risk. As would be expected, the average S&P historical 1-year default rates increase significantly with lower ratings. The average S&P 1-year default rate for BBB-rated companies from 1981 to 2020 was 0.24 percent. Comparatively, the average 1-year default rate for BB- rated companies was 1.21 percent, for B- rated companies, 8.73 percent, and for C rated companies, 24.92 percent. In the proposal, BOEM asserted that 1-year default rates are an appropriate measure of risk, given BOEM's policy of reviewing the financial status of lessees, ROW holders, and RUE holders, typically on an annual basis (the review typically corresponding with the release of audited annual financial statements). In addition, throughout the year, BOEM monitors company credit rating changes, market reports, trade press, articles in major news media, and quarterly financial reports to review the financial status of lessees, ROW holders, and RUE holders. The amended regulation, as proposed, would not preclude a demand for supplemental financial assurance through the Regional Director's regulatory authority at any time.

The Department proposed to use an investment grade credit rating threshold for determining if supplemental financial assurance may be required by a lessee. The Department proposed the term and associated definition of ''Investment grade credit rating'' in 30 CFR 550.105 and 556.105. BOEM explained in the preamble to the proposed rule (88 FR 42159) that the use of an investment grade credit rating standard for waiving supplemental financial assurance was an appropriate threshold because it minimizes credit default risk to the taxpayer without overburdening offshore companies with the cost of providing financial assurance in low credit risk scenarios. BOEM received a wide range of comments on the proposal to use an investment grade credit rating threshold for determining supplemental financial assurance requirements, as summarized below.

Comment: Multiple commenters asserted that the proposal would result in significant hardship to small businesses that did not meet this criterion and hence would have to provide supplemental financial assurance. Commenters argued that a requirement to provide supplemental financial assurance would increase the risks of defaulting, not investing in maintenance of existing operations, laying off employees, delaying performance of current decommissioning obligations, and diverting capital funds needed for future OCS energy development.

Response: BOEM acknowledges the commenters' concern and considered the effects on small entities; however, BOEM is not targeting the size of companies. BOEM is evaluating the financial strength of all companies in order to ensure that the development of energy in the OCS is safe and protects both the taxpayer and the environment. The Department has included numerous provisions in this rulemaking to reduce the burden on small entities. BOEM acknowledged in the proposed rule (88 FR 42146) that small businesses may not have issuer credit ratings and, to address this issue, proposed to allow entities without a rating to request that the BOEM Regional Director assess a proxy credit rating. Additionally, these small businesses can be evaluated on the proved reserves of their lease to determine whether they may be waived from the requirement to provide additional supplemental financial assurance, also potentially reducing their financial burden. Furthermore, on a lease where the lessee has an investment grade credit rating, BOEM will waive co-lessees from having to provide supplemental financial assurance. The Department also included phased-in implementation, and increased the flexibility of decommissioning accounts and third party guarantees to reduce the financial burden on all lessees, including small businesses.

Comment: Multiple commenters supported the use of an investment grade threshold.

Response: BOEM acknowledges the commenters' support and agrees that using a credit rating threshold of investment grade strikes the appropriate balance between both DOI's and the conventional energy sector's goal to protect the American taxpayers from exposure to financial loss associated with OCS development and the burden of providing financial assurance because of the low default risk associated with companies that maintain an investment grade credit rating. The Department is finalizing, as proposed in 30 CFR 556.105, the use of an investment grade credit rating threshold.

Comment: Other commenters supported an even higher credit rating threshold.

Response: BOEM acknowledges the commenters' support for the change in the proposed rule that changed the credit rating threshold for waiver of supplemental financial assurance from BB- to BBB- but disagrees with the commenters' assertion that BOEM should further raise the threshold to a higher rating. As discussed in the preamble to the proposed rule, BOEM believes that 1-year default rates are an appropriate measure of risk, given BOEM's policy of reviewing the financial status of lessees, ROW holders, and RUE holders at least on an annual basis (the review typically corresponds with the release of audited annual financial statements). As would be expected, the average S&P historical 1-year default rates increase significantly with lower ratings. The average S&P 1-year default rate for BBB- rated companies from 1981 to 2020 was 0.24 percent. Comparatively, the average 1-year default rate for BB- rated companies was 1.21 percent, for B- rated companies, 8.73 percent, and for C rated companies, 24.92 percent. Raising the threshold criteria would only reduce the rate to 0.12 percent for a credit rating of BBB+ or to 0.07 percent for a credit rating of A-. BOEM believes that the 1-year default rate for BBB- rated companies of 0.24 percent balances the need for ensuring lessee obligations in the OCS are met while ensuring that the development of the nation's offshore resources is not unreasonably hindered. Raising the threshold to a higher value would reduce capital available to companies for investment, with little additional protection from the effects of bankruptcy. Additionally, financial assurance can only be used for the obligations of the specific lease for which it is provided. Having more financial assurance from low-risk companies will not provide meaningful protection against the default of high-risk companies and thus would have an insignificant effect on aggregate risk.

Comment: One commenter asserted that the proposal is a ''form of adverse selection against financial assurance providers because only entities with an elevated risk of default will remain in the market for financial assurance instruments such as surety bonds.''

Response: BOEM disagrees with the commenter's assertion that the proposal is a ''form of adverse selection.'' ''Adverse selection'' describes the phenomenon whereby one party to a transaction has better information than the other and therefore prices are adjusted to accommodate this discrepancy in information. The commenters do not explain how that concept applies to the rulemaking. They assert that it amounts to ''adverse selection'' against financial assurance providers because ''only entities with an elevated risk of default will remain in the market for financial assurance

instruments such as surety bonds.'' There is no assertion of any discrepancy in the information available to lessees vs. assurance providers or any effect on the price of that transaction and BOEM does not see any. To the extent the commenters are asserting that the risk pool is too small to make underwriting feasible, their comment conflicts with other comments received claiming that the rule requires supplemental assurance from relatively low risk lessees. The Department continues, as proposed, to allow other types of financial assurance instruments in addition to bonds in the final rule. Under BOEM's past practice, many companies were waived from providing supplemental financial assurance, and it is likely that only companies with an elevated risk of default sought to obtain bonds to comply with the existing regulations. Additionally, the number of companies requesting bonds for use as supplemental financial assurance and their corresponding risk profile does not preclude a viable bond market as the market can set the fees and collateral required to obtain the bonds.

Comment: Several commenters expressed concerns that the preamble to the proposed rule alluded to monitoring of credit ratings, but the regulatory text did not mention the monitoring. They asserted that, to ensure these commitments are kept, the Department must include specific requirements for reviewing credit ratings regularly, with a requirement for BOEM to reassess credit ratings at least once per year.

Response: With respect to monitoring credit ratings, BOEM stated in the preamble to the proposed rule at 88 FR 42147 (and has repeated in this final rulemaking) that BOEM's general practice is to review ''the financial status of lessees, ROW holders, and RUE holders at least on an annual basis (the review typically corresponding with the release of audited financial statements).'' BOEM's financial assurance program is intended to ensure that private companies have the capacity to meet their financial and non-financial obligations. BOEM seeks to balance the financial risk to the government and the taxpayer with the regulatory burden on lessees and grantees. BOEM did not add additional regulatory text in this final rule to address this comment because it is unnecessary; BOEM maintains the general practice of evaluating lessees, RUE grant-holders, and pipeline ROW grant-holders for financial risk on at least an annual basis. The amended regulation would not preclude a demand for supplemental financial assurance through the Regional Director's regulatory authority at any time.

As discussed in the proposed RIA, of the 276 companies analyzed, none were rated at or above BBB- at the time of bankruptcy or within 10 years prior to bankruptcy. As such, BOEM has selected BBB- as the credit rating threshold for providing additional financial assurance. The Department is finalizing, as proposed in 30 CFR 556.901(d), an issuer credit rating threshold of BBB- (S&P and Fitch) or Baa3 (Moody's), an equivalent credit rating provided by another SEC-recognized NRSRO, or an equivalent proxy credit rating, to ensure that lessees and grant holders have the capacity to meet their financial and non-financial obligations. In order to both ensure that companies do not ''cause [unmitigated] damage to the environment or to property, or endanger life or health,'' 43 U.S.C. 1332(6), and to promote ''expeditious and orderly development,'' 43 U.S.C. 1332(3), BOEM seeks to balance the financial risk to the government and the taxpayer while minimizing unreasonable regulatory burdens. If different NRSROs provide different ratings for the same lessee, BOEM will use the higher of the lessee's ratings. Additionally, as BOEM monitors company rating changes throughout the year, use of this threshold will ensure that BOEM has adequate time to demand needed financial assurance before a company drops further below the investment grade rating.

2. Proxy Credit Ratings

The Department proposed in 30 CFR 556.901(d) to allow entities that do not have a NRSRO-issued credit rating to request that the Regional Director determine a proxy credit rating based on audited financial information for the most recent fiscal year, including an income statement, a balance sheet, a statement of cash flows, and the auditor's certificate. As proposed, DOI intended the ''most recent fiscal year'' to mean a continuous 12-month period within the 24-months prior to the Regional Director's determination that supplemental financial assurance is required. General comments on proxy credit ratings are as follows:

Comment: Commenters expressed concerns regarding BOEM's proposal to use a proxy credit rating for entities without an issuer credit rating. Commenters asserted that BOEM is not a financial rating agency and does not have the capacity or expertise to institute a program to develop proxy credit ratings.

Response: BOEM is not developing the credit rating; it is using S&P Global Inc.'s Credit Analytics credit model, in conjunction with company-provided financial information for the most recent fiscal year to obtain a proxy rating. As discussed in the preamble to the proposed rule at 88 FR 42146, the Regional Director would use the model and company-provided audited financial information for the most recent fiscal year, including an income statement, a balance sheet, a statement of cash flows, and the auditor's certificate. The use of S&P Global Inc.'s Credit Analytics credit model provides an accurate and objective method to assess any given company's probability of default on its financial obligations based on its audited financial statements. The vast majority of companies operating on the OCS are private companies that do not have an issuer credit rating; therefore, without an option for a proxy credit rating, these companies would be required to provide supplemental financial assurance unless they met the reserves criterion. The Department proposed, and is finalizing in 30 CFR 556.901(d), the use of a proxy credit rating to benefit those companies without an issuer credit rating, particularly small businesses, and to therefore reduce their burden by allowing them the opportunity to demonstrate that they should not be required to provide supplemental financial assurance.

Comment: Commenters asserted that companies would need to establish a proxy credit rating using the ''intricate financial models of S&P and Moody's'', which would be time consuming, and that providing the information that BOEM proposed to require in order to perform a proxy rating would represent a burden for small companies.

Response: BOEM disagrees with the commenter's assertion that the companies would need to establish a proxy credit rating using the ''intricate financial models of S&P and Moody's'' and that the development would be time-consuming. Companies without a credit rating can provide BOEM with audited financials and BOEM will perform the modeling to determine the proxy credit rating. BOEM does not believe this option creates an undue burden on small businesses, as those small businesses would be required to provide supplemental financial assurance if they could not obtain an issuer credit rating; the proxy credit rating provides an alternative for these businesses to qualify for the financial waiver. Additionally, if a company finds this alternative more burdensome than the benefit of avoiding posting

supplemental financial assurance, nothing in the regulations requires them to select this alternative. Providing audited financials in exchange for possible supplemental financial assurance avoidance is consistent with practice under the current regulations and thus not an additional burden.

The Department proposed to use S&P Global Inc.'s Credit Analytics credit model to calculate proxy credit ratings, but retained the right to use a different model if it determines that a different model more accurately reflects those factors relevant to the financial evaluation of companies operating on the OCS. BOEM specifically solicited comment on the use of S&P Global Inc.'s Credit Analytics credit model for developing proxy credit ratings. General comments on the use of the S&P model are as follows:

Comment: Commenters were generally supportive of the use of S&P Global Inc.'s Credit Analytics credit model.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), the option for companies without issuer credit ratings to request the Regional Director to determine a proxy credit rating based on audited financial information for the most recent fiscal year and the S&P credit model.

3. Valuing Proved Oil and Gas Reserves

The Department proposed in 30 CFR 556.901(d) to consider the proved reserves on a particular lease when determining whether supplemental financial assurance is required. As discussed in the preamble to the proposed rule (88 FR 42147), BOEM would require the lessee to submit a reserve report for the proved oil and gas reserves (as defined by the SEC regulations at 17 CFR 210.4–10(a)(22)) located on a given lease. DOI proposed that companies should report the value of their reserves using the methodology pursuant to the SEC's regulations on reserve reporting, and the presentation should be by the lease, or leases, for which the exemption is being requested. These regulations are commonly used and understood by offshore oil and gas companies and such reserve reports are already produced by publicly traded companies. This also allows BOEM to rely on the established SEC regulations on the definitions, qualifications, and requirements for proved reserves, rather than attempting to recreate these regulations. BOEM would use the value of proved oil and gas reserves per-lease when determining whether the discounted value of the reserves on any given lease exceeds three times the cost of the proposed P70 decommissioning estimate associated with the production of those reserves.

Additionally, the Department proposed the use of a ratio of the value of proved reserves to decommissioning liability associated with those reserves that meets or exceeds a value of 3-to-1. As discussed in the preamble to the proposed rule (88 FR 42148), BOEM believes that a property with a sufficient ''reserves-to-decommissioning cost'' ratio would likely be purchased by another company if a current lessee defaults on its obligations, thereby reducing the risk that decommissioning costs for that property would be borne by the government, and consequently reducing the need for supplemental financial assurance. In BOEM's judgment, a ratio of 3-to-1 provides sufficient risk reduction to justify a Regional Director determination that the lessee is not required to provide supplemental financial assurance for that lease. Bankruptcy data show that the most valuable properties of the bankrupt company (with at least a 3-to-1 ratio of the value of reserves to decommissioning costs) are acquired by another entity. That result accords with BOEM's experience and with common sense because the value of these properties is economically viable even after including the decommissioning cost. Additionally, no commenters provided a different value than 3-to-1 in response to BOEM's solicitation for comment on other appropriate values.

Comment: Multiple commenters generally supported the use of a minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves.

Response: BOEM acknowledges the commenters' support, and the Department is finalizing, as proposed in 30 CFR 556.901(d), the use of a minimum 3-to-1 ratio.

Comment: Several commenters opposed the use of the ratio, asserting that normal fluctuations in the demand and price of oil and gas, coupled with the imminent global shift away from fossil fuels to renewable energy, make it likely that the value of proved oil reserves in all leases will decline over time. As a result, lessees may earn less over the life of the lease and in turn, have less capital to cover decommissioning costs.

Response: There are many external factors that can impact the value of reserves. BOEM's use of this metric is only to determine the likelihood that a lease would be acquired, due to the value of the reserves left on the lease, by a financially healthy company that would then be liable for lease obligations.

Comment: Several commenters asserted that the value of decommissioning liability should be added back to the reserve value to avoid double counting. Additional commenters asserted that comparing undiscounted decommissioning liability to the present value of underlying reserves was an incorrect analysis.

Response: BOEM agrees with the commenters that the decommissioning liability should not be double counted; it is not the Bureau's intent to double count the decommissioning liability. The regulations are clear that BOEM is asking for the discounted value of the reserves (*e.g.,* realized sale price minus uplift costs) without factoring in decommissioning. BOEM requires lessees to provide supplemental financial assurance against undiscounted BSEE decommissioning estimates to protect from financial default events that may occur before scheduled end of life and the full accounting recognition of the asset retirement obligation, therefore BOEM concludes that using a discounted asset retirement obligation insufficiently protects the taxpayer. BOEM believes the regulations are sufficiently defined to ensure the reserve analysis is based on the ratio on the discounted value of proved reserves (excluding decommissioning costs) to the undiscounted BSEE decommissioning estimate. The Department is finalizing, as proposed in 30 CFR 556.901(d)(4), the use of a ratio of the value of proved reserves to decommissioning liability associated with those reserves that meets or exceeds 3-to-1.

E. Phased Compliance With Supplemental Financial Assurance Orders

In the preamble to the proposed rule, BOEM acknowledged that the proposed regulations could have a significant financial impact on affected companies (88 FR 42148). For that reason, BOEM proposed to phase in the new supplemental financial assurance requirements over a 3-year period for existing leaseholders in 30 CFR 556.901(h). As proposed, BOEM would require that any company receiving a supplemental financial assurance demand (within 3 years of the rule becoming effective) post one-third of the total amount by the deadline listed on the demand letter. A second one-third would be required within 24 months of the receipt of the demand letter. The final one-third payment would be due within 36 months of the receipt of the demand letter. BOEM specifically

solicited comments regarding this approach from potentially affected parties, and requested comment on how the new supplemental financial assurance demands could be most effectively implemented to minimize any unnecessarily adverse effects.

A summary of all comments received regarding the phased compliance approach and BOEM's corresponding responses can be found in section 8 of the *Response to Public Comments.*

Comment: In general, industry commenters supported the phased approach and several commenters recommended that it be extended to 5 years to ''mitigate potential significant risk to companies and to provide adequate time for the bonding market to adjust.''

Response: BOEM disagrees with the commenters' recommendation that the phased approach should be extended to 5 years. BOEM has concluded that the period of 3 years reduces exposure to risk of non-performance and hence addresses the need at issue in this rulemaking, requiring supplemental financial assurance where appropriate to protect the taxpayer while simultaneously providing adequate time for the bonding market to adjust to the new requirements. The bond market adjustment is basically a price adjustment and not so much a volume adjustment, and hence a 3-year period is sufficient to make these adjustments. On the other hand, lessees have a sufficient period of time to finance the cost of the required financial assurance. If the bond market does not provide bonding to a lessee, it is not due to market conditions, but rather to the high levels of risk, and hence the implication in this case is that the lessee is such a high risk that no bonding company wants to add this risk to its portfolio. The Department is finalizing in 30 CFR 556.901(h) a 3-year phased compliance period.

Comment: Additional commenters requested that BOEM include a phased provision for parties that were exempt but then later could not meet the exemption criteria because of changed circumstances and that BOEM include such provisions for parties that obtain OCS lease or grant interests in the first 3 years after implementation of the final rule.

Response: In response to commenters' suggestions that BOEM add clarification that this option is available for changed circumstances or for obtaining new lease interests, BOEM believes that the proposed text in 30 CFR 556.901(h) was broad enough to encompass these circumstances. If a party is exempt but then later cannot meet the exemption criteria because of changed circumstances (*e.g.,* change in credit rating), or if a party obtains an OCS lease or grant interest within the phased compliance time frame after implementation of the final rule, they would be allowed to use the phased compliance approach. BOEM has retained the language to establish a 3-year compliance window broad enough to encompass these circumstances. BOEM intends for any party who, within the 3-year compliance window, incurs new decommissioning liability or experiences changed circumstances resulting in a financial assurance demand from BOEM, to be allowed, at the Regional Director's discretion, to use the 3-year phased in approach to providing supplemental financial assurance. This compliance window will end on the date 3 years after the effective date of this final rule and any party receiving a supplemental financial assurance demand after that date will be required to provide the supplemental financial assurance in full as required by the demand, with no phase-in.

F. Appeal Bonds

As discussed in the preamble to the proposed rule (88 FR 42148), the Department proposed a new requirement in 30 CFR 556.902(h) whereby any company seeking to stay a supplemental financial assurance demand pending appeal must, as a condition of obtaining a stay of the order, post an appeal bond in the amount of supplemental financial assurance required. If the appeal is successful, the amount of the appeal bond in excess of the amount of any supplemental financial assurance determined to be required would be returned to the appropriate party. If the appeal is unsuccessful, the appeal bond could be replaced with, or converted into, bonds or other forms of financial assurance to cover the supplemental financial assurance demand.

Comments received regarding appeals and BOEM's corresponding responses can be found in section 9 of the *Response to Public Comments.*

Comment: Multiple commenters expressed opposition to BOEM's proposal, asserting that it raises due process concerns, specifically because the proposal inhibits the recipient's first opportunity to have an adjudication of BOEM's determination. They noted that the current process provides an opportunity for each party to express concerns at an early stage, while, under the proposal, a lessee could be forced into posting a bond that could be held for years, which is disproportionate to the perceived risk to the U.S. taxpayer. An additional commenter equated the appeal bond requirement to ''an automatic denial of stays,'' which, they claimed, could render most supplemental financial assurance demands subject to immediate judicial review, citing 5 U.S.C. 704 and 43 CFR 4.21(c). The same commenter also suggested that the appeal bond provision would contradict existing § 590.107 (sic) (should be ''§ 590.7'').

Response: BOEM disagrees that the appeal bond provision raises due process concerns. It does not prevent the recipient of a BOEM order from appealing, or from requesting a stay of that order. An appeal bond no more deprives an appellant of due process here than it does in the case of a judicial appeal. No court has held that due process requires that agencies assure the availability of stays without appeal bond requirements, nor is it the case that the Interior Board of Land Appeals' (IBLA's) decision on a stay request constitutes an adjudication of the decision appealed. Further, the appeal bond provision does not prevent the parties from being able to express concerns at an early stage. The recipient of a financial assurance demand has 60 days within which to file a notice of appeal with the IBLA, during which time it is free to meet with BOEM and attempt to resolve any issues with respect to the demand. See 30 CFR 590.3. In fact, the regulations specifically provide for early, informal resolution of issues. See 30 CFR 590.6. Moreover, whether an appeal bond is required has no effect on the IBLA's adjudication of the merits of an appeal. The requirement to post an appeal bond would, however, add a procedural step before a stay of a BOEM demand could be put in place. This step is necessary to ensure that financial assurance is available to cover an appellant's obligations if, during the pendency of the appeal, the appellant undergoes financial distress.

As noted above, if an appellant wins its appeal, and no financial assurance is required, the appeal bond will be cancelled, or the amount of the appeal bond in excess of the amount of financial security determined to be required will be returned to the appropriate party. Thus, an appellant is not ''forced'' to post an appeal bond that may be held for years, as claimed by the commenter. This is different from not appealing and posting a bond for lease compliance that will be held until decommissioning is performed. Nor did the proposed rule prescribe that an appeal bond must ''convert'' to a different type of bond to cover a required financial assurance obligation.

BOEM also disagrees that the appeal bond provision will result in ''automatic denials of stays,'' leading to more judicial litigation. The statutory and regulatory provisions cited by the commenter stand for the proposition that the unavailability of a stay excuses parties from the requirement to exhaust administrative remedies before seeking judicial review. But this outcome will occur only if the IBLA denies a stay request, and such a denial would be made independent of the appeal bond requirement. The IBLA must grant or deny a stay based on the factors set forth at 43 CFR 4.21(b)(1), and not on whether an appeal bond has been, or must be, posted. See 43 CFR 4.21(b)(4). Therefore, the requirement that an appeal bond be posted should not result in the IBLA granting fewer stay requests. Nor does the appeal bond provision contradict § 590.7. The latter provision, at paragraph (c), states that the IBLA may grant a stay of a BOEM decision, but that the decision remains in effect until the stay is granted. That is true regardless of the new appeal bond provision. Under the new provision, the IBLA may still grant a stay of a decision, and until a stay is granted, the decision remains in effect, but in order for the stay to take effect, the appellant must post the required appeal bond.

Comment: One commenter expressed concern that the proposed rule specifies that an appeal bond will ''automatically'' convert to a financial assurance obligation should the lease operator lose its appeal and noted that bonds do not operate in this manner. If finalized, the commenter asserted that the appeal bond should provide a certain number of days for the lease operator to post its financial assurance obligation to allow the surety to underwrite the operator at the time the bond is determined to be justified. Additionally, the commenter stated that BOEM did not offer support for this proposed requirement and requested data on the number of financial assurance appeals, the number of stays granted in those appeals, and the total historical decommissioning liability that has gone uncovered due to appellate stays.

Response: The proposed rule did not require that an appeal bond ''convert'' to a financial assurance obligation and BOEM is not finalizing the rule to require conversion. If an appellant lost its appeal, the appeal bond could be ''converted'' to financial assurance if that is a viable approach, or the lessee who lost the appeal would have to provide some other acceptable form of financial assurance. Neither the proposed nor final rule specify a timeline for this provision of financial assurance.

In response to the request for data, of the 1,449 appeals the IBLA received during the last 5 fiscal years, only 5 were from BOEM decisions concerning financial assurance. The appellant(s) filed a petition for a stay in 4 of those 5 appeals, and the IBLA granted one of them. Additional data regarding the current number of appeals is available at the following website: *https://www.doi.gov/oha/organization/ibla/IBLA-Pending-Appeals.*

Comment: A commenter also highlighted that BSEE, in its recent final rule arising from the Department's 2020 proposed rule, declined to retain an appeal bond provision that would have required the posting of an appeal bond to obtain a stay of a BSEE decommissioning order. This commenter suggested that it would be unreasonable for BOEM and BSEE to take two different approaches.

Response: There is no inconsistency with BSEE deciding not to require appeal bonds at the stage of an order to decommission and BOEM deciding to require them at the stage of financial assurance demands. The BSEE decision is based in large part on the assumption that financial assurance is already in place by the time it issues decommissioning orders and thus it does not face the risks that BOEM does at the time of demanding financial assurance. See 88 FR 23569, 23579 (April 18, 2023) (noting BSEE's reliance on the financial assurance regulations for determining an appeal bond is not necessary for the BSEE program).

BOEM's retention of the appeal bond provision means that, in the event of a stay of a financial assurance order, there will be an appeal bond, ensuring that, even if the appellant becomes insolvent during the appeal, there will be sufficient funds to perform decommissioning when it is ordered by BSEE. This fact supports, rather than contradicts, BSEE's decision not to retain its own appeal bond provision in the BSEE rule, as duplicative and unnecessary.

Additionally, after the publication of the NPRM, which included BOEM's proposed provision to require the appeal bond, on December 13, 2023, BSEE published a proposed rule titled *Bonding Requirements When Filing an Appeal of a Bureau of Safety and Environmental Enforcement Civil Penalty* (88 FR 86285), which would amend the bonding requirements when filing an appeal of a BSEE civil penalty. The proposed regulations would require that entities appealing a BSEE civil penalty decision to the IBLA must have a bond covering the civil penalty assessment amount for the IBLA to have jurisdiction over the appeal.

Further, an appeal bond requirement already applies to appeals of civil penalties assessed by BOEM and orders of the Office of Natural Resources Revenue (ONRR). Such a requirement is equally appropriate when the effect of a change in circumstances of the appellant, such as bankruptcy or insolvency, could leave DOI without the means of performing decommissioning. Companies can, and have, filed for bankruptcy while waiting for a decision from the IBLA on an appeal, leaving the government with no financial assurance to address decommissioning obligations. As such, the Department is finalizing, as proposed, the inclusion of the requirement whereby any company seeking to stay a supplemental financial assurance demand pending appeal must, as a condition of obtaining a stay of the order, post an appeal bond in the amount of supplemental financial assurance required.

G. Other Amendments

1. Revisions to Definitions

The Department proposed to revise definitions, remove terms and associated definitions, and add new definitions in 30 CFR 550.105 (*Definitions*) and 30 CFR 556.105 (*Acronyms and definitions*) as discussed in the following subsections. A summary of all comments received regarding revisions to definitions and BOEM's corresponding responses can be found in section 10 of the *Response to Public Comments.*

a. New Terms: ''Assign'' and ''Transfer''

The Department proposed to add new definitions for the terms ''Assign'' and ''Transfer'' to clarify that these terms are used interchangeably throughout 30 CFR parts 550 and 556. This change would also serve to clarify that the related terms ''transferee'' and ''transferor'' are interchangeable with ''assignee'' and ''assignor'' respectively. The definition of the new term ''Assign'' was proposed to mean conveying an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For purposes of this part, ''assign'' is synonymous with ''transfer'' and the two terms are used interchangeably. The definition of the new term ''Transfer'' was proposed to mean ''conveying an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''transfer'' is synonymous with ''assign'' and the two terms are used interchangeably.

General comments received are as follows:

Comment: Commenters suggested that BOEM clarify for the purposes of part 550 that ''transfer'' in both the new term and in the definition of ''Assign'' should be defined to exclude informal transfers. Examples of informal transfers were corporate name changes that are not technically a conveyance of an interest to a new entity. They provided suggested regulatory text edits as follows: ''Transfer means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''transfer'' is synonymous with ''assign'' and the two terms are used interchangeably, [Underline: except that a transfer excludes transactions subject to 30 CFR 556.715 or changes only in the corporate name of an interest owner that do not require BOEM approval]'' where the underline represents the commenter's proposed additional language.

Response: BOEM disagrees with the commenters' assertion that BOEM should clarify that ''Transfer'' excludes transactions subject to 30 CFR 556.715 or changes only in the corporate name of an interest owner that do not require BOEM approval. The referenced section, 30 CFR 556.715, addresses transactions of economic interests that should and will be included in the definition of transfer, although that section makes clear such transfers do not require BOEM approval. Additionally, BOEM does not consider a corporate name change to be an ''assignment'' and therefore, the suggested edit is unnecessary.

The Department is finalizing, as proposed, the new terms ''Assign'' and ''Transfer'' and their corresponding definitions.

b. Replacement: ''Right-of-Use'' and ''Easement'' With ''Right-of-Use and Easement''

The Department proposed to remove the terms ''Easement'' and ''Right-of-use'' from 30 CFR part 550 because neither are used separately in the regulations. In lieu of these two terms, and to define the term used in part 550, DOI proposed the addition of the new term ''Right-of-Use and Easement'' and its associated definition as ''a right to use a portion of the seabed, at an OCS site other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, or other devices to support the exploration, development, or production of oil, gas, or sulfur resources from an OCS lease or a lease on State submerged lands.'' Additionally, the Department proposed to amend the definition of ''Right-of-Use and Easement'' in 30 CFR 556.105 to match the proposed definition in 30 CFR 550.105.

No public comments were received on the proposal to delete ''Easement'' and ''Right-of-use'' and replace with the new term ''Right-of-use and Easement'' in 30 CFR 550.105 or on the amendments to the existing definition in 30 CFR 556.105. As such, the Department is finalizing, as proposed, BOEM's amendments to remove the terms ''Easement'' and ''Right-of-use'' from 30 CFR part 550 because neither are used separately in the regulations. In lieu of these two terms, and to define the term used in part 550, the Department is finalizing the addition of the new term ''Right-of-Use and Easement'' and its associated definition. In the final rule, BOEM has removed ''adjacent to or accessible from the OCS'' from the proposed RUE definition, as it is not helpful. This is a technical correction and does not change any meaning or intent of the definition. Additionally, the Department is finalizing the edits to the same definition, in 30 CFR 556.105.

c. New Term: ''Financial Assurance''

The Department proposed to add a new term and definition for ''Financial assurance'' in 30 CFR 550.105 and 556.105(b) to list the various methods that may be used to ensure compliance with OCS obligations in 30 CFR parts 550 and 556. DOI proposed to define the term as ''a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations in this part and under the terms of a lease, a RUE grant, or a pipeline ROW grant.'' General comments received are as follows:

Comment: One commenter expressed support for the new ''Financial assurance'' term and noted that it supported ''the breadth and optionality in the proposed'' definition.

Response: BOEM acknowledges the commenter's support, and the Department is finalizing the new term as proposed.

Comment: Commenters recommended that BOEM should be consistent and intentional in its use of ''financial assurance,'' ''security,'' and ''bond'' within the final rule. Specifically, they asked BOEM to consider using the global term ''security'' as in the 2020 Proposed Rule in lieu of ''financial assurance,'' which instead can refer to the process of furnishing security rather than the security itself.

Response: BOEM does not believe the term ''financial assurance'' is ever used as a ''process for furnishing security'' in this rulemaking and, instead, is used to describe any of a number of different types of securities that BOEM will accept to guarantee performance of obligations. As such, BOEM believes the term and associated definition is appropriate. BOEM has elected to simplify the rule by consistently using the term financial assurance instead of referring to the various types of financial securities. The Department is finalizing, as proposed, the removal of the term and definition of ''Security or securities'' in part 556, as these terms have been replaced with ''financial assurance'' throughout part 556 and 550 for regulatory consistency.

The Department is finalizing, as proposed, the new term and definition for ''Financial assurance'' in 30 CFR 550.105 and 556.105(b) to list the various methods that may be used to ensure compliance with the relevant OCS obligations in 30 CFR parts 550 and 556.

d. New Term: ''Investment Grade Credit Rating''

The Department proposed to add the new term and associated definition for ''Investment grade credit rating'' in 30 CFR 550.105 and 556.105(b). The associated definition was proposed as ''an issuer credit rating of BBB− or higher, or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization (NRSRO) as that term is defined by the United States Securities and Exchange Commission (SEC).'' This definition was proposed as the threshold above which BOEM would typically not require supplemental financial assurance. General comments received are as follows:

Comment: As discussed in section III.D of this preamble, commenters both supported and opposed the addition of the ''Investment grade credit rating'' definition. Several commenters suggested that BOEM not add the term to 30 CFR 550.105 because the term is not used in part 550.

Response: As discussed in section III.D of this preamble, the Department is not finalizing the proposed addition of ''Investment grade credit rating'' to 30 CFR part 550, as the commenters' assertion that the term is not used in part 550 is correct. In part 550, the regulatory text references 30 CFR part 556 to discuss the use of the issuer credit rating.

The Department has revised the definition of ''Investment grade credit rating'' in 30 CFR 556.105(b) with this final rule to clarify which rating agency corresponded with the proposed BBB− rating. The final definition is ''an issuer credit rating of BBB− or higher (S&P Global Ratings and Fitch Ratings, Inc.), Baa3 or higher (Moody's Investors Service Inc.), or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.''

e. New Term: ''Issuer Credit Rating''

The Department proposed to add the new term and associated definition for ''Issuer credit rating'' in 30 CFR 550.105 and 556.105(b). The associated definition was proposed as ''a credit rating assigned to an issuer of corporate debt by Standard and Poor's (S&P) Rating Services (or any of its subsidiaries), by Moody's Investors Service Incorporated (or any of its subsidiaries), or by another NRSRO as that term is defined by the United States SEC.'' General comments received are as follows:

Comment: Multiple commenters suggested that BOEM not add the term ''Issuer credit rating'' and associated definition to 30 CFR 550.105 because the term is not used in part 550. Other commenters recommended that BOEM include Fitch Ratings as one of the listed NRSROs in the new definition in 30 CFR 556.105.

Response: The Department is not finalizing the proposed addition of ''Issuer credit rating'' to 30 CFR part 550, as the commenters' assertion that it is not used in part 550 is correct. In part 550, the existing regulatory text references 30 CFR part 556 to discuss the use of the issuer credit rating. BOEM agrees with the commenters' assertion that Fitch Ratings is also an appropriate NRSRO and is adding it to the definition in 30 CFR 556.105.

f. Removal: ''Security or Securities''

The Department proposed to delete the term and associated definition of ''Security or securities'' in 30 CFR 556.105(b) since the term ''security'' was proposed to be replaced with ''financial assurance'' throughout the subpart. This term, *i.e.,* ''security,'' did not exist in 30 CFR part 550 and therefore was not proposed to be removed therefrom. General comments received are as follows:

Comment: Commenters recommended that BOEM be consistent and intentional in its use of ''financial assurance,'' ''security,'' and ''bond'' within the final rule. Specifically, they asked BOEM to consider utilizing the global term ''security'' as in the 2020 Proposed Rule in lieu of ''financial assurance,'' which instead can refer to the process of furnishing security rather than the security itself.

Response: BOEM does not believe the term ''financial assurance'' is ever used as a ''process for furnishing security'' in this rulemaking and, instead, is used to describe any of a number of different types of securities which BOEM accepts to guarantee performance of obligations. As such, BOEM believes the term and associated definition is appropriate. BOEM has elected to simplify the rule by consistently using the term financial assurance instead of the various types of financial securities. The Department is finalizing, as proposed, the removal of the term and definition of ''Security or securities'' from part 556, as these terms have been replaced with ''financial assurance'' throughout parts 556 and 550 for regulatory consistency.

g. Revision: ''You''

The Department proposed to revise the definition for ''You'' in 30 CFR parts 550 and 556 as, depending on the context of the part: ''a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the individuals listed in this definition.'' This change to the definition of ''You'' would, in concert with changes proposed in § 550.166, make explicit that any financial assurance provisions applicable to either a State or Federal RUE would apply to the other. General comments received are as follows:

Comment: Commenters expressed concerns with BOEM's proposed definition of ''You'' and asserted that BOEM was imposing on the regulated community the duty to ascertain which persons covered by the definition are subject to the specific regulatory requirements of each section. For example, a commenter asserted that the inclusion of ''an assignor or transferor'' in the definition is problematic in the context of part 556 because the scope ''is financial assurance that is solely the responsibility of current interest holders.''

Response: The Department did not revise the proposed definition of ''you'' in the final rule. BOEM retained ''assignor or transferor'' in the definition as it is appropriate in the context of some subsections across the broad scope of parts 550 and 556. The intent of the definition of ''you'' was always to be totally encompassing and to rely on context for its meaning in any particular situation.

The Department is finalizing, as proposed, the revisions to the definition of ''You.'' The definition of the term has traditionally been all-encompassing in both parts 550 and 556 and BOEM believes the context provided by the individual subsections is sufficient for determining which entity covered by the term is the appropriate entity to which a particular subsection applies.

2. Changing of the Spelling of ''Sulphur'' to ''Sulfur''

The Department proposed to replace the word ''sulphur'' with the more contemporary spelling of ''sulfur'' throughout the regulatory text where it has not been previously changed. BOEM noted that this edit was a technical correction and did not change any meaning or intent of the regulatory provisions. The Department proposed to update the word ''sulphur'' in the heading of part 550 and in §§ 550.101, 550.102, 550.105, and 550.199.

No comments were received on changing the spelling of ''sulphur'' to ''sulfur.'' Therefore, the Department is finalizing, as proposed, its plans to replace the word ''sulphur'' with the more contemporary spelling of ''sulfur'' in §§ 550.101, 550.102, and 550.105 in this final action.

IV. Summary of Cost, Economic Impacts, and Additional Analyses Conducted

A. What are the affected entities?

This final rule will affect current and future lessees, sublessees, RUE grant holders, and pipeline ROW grant holders. BOEM's analysis shows that this includes roughly 391 companies with record title ownership or operating rights in leases, and with interests in RUE grants and pipeline ROW grants. These lessees and grant holders are responsible for complying with the regulations and therefore would bear the compliance costs and realize the cost savings associated with the provisions in this final rule.

B. What are the economic impacts?

The amendments in this final rule are expected to increase the total amount of financial assurance required from OCS lessees and grant holders. Those lessees that do not meet the updated criteria to avoid providing supplemental financial assurance will have an increased compliance cost in the form of bond premiums. BOEM has drafted an RIA detailing the estimated impacts of the

respective provisions of this final rule. These impacts reflect both monetized and non-monetized impacts; the costs and benefits of the non-monetized impacts are discussed qualitatively in the RIA and in the following paragraphs. The table below summarizes BOEM's monetized estimate of the cost of increased bonding premiums paid by lessees over a 20-year period. This timeframe is expected to adequately capture the aging shallow-water OCS infrastructure removal while providing BOEM with time to monitor the efficacy of its new program. Due to technological advances and the changing nature of the OCS's role in the energy transition, estimates beyond 20-years are too speculative to be reliable at this stage. Regulatory certainty for OCS lessees is valuable, however; as the Statement of Energy Effects notes, higher compliance costs could make the U.S. OCS less competitive in a global oil market. Additional information on the estimated transfers, costs, and benefits can be found in the RIA posted in the public docket for this rule.

NET TOTAL ESTIMATED COMPLIANCE COST OF THE RULE

[2024–2043, 2023, $ millions]

2024–2043	Discounted at 3%	Discounted at 7%
Net Total Compliance Cost	$8,525	$5,923
Annualized Compliance Cost	573.0	559.0

The rule affects holders of oil, gas, and sulfur leases, ROW grants, and RUE grants on the OCS. The analysis shows that this includes roughly 391 companies with ownership interests in OCS leases and grants. Entities that operate under this rule are classified primarily under NAICS codes 211120 (Crude Petroleum Extraction), 211130 (Natural Gas Extraction), and 486110 (Pipeline Transportation of Crude Oil and Natural Gas). For NAICS classifications 211120 and 211130, the SBA defines a small business as one with fewer than 1,250 employees; for NAICS code 486110, it is a business with fewer than 1,500 employees. Based on this criterion, approximately 271 (69 percent) of the businesses operating on the OCS subject to this rule are considered small; the remaining businesses are considered large entities. All the operating businesses meeting the SBA classification are potentially impacted; therefore, BOEM expects that the rule will affect a substantial number of small entities.

BOEM has estimated the annualized increase in compliance costs to lessees and allocated those to small and large entities based on their decommissioning liabilities. In the table below, BOEM's analysis estimates small companies could incur $421 million (7 percent discounting) in annualized compliance costs from changes in the final rule. The Bureau recognizes that there will be incremental cost burdens to most affected small entities and has included a 3-year phased compliance approach to provide flexibility for entities required to provide financial assurance under the new requirements. The changes are designed to balance the risk of non-performance with the compliance burdens that are associated with the requirement to provide supplemental financial assurance. Additional information about these conclusions can be found in the regulatory flexibility analysis for this rule.

ESTIMATED COMPLIANCE COSTS FOR NON-INVESTMENT GRADE SMALL ENTITIES

[2024–2043, 2023, $ millions]

2024–2043	Discounted at 3%	Discounted at 7%
Total Compliance Cost	$6,362	$4,455
Annualized Compliance Cost	428	421

C. What are the benefits?

OCSLA regulations and lease provisions require lessees to decommission facilities, including plugging and abandoning OCS wells and removing facilities when their useful life has concluded. If the current lessee fails to perform decommissioning of its OCS facilities, the burden to decommission OCS facilities may fall to other obligated parties, such as co-lessees or predecessor lessees, and failing that, the Federal Government and U.S. taxpayers. Some of the corporate bankruptcies involving offshore oil and gas lessees since 2009 have involved decommissioning liabilities not covered by bonds or other forms of financial assurance. As such, these bankruptcies demonstrate that BOEM's regulations have been inadequate to protect the public from potential responsibility for OCS decommissioning, especially during periods of low hydrocarbon prices. The final rule is intended to correct these shortcomings with an approach that promotes internalization of costs of decommissioning by lessees and grant holders by adhering to the general principle that each current owner should bear the costs for its own obligations. This final rule is expected to significantly increase the amount of financial assurance coverage that protects the Federal Government and taxpayer by requiring that every lessee, ROW grant holder, and RUE grant holder assume full responsibility for providing assurance for performance of its own obligations unless there is a financially strong co-lessee (*i.e.,* one that meets the credit rating threshold). Finally, the final rule is expected to reduce the decommissioning activity lead-time that can result in environmental harms arising out of orphaned, unmaintained, or minimally maintained facilities, which could result in additional environmental damage or increased obstacles to navigation, while awaiting the uncertain outcomes of bankruptcy proceedings or Congressional appropriations. A reduction in decommissioning activity lead-time could reduce environmental damage, but BOEM cannot quantify this benefit in this rulemaking.

Bonding of OCS liabilities by a surety company greatly reduces the risk that those liabilities will revert to a predecessor lessee or grant holder because DOI could, but is not required to, turn to the surety for performance before turning to a predecessor. Further, because this final rule is designed to secure the taxpayer against the riskiest subset of liability—*i.e.,* OCS obligations that belong to speculatively rated companies without marketable reserves—it will require more supplemental financial assurance than the Department currently holds from such companies and will decrease the likelihood that these liabilities become the responsibility of the government. These reductions in risk are dependent on the initial level of risk specific to each OCS lease and lessee, and as such, BOEM is not able to quantify them in aggregate, as discussed in the RIA. This rule will not affect the Department's regulatory authority to issue decommissioning orders to predecessor lessees or to intervene as necessary to address an imminent environmental or safety risk. However, without this final rule (*i.e.,* without the new supplemental financial assurance procedures fully in place), it could take longer to arrange for decommissioning. Orphaned, unmaintained, or minimally maintained facilities, which currently exist on the OCS, could result in additional environmental damage or increased obstacles to navigation, while awaiting the uncertain outcomes of bankruptcy proceedings or Congressional appropriations.

Additionally, this final rule provides lessees and grant holders with clarity and regulatory certainty regarding the

way in which BOEM will conduct its financial assurance program. The financial assurance it requires will provide accountability to the taxpayer that a current lessee's or grant holder's obligations to decommission will not go unfulfilled, or that an associated cost of business is not transferred to another party at the culmination of the life of the facility when the productive value is gone and only liabilities remain.

D. What tribal outreach did BOEM conduct?

On March 31, 2023, BOEM sent letters to all federally recognized Tribal Nations and Alaska Native Claims Settlement Act (ANCSA) Corporations to ensure they are aware of the proposed rulemaking, to answer any immediate questions they may have had, and to invite formal consultation if desired. Only one Tribe requested consultation, which was held on June 28, 2023; meeting notes for this consultation are available in the docket (Docket No. BOEM–2023–0027).

V. Section-by-Section Analysis

Severability

BOEM proposed in the preamble to the proposed rule at 88 FR 42156 that the provisions of the rule be severable. No public comments were received on severability. Should any court hold unlawful and/or set aside portions of this rule, the remaining portions are severable and therefore should not be remanded to the Department. The final rule contains three main components: (1) streamlining criteria warranting a demand for supplemental financial assurance; (2) establishing the amount of any supplemental financial assurance; and (3) making several, less significant changes to, among other things, transferring interests in RUE grants and requiring appeals bonds for a stay of an IBLA appeal. See section III of this preamble.

It is impracticable, if not impossible, for BOEM to anticipate and address every conceivable adverse court remedy order. For purposes of this rule, it suffices to substantiate BOEM's intent that the rule's three components operate largely independently of each other: the first component considers whether a lessee is at risk of default based on the lessee's credit rating or the proved reserves on the lease; the second component considers the appropriate level of financial assurance required in light of that risk; and the third component addresses several longstanding and technical matters that do not bear directly on the first two components. Indeed, these three components are sufficiently distinct that their utility does not depend on the specifics of this final rule. For example, if a court were to vacate BOEM's selection of the level of supplemental financial assurance required (P-value), that decision would remain severable from the threshold determination regarding *whether* to collect supplemental financial assurance and from the other separate technical changes included in this rule. In this scenario, BOEM could still collect supplemental financial assurance using the previously accepted BSEE deterministic estimate for decommissioning costs.

BOEM is amending the following regulations as follows:

Part 550—Oil and Gas and Sulfur Operations in the Outer Continental Shelf

The terms ''bond,'' ''bonding,'' ''surety bond,'' ''security,'' and ''securities'' are replaced throughout this part with the new term ''financial assurance'', as proposed.

The term ''sulphur'' is replaced throughout this part with ''sulfur'', as proposed. This edit is a technical correction and does not change any meaning or intent of the regulatory provisions.

Subpart A—General

Section 550.101 Authority and Applicability

The Department is finalizing the revision of ''sulphur'' to ''sulfur'' in the introductory text and is clarifying that the BOEM Director is the one granted authority by the Secretary to regulate oil, gas, and sulfur exploration, development, and production operations on the OCS.

Section 550.102 What does this part do?

The Department is finalizing the revision of ''sulphur'' to ''sulfur'' in the paragraphs (a) and (b).

Section 550.103 Where can I find more information about the requirements in this part?

The Department is removing the term ''supplement'' from this section as a technical correction. The existing regulatory text needs improvement because NTLs do not supplement regulatory requirements, but instead clarify, provide voluntary recommendations, or provide additional information concerning how to comply with requirements in the regulations (*e.g.,* addresses for submissions).

Section 550.105 Definitions

The Department is finalizing as proposed, and as discussed in section III.G of this preamble, new definitions for the terms ''Assign'' and ''Transfer'' to clarify that these terms are used interchangeably throughout the part. This change also serves to clarify that the related terms ''assignee'' and ''assignor'' are interchangeable with ''transferee'' and ''transferor,'' respectively.

The Department is finalizing, as proposed, revisions to the definition of ''Criteria air pollutant'' and ''Nonattainment area'' to explain the acronyms U.S. EPA and NAAQS. This is a technical correction and does not change any meaning or intent of the definitions.

The Department is finalizing as proposed, and as discussed in section III.G of this preamble, removal of the terms ''Easement'' and ''Right-of-use'' because neither are used separately in the regulations. In lieu of these two terms, and to define the term used in part 550, The Department is finalizing the addition of the new term ''Right-of-Use and Easement'' and its associated definition. Since proposal, BOEM has removed ''adjacent to or accessible from the OCS'' from the RUE definition, as it is not helpful. This is a technical correction and does not change any meaning or intent of the definition. This definition is consistent with the final amendments to the definition of RUE in 30 CFR 556.105.

The Department is finalizing as proposed, and as discussed in section III.G of this preamble, the addition of the new term and definition for ''Financial assurance'' to list the various methods that may be used to ensure compliance with OCS obligations. Additionally, the Department is finalizing, as proposed, and discussed in section III.G of this preamble, revisions to the definition of ''You.''

Section 550.160 When will BOEM grant me a right-of-use and easement (RUE), and what requirements must I meet?

The paragraph (a) introductory text is expanded, as in the proposed rule, to include additional functions and devices associated with a RUE by adding ''secure to the seafloor, use, modify'' after ''construct;'' by substituting ''or'' for ''and'' before the word ''maintain;'' and by adding references to ''seafloor production equipment'' and ''facilities.'' These edits create consistency between this section and the definition of RUE in § 550.105. A commenter suggested edits to

paragraph (a) because the commenter found the paragraph difficult to read. In response to this comment, DOI has replaced the proposed clause ''You must require the RUE'' with ''A RUE is required'' in this final rule. That change, in turn, could be confusing when read in conjunction with the existing introductory text of § 550.160. Accordingly, DOI is deleting the introductory text in this final rule. This deletion does not change any meaning or intent of any part of § 550.160.

The Department is finalizing, as proposed, revisions to paragraph (b) to provide that a RUE grant holder must exercise the grant according to the terms of the grant and the applicable regulations of part 550.

The Department is finalizing, as proposed, revisions to paragraph (c) to update the cross-reference to BOEM's lessee qualification requirements, §§ 556.400 through 556.402, and to replace the language in this paragraph referencing ''bonding requirements'' with a cross reference to § 550.166, which BOEM has amended to add specific criteria for financial assurance demands, as discussed in section III.A of this preamble. The Department is also revising paragraph (d) to replace ''right-of-use and easement'' with ''RUE.''

The Department is revising paragraphs (e) and (f)(2) to update the list therein to be consistent with the finalized revisions in paragraph (a). BOEM identified the need for these revisions after publication of the proposed rule and is making them in the final rule for consistency with the new definition of RUE.

Section 550.166 If BOEM grants me a RUE, what financial assurance must I provide?

As proposed, the Department is finalizing amendments to the section heading by removing the reference to ''a State lease'' and replacing ''surety bond'' with ''financial assurance.'' This reflects the change in the text of this section that provides that the financial assurance requirements of this section would apply to both a RUE granted to serve a State lease and one serving an OCS lease, as discussed in section III.A of this preamble. The term ''surety bond'' is replaced with ''financial assurance'' throughout the section.

The Department is finalizing revisions to paragraph (a) to require $500,000 in financial assurance that guarantees compliance with the terms and conditions of any OCS RUEs an entity holds, as discussed in section III.A of this preamble. Previously, paragraph (a) required $500,000 in financial assurance only for RUEs associated with State leases. Additionally, the Department is finalizing the addition of paragraph (a)(1), as proposed, to allow area-wide lease financial assurance to satisfy the requirements of paragraph (a) provided that assurance is in excess of the $500,000 base RUE financial assurance requirement and also guarantees compliance with all the terms and conditions of the RUE(s) it covers. The Department is also finalizing the addition of paragraph (a)(2) as proposed to allow the Regional Director to lower the required financial assurance amount for research and other similar types of RUEs, which reflects BOEM's experience that the total liability exposure for such RUEs can be well below $500,000. Lastly, the Department is finalizing the addition of paragraph (a)(3) as proposed to provide that the financial assurance requirements of section 556.900(d) through (g) and § 556.902 apply to the financial assurance required in paragraph (a).

The Department is finalizing, as proposed, the revision of paragraph (b) in this section to provide that, if BOEM grants a RUE that serves either an OCS lease or a State lease, the Regional Director may require the grant holder to provide supplemental financial assurance to ensure compliance with the obligations under the RUE grant. BOEM will use the issuer credit rating or proxy credit rating criterion found in § 556.901(d)(1) and (2) to evaluate a RUE grant holder, as discussed in section III.A of this preamble; *i.e.,* the Regional Director may require supplemental financial assurance if the grant holder does not have an issuer credit rating or a proxy credit rating that meets the criterion set forth in amended § 556.901(d)(1). Like lessees, most RUE holders are oil and gas companies, and BOEM will therefore, as discussed in section III.A of this preamble, use the same financial criterion to determine the need for additional financial assurance from RUE holders and lessees to provide consistency.

The Department is finalizing the revision to paragraph (b)(1) as proposed to update the regulatory citation in existing § 550.166(b)(1) to provide that the supplemental financial assurance must meet the requirements for lease surety bonds or other financial assurance provided in §§ 556.900 (d) through (g) and 556.902. This rule also finalizes the revision to § 550.166(b)(2) to include ''applicable BOEM and BSEE orders'' in the list of what RUE supplemental financial assurance must cover. The Department is not finalizing the proposed language that clarified that RUE holders must also comply with the decommissioning regulations at part 250, subpart Q of this title as it is no longer needed. BSEE adopted changes to their regulations in subpart Q to expressly state that RUE holders must comply with the BSEE decommissioning regulations. 88 FR 23569 (Apr. 18, 2023). As such, BOEM is not finalizing this reference to the BSEE regulations, as it is now redundant. The Department is finalizing the addition of new paragraph (c), as proposed, to provide that if a RUE grant holder fails to replace any deficient financial assurance upon demand, or fails to provide supplemental financial assurance upon demand, BOEM may assess penalties, request BSEE to suspend operations on the RUE, and/or initiate action for cancellation of the RUE grant.

Section 550.167 How may I assign my interest in a RUE?

The Department is finalizing the addition of a new § 550.167 to establish the ability to assign a RUE interest. Paragraph (a) establishes that those who want to obtain a RUE or are requesting assignment of an interest in a RUE must provide the information contained § 550.161 and must obtain BOEM's approval. In response to comment, the Department is finalizing the addition of a new paragraph (b) that parallels the provisions for ROW assignments in BSEE's regulations at 30 CFR 250.1018. New paragraphs (c)(1) through (4) establish, as proposed, the circumstances in which BOEM may disapprove an assignment. These circumstances are intended to prevent the assignment of a RUE when, for example, the assignment would result in inadequate financial assurance.

Section 550.199 Paperwork Reduction Act Statements—Information Collection

The Department is finalizing the revision of ''sulphur'' to ''sulfur'' in paragraph (b) and clarification that ''parts 551, 552'' refer to 30 CFR parts 551 and 552.

Subpart J—Pipelines and Pipeline Rights-of-Way

Section 550.1011 Financial Assurance Requirements for Pipeline Right-of-Way (ROW) Grant Holders

The Department is finalizing the revision of this section in its entirety. The section heading is revised to read, ''Financial assurance requirements for pipeline right-of-way (ROW) grant holders,'' to clarify that a pipeline ROW grant holder may meet the requirements of this section by providing bonds or other types of financial assurance.

The Department is finalizing, as proposed, revisions to paragraph (a) to

add '', attempt to assign,'' after ''apply for'' so that it is clear the financial assurance requirements of this section apply to an assignment of a right-of-way grant. The revisions subsume paragraph (a)(1) into paragraph (a) and revise it to remove the reference to 30 CFR part 256, which has no bonding requirements for pipelines, and to add the word ''pipeline'' before ''right-of-way.'' The revisions add ''grant'' after ''right-of-way (ROW)'' for clarification, and to clarify that the purpose of the area-wide financial assurance, which is required in paragraph (a), is to guarantee compliance with the terms and conditions of all the pipeline ROW grants held in an OCS area, as defined in § 556.900(b). These amendments clarify that the requirement to provide area-wide financial assurance for a pipeline ROW grant is separate and distinct from the financial assurance coverage provided for leases and RUEs. Existing paragraph (a)(2) is removed because supplemental financial assurance requirements would be covered by new paragraph (d).

The Department is finalizing, as proposed, the removal of existing paragraph (b), which defines the three recognized OCS areas, because it is made redundant by the reference to § 556.900(b) in revised paragraph (a). The Department is finalizing, as proposed, the replacement of the removed paragraph (b) with a new paragraph (b) to provide that the requirement under paragraph (a) to furnish and maintain area-wide financial assurance may be satisfied if the operator or a co-grant holder provides area-wide pipeline right-of-way financial assurance in the required amount that guarantees compliance with the regulations and the terms and conditions of the grant.

The Department is finalizing the replacement of paragraph (c), as proposed, with a provision stating that the requirements for lease financial assurance in §§ 556.900(d) through (g) and 556.902 apply to the area-wide financial assurance required in paragraph (a) of this section. The Department is finalizing the removal of existing paragraph (d), which is now made redundant by new paragraph (f).

The Department is finalizing, as proposed, the addition of a new paragraph (d) to provide that the Regional Director may determine that supplemental financial assurance is necessary to ensure compliance with the obligations under a pipeline ROW grant based on an evaluation of the grant holder's ability to carry out present and future obligations on the pipeline ROW. As discussed in section III.A of this preamble, the Department is finalizing the use of the same issuer credit rating or proxy credit rating criterion to evaluate a pipeline ROW grant holder, or co-grant holder, as the Department is finalizing to apply to lessees in § 556.901(d)(1). BOEM, as discussed in section III.A of this preamble, has found that reliance on credit ratings better evaluates financial stability than net worth, and is thus applying the same financial criterion in evaluating the financial stability of grant holders.

The Department is finalizing, as proposed in new paragraph (e)(1), a provision that the supplemental financial assurance must meet the general requirements for lease surety bonds or other financial assurance, as provided in §§ 556.900(d) through (g) and 556.902. The Department is not finalizing the proposed language in new paragraph (e)(2) that stated that any supplemental financial assurance for a pipeline ROW is required to cover costs and liabilities for regulatory compliance and compliance with applicable BOEM and BSEE orders, decommissioning of all pipelines or other facilities, and clearance from the seafloor of all obstructions created by the pipeline ROW operations, in accordance with the regulations set forth in 30 CFR part 250, subpart Q, because it is no longer needed and redundant. BSEE adopted changes to their regulations in subpart Q to expressly state that all ROW holders must comply with the BSEE decommissioning regulations. 88 FR 23569 (Apr. 18, 2023). As such, BOEM is not finalizing this reference to the BSEE regulations, as it is now redundant. New paragraph (e)(2) now states that any supplemental financial assurance for a pipeline ROW is required to cover the costs and liabilities for compliance with obligations of your ROW grants and with applicable BOEM and BSEE orders.

The Department is also finalizing the addition of new paragraph (f) to provide that if a pipeline ROW grant holder fails to replace any deficient financial assurance upon demand or fails to provide supplemental financial assurance upon demand, the Regional Director may assess penalties, request BSEE to suspend operations on the pipeline ROW, and/or initiate action for forfeiture of the pipeline ROW grant in accordance with 30 CFR 250.1013.

Part 556—Leasing of Sulfur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf

The Department is finalizing, as proposed, a technical correction to the authority citation for part 556 by removing the citation to 43 U.S.C. 1801–1802, because neither of these two sections contain authority allowing BOEM to issue or amend regulations.

The final rule also removes, as proposed, the citation to 43 U.S.C. 1331 note which is where the Gulf of Mexico Energy Security Act of 2006 (GOMESA) is set forth. While this statute required BOEM to issue regulations concerning the availability of bonus or royalty credits for exchanging eligible leases, the deadline for applying for such a bonus or royalty credit was October 14, 2010; therefore, lessees may no longer apply for such credits. BOEM no longer needs the authority to issue regulations under that statute and has removed all regulations on this topic from part 556, except section 556.1000, which provides that lessees may no longer apply for such credits.

Additionally, the terms ''bond,'' ''bonding,'' and ''surety bond'' are replaced throughout this part with the new term ''financial assurance.'' The Department is finalizing, as proposed, the revision to the part 556 heading to update the spelling of sulfur and to replace ''bonding'' with ''financial assurance.''

Subpart A—General Provisions

Section 556.104 Information Collection and Proprietary Information

The Department is finalizing the removal of an incorrect phone number and email address in paragraph (a)(4). This is a technical correction, consistent with the content of other subparts, that was discovered after publication of the proposed rule and does not change the intent of the paragraph.

Section 556.105 Acronyms and Definitions

The Department is finalizing, as proposed, and as discussed in section III.G of this preamble, the new terms ''Assign'' and ''Transfer'' and associated definitions to clarify that these terms are used interchangeably throughout the part. This change also serves to clarify that the related terms ''assignee'' and ''assignor'' are interchangeable with ''transferee'' and ''transferor'' respectively.

The Department is finalizing the removal of ''GOMESA'' from the acronym list in paragraph (a) as discussed above. The final rule removes the citation to 43 U.S.C. 1331 note which is the only reference to GOMESA in part 556.

The Department is finalizing, as proposed, and as discussed in section III.G of this preamble, amendments to the definition of ''Right-of-Use and Easement (RUE)'' to include the words

''to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment.'' This amended definition is the same as the definition of ''Right-of-Use and Easement'' finalized in § 550.105.

The Department is finalizing revisions to the definition of ''Eastern Planning Area'' as proposed to remove the acronym ''EPA'' which can be confused with the United States Environmental Protection Agency (U.S. EPA). The Department is not finalizing the proposed removal of the rest of the first sentence in the existing definition to retain consistency with the definitions for ''Central Planning Area'' and ''Western Planning Area,'' which were not changed in the proposed rulemaking.

The Department is finalizing, as proposed, and as discussed in section III.G of this preamble, the addition of a new term and definition for ''Financial assurance'' to clarify that various methods can be used to ensure compliance with OCS obligations. This definition is the same as the definition of ''Financial assurance'' finalized in § 550.105.

The Department is finalizing, as proposed, and as discussed in sections III.D and III.G of this preamble, the addition of a new term and definition for ''Investment grade credit rating'' to 30 CFR part 556.

The Department is finalizing, as discussed in section III.G of this preamble, the addition of the new term ''Issuer credit rating'' and its corresponding definition, as revised based on public comment as: ''a credit rating assigned to an issuer of corporate debt by S&P Global Ratings, by Moody's Investors Service Inc., by Fitch Ratings, Inc., or by another nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.''

The Department is adding the definition of ''Predecessor,'' as proposed in the 2020 proposed rule and as discussed in section III.B of this preamble, to describe the prior owners who share liability with the current owners.

The Department is finalizing, as proposed, the removal of the term and definition of ''Security or securities,'' as these terms have been replaced with ''financial assurance'' throughout parts 556 and 550 for regulatory consistency. Additionally, the Department is finalizing, as proposed, and discussed in section III.G of this preamble, the revisions to the definition of ''You.'' This definition is the same as the definition of ''You'' finalized in § 550.105.

Subpart G—Transferring All or Part of the Record Title Interest in a Lease

Section 556.703 What is the effect of the approval of the assignment of 100 percent of the record title in a particular aliquot(s) of my lease and of the resulting lease segregation?

The Department is removing ''bonding'' from paragraph (a) as a non-substantive change identified after proposal to be consistent with its replacement by the term ''financial assurance'' throughout the subpart.

Section 556.704 When may BOEM disapprove an assignment or sublease of an interest in my lease?

The Department is finalizing, as proposed, revisions to paragraph (a)(1) to clearly state that BOEM may disapprove an assignment or sublease when the transferor, transferee, or sublessee is not in compliance with all applicable regulations and orders, including financial assurance requirements. Similarly, this rule replaces the word ''would'' in the section heading with ''may'' to better reflect this discretion. Additionally, BOEM is non-substantively revising paragraph (a)(2) to remove the ''etc.'' in the parenthetical as it is not necessary since the parenthetical is a list of examples.

Subpart H—Transferring All or Part of the Operating Rights in a Lease

Section 556.802 When may BOEM disapprove the transfer of all or part of my operating rights interest?

The final rule revises paragraph (a) to clearly state that BOEM may disapprove a transfer of operating rights in a lease if the transferee is not in compliance with all applicable regulations and orders, including financial assurance requirements. This final rule also replaces the word ''would'' in the section heading with ''may'' to better reflect this discretion. Additionally, BOEM is non-substantively revising paragraph (b) to remove the ''etc.'' in the parenthetical as it is not necessary since the parenthetical is a list of examples.

Subpart I—Financial Assurance

Section 556.900 Financial Assurance Requirements for an Oil and Gas or Sulfur Lease

The Department is finalizing, as proposed, revisions to the section heading to read, ''Financial assurance requirements for an oil and gas or sulfur lease'' to ensure that the term ''bonding'' has been consistently replaced with ''financial assurance'' and to clarify that a number of forms of financial assurance can be provided, not just surety bonds. The Department is also finalizing the heading of subpart I to remove ''Bonding or Other'' consistent with the replacement of ''bonding'' with ''financial assurance.''

The Department is finalizing the addition of what was proposed as paragraph (a)(4) to make clear that any supplemental financial assurance required by the Regional Director must be provided before a new lease will be issued or an assignment of a lease approved. However, to avoid confusion in how to apply existing paragraphs (a)(1) through (3), BOEM has moved this language to the introduction of paragraph (a) to note that it is required in addition to any one of paragraphs (a)(1) through (3). BOEM's modified language in paragraph (a) also addresses a concern by a commenter that asserted ''the proposed provision makes no sense at the lease issuance stage because supplemental financial assurance can only be required after approved lease exploration or production activities commence.''

The Department is finalizing, as proposed, revisions to the introductory text in paragraph (g) to replace the word ''security'' with ''financial assurance,'' and to add the word ''surety'' before ''bond'' in two places to clarify that in those cases the regulation is referring to a ''surety bond.''

The Department is finalizing, as proposed, revisions to the introductory text in paragraph (h) to replace the words ''additional bond coverage'' with ''supplemental financial assurance'' to clarify that surety bonds are not the only means of meeting the requirement. The final rule also revises paragraph (h)(2) in recognition that BSEE, rather than BOEM, is the agency with authority to suspend production or other operations on a lease.

Finally, the Department is finalizing, as proposed, the addition of paragraph (i) to ensure consistency with the RUE financial assurance requirements by providing that area-wide lease surety bonds pledged to satisfy the financial assurance requirements for RUEs under § 550.166 may be called for performance of obligations arising from a RUE on which the holder of a RUE defaults.

Section 556.901 Base and Supplemental Financial Assurance

The Department is finalizing, as proposed, revisions to the section heading to read, ''Base and Supplemental Financial Assurance,'' because this section covers both base financial assurance and supplemental financial assurance requirements.

The Department is finalizing, as proposed, revisions to the introductory text of paragraph (a) to replace the word ''bonds'' with ''financial assurance'' for consistency with the terminology amendments in this subpart. The Department is also revising paragraph (a)(1)(i) introductory text to replace the word ''bond'' with ''lease exploration financial assurance'' for consistency with the terminology used in existing paragraph (a)(1)(ii) (lease exploration bond).

The Department is finalizing, as proposed, the elimination of the parenthetical ''(the lessee)'' from the paragraph (b) introductory text as it is made redundant by the definition of ''You.'' The Department is also finalizing, as proposed, revisions to the paragraph (b)(1)(i) introductory text to replace the word ''bond'' with ''lease development financial assurance'' for consistency with the terminology used in existing paragraph (b)(1)(ii), which is not being changed.

The Department is finalizing, as proposed, revisions to paragraph (c) to remove the words ''authorized officer'' and replace them with ''Regional Director,'' and to remove the words ''lease bond coverage'' and ''a lease surety bond'' and replace them in each instance with ''financial assurance'' to clarify that the Regional Director can review whether BOEM would be adequately secured by a surety bond, or another type of financial assurance, for an amount less than the amount prescribed in paragraph (a)(1) or (b)(1), but not less than the amount of the cost for decommissioning.

The Department in the final rule is, as proposed, combining the provisions of the existing paragraph (d) introductory text and the existing paragraph (d)(1) to provide that the Regional Director may determine that supplemental financial assurance is required to ensure compliance with the obligations, including decommissioning obligations, under a lease and the applicable regulations if the lessee does not meet at least one of the criteria provided in new paragraphs (d)(1) through (4).

The Department is finalizing, as proposed, the addition of a new paragraph (d)(1) to set forth the criterion BOEM would use to evaluate the ability of a lessee to carry out present and future obligations. Under this paragraph, BOEM will use an investment grade issuer credit rating from a NRSRO, as defined by the SEC, greater than or equal to either BBB− from S&P Global Ratings or Fitch Ratings Inc., or Baa3 from Moody's Investor Service Inc., or the equivalent rating from another NRSRO. If different SEC-recognized NRSROs provide different ratings for the same company, BOEM will apply the highest rating.

As discussed in section III of this preamble, the Department is finalizing the addition of a new paragraph (d)(2) that states that BOEM can also use a proxy credit rating calculated by BOEM based on audited financial information from the most recent fiscal year (including an income statement, balance sheet, statement of cash flows, and the auditor's certificate) greater than or equal to either BBB− from S&Ps Global Ratings or Fitch Ratings Inc., or Baa3 from Moody's Investor Service Inc., or their equivalent from another NRSRO. The proxy credit ratings that BOEM will calculate on behalf of lessees will be structured in the same scale as the standard ratings (*i.e.,* AAA to D). The audited financial information from the most recent fiscal year that BOEM uses to determine the proxy credit rating must be from a continuous 12-month period within the 24-month period prior to the lessee's receipt of the Regional Director's determination that the lessee must provide supplemental financial assurance. When determining a proxy credit rating, the Regional Director will consider all liabilities that may encumber a lessee's ability to carry out future obligations. Under the final rule in § 556.901(d)(2)(ii), the lessee is obligated to provide the Regional Director with information regarding its joint-ownership interests and other liabilities associated with OCS leases, which might not otherwise be accounted for in the audited financial information provided to BOEM.

The Department is finalizing revisions to paragraph (d)(3) to address the situation where the lessee does not meet the criterion in paragraph (d)(1) or (2), but one or more co-lessees or co-grant holders meet the criterion. The Regional Director may require a lessee to provide supplemental financial assurance for decommissioning obligations if no co-lessee or co-grant holder has an issuer credit rating or proxy credit rating that meets the threshold set forth in paragraph (d)(1) or (2). In response to comments, BOEM has revised new paragraph (d)(3) to make clear that the presence of such co-lessee or co-grant holder will allow the Regional Director to not require financial assurance from a current lessee only to the extent that the current lessee and that co-lessee or co-grant holder shares accrued liabilities.

The Department is finalizing the addition of a new paragraph (d)(4) to set forth the methodology the Regional Director would use to determine proved reserves if the lessee does not meet the criteria in paragraph (d)(1), (2), or (3). In this instance, the Regional Director will assess each lease, unit, or field to determine whether the value of the discounted proved oil and gas reserves on the lease exceeds three times the undiscounted estimated cost of the decommissioning associated with the production of those reserves. Under paragraph (d)(4), the Regional Director's assessment will be based on the evaluation of proved oil and gas reserves following the methodology set forth in SEC Regulation S–X at 17 CFR 210.4–10 and SEC Regulation S–K at 17 CFR 229.1200. BOEM received multiple comments requesting BOEM allow the proved oil and gas reserve analysis to be based on a unit or field basis, and to clarify when values are discounted and when they are undiscounted in the calculation; BOEM has added clarifications in paragraph (d)(4) to address these comments (*e.g.,* including the field or unit basis, and stating that undiscounted cost estimates will be used).

The Department is also finalizing the addition of new paragraphs (d)(4)(i) and (ii), which state that, when implementing this reserves criterion, BOEM will use decommissioning cost estimates, including a BSEE-generated probabilistic estimate at the P70 level when available, or, if such estimate is not available, BOEM will use the BSEE-generated deterministic estimate.

The Department is finalizing, as proposed, redesignation of existing paragraph (d)(2) as paragraph (e) and revisions to provide that a lessee may satisfy the Regional Director's demand for supplemental financial assurance either by increasing the amount of its existing financial assurance or by providing additional surety bonds or other types of acceptable financial assurance.

The Department is finalizing redesignation of existing paragraph (e) as paragraph (f) and revisions to remove the word ''bond'' and replace it with ''supplemental financial assurance,'' a term that includes a surety bond or another type of financial assurance. As discussed in section III.B of this preamble, the Department is finalizing the use of the BSEE P70 decommissioning probabilistic estimate to determine the amount of supplemental financial assurance required to guarantee compliance when there are insufficient reserves or no current lessee or co-lessee that meets the criterion in § 556.901(d)(1) or (2). The Department is finalizing, as proposed, the inclusion of the language from existing paragraph (e) in new paragraph (f) to establish that, in determining the

amount of supplemental financial assurance, the Regional Director will consider the lessee's potential underpayment of royalty and cumulative decommissioning obligations.

The Department is finalizing, as proposed, redesignation of existing paragraph (f) as paragraph (g) and revisions to replace the words ''bond'' and ''surety'' with ''financial assurance'' throughout. Existing regulation 30 CFR 556.901(f)(2) includes a statement to the effect that, if a company requests a reduction of the amount of the original bond required, the Regional Director may agree to such a reduction provided that he or she finds that ''the evidence you submit is convincing.'' The Department is finalizing, as proposed, the replacement of this less prescriptive regulatory text with new paragraph (g)(2) that states an entity must submit evidence to the Regional Director that demonstrates that the projected amount of royalties due to the United States Government and the estimated costs of decommissioning are less than the required financial assurance amount. Additionally, through the same process, BOEM will allow an entity to request a reduction if it opposes the amount of a proposed increase in the amount of financial assurance required.

The Department is finalizing the addition of new paragraph (h) to describe the limited opportunity lessees will have to provide the required supplemental financial assurance in phased installments during the first 3 years after the effective date of this regulation, subject to the conditions of paragraphs (h)(1) and (2). The Department proposed and is finalizing a 3-year approach, as discussed in section III.E of this preamble, which is appropriate to mitigate potentially significant risk to companies and to provide adequate time for the bonding market to adjust. Additionally, this approach reduces the immediate regulatory burden on lessees and grant holders that are required to provide financial assurance as a result of this rule, which are likely to mainly be small businesses.

The Department is finalizing the addition of new paragraphs (h)(1)(i) through (iii) to establish the timing and amounts of phased supplemental financial assurance that would need to be provided. Submissions would be required in three installments of one-third of the demand each, the first of which would be required within the timeframe specified in the demand letter, or within 60 calendar days of receiving the demand letter if no timeframe is specified. The second one-third would be required within 24 months from the date of receipt of the original demand letter, and the final installment would be due within 36 months from the date of the receipt of the original demand letter.

Additionally, the Department is finalizing, as proposed, the addition of new paragraph (h)(2) to establish a procedure in case a demand that has been approved for phased compliance is not met within the timeframes established by paragraphs (h)(1)(i) through (iii). If a phased compliance deadline under paragraphs (h)(1)(i) through (iii) is missed, the Regional Director will notify the party of the failure to meet the timeframe and that it will no longer be eligible to meet the supplemental financial assurance demand by using the phased compliance option set forth in paragraph (h). Moreover, the remaining balance of the demand will become due ten calendar days after the Regional Director's notification is received.

Section 556.902 General Requirements for Bonds or Other Financial Assurance

The Department is finalizing, as proposed, revisions to the section heading to read, ''General requirements for bonds or other financial assurance,'' to recognize that other types of financial assurance, such as a dual-obligee bond or a pledge of Treasury securities, may be provided under part 556. These amendments clarify that the same general requirements for financial assurance provided by lessees, operating rights owners, or operators of leases also apply to financial assurance provided by RUE grant and pipeline ROW grant holders. The final rule also revises paragraph (a), as proposed, to include ''grant holder'' and ''record title holder'' and to cover financial assurance provided under 30 CFR part 550. The requirements of this section are those that apply broadly to all types of financial assurance provided to BOEM for oil and gas activities on a lease or grant. Additional requirements applicable specifically to RUEs and ROWs are described in §§ 550.166 and 550.1011, respectively.

The Department is finalizing, as proposed, the addition of ''or grant'' after ''lease'' to clarify the change to include grant holders in paragraph (a)(2). The rule also adds compliance with ''all BOEM and BSEE orders'' as a requirement. Additionally, the final rule revises proposed paragraph (a)(3) to include the obligations of all record title owners, operating rights owners, and operators on the lease, except as stated in § 556.905(b) and to add ''all grant-holders on a grant.''

The Department is finalizing, as proposed, a revision to paragraph (e)(2) to clarify that the use of Treasury securities as financial assurance requires a pledge of Treasury securities, as provided in § 556.900(f).

The Department is finalizing, as proposed, the addition of new paragraph (g) to recognize the option to seek an informal resolution of a surety bond demand pursuant to § 590.6. This paragraph further provides that a request for an informal resolution of a dispute concerning the Regional Director's decision to require supplemental financial assurance will not affect the applicant's ability to request a phased payment of its supplemental financial assurance demand under § 556.901(h).

The Department is finalizing, as proposed, the addition of a new paragraph (h) to address risks arising in connection with the lessee's and grant holder's ability to stay the demand during an appeal of a demand for supplemental financial assurance to the IBLA pursuant to the regulations in 30 CFR part 590. The rule adds an additional requirement to the IBLA appeals process whereby if an appellant requests that the IBLA stay the supplemental financial assurance demand, the appellant will be required to post an appeals surety bond equal to the amount of supplemental financial assurance that the appellant seeks to stay before any stay can go into effect. Because IBLA appeals may continue for several years, it is important that BOEM ensure that the government's and taxpayers' interests are protected during the appeal. The appeal surety bond requirement will prevent the government from being left with inadequate security if the appellant files bankruptcy before the appeal process ends.

Section 556.903 Lapse of Financial Assurance

The Department is finalizing, as proposed, the replacement of the word ''bond'' in the section heading with ''financial assurance'' for consistency with the terminology change made throughout the subpart. The final rule revises paragraph (a) to add after the word ''surety,'' ''guarantor, or the financial institution holding or providing your financial assurance'' and to include references to the financial assurance requirements for RUE grants (§ 550.166) and pipeline ROW grants (§ 550.1011). The final rule also revises, as proposed, paragraph (a) by removing the words ''terminates immediately'' and substituting the words ''must be replaced.'' The final rule, in paragraph

(a), replaces the word ''promptly'' with a specific timeline of within 72 hours of learning of a negative event for the financial assurance provider and also adds a 30-calendar day timeframe in which the party must provide other financial assurance from a different financial assurance provider.

The Department is also finalizing, as proposed, a revision to the first sentence of paragraph (b) by inserting ''or financial institution'' after ''guarantor,'' to make the provision apply to all types of financial assurance providers, including those offering decommissioning accounts. BOEM is revising the second sentence of paragraph (b) for consistency in terminology by inserting the words ''or other financial assurance'' after the word ''bonds'' and inserting the words ''guarantor, or financial institution'' after the word ''surety,'' so that all surety bonds or other financial assurance instruments must require all financial assurance providers to notify the Regional Director within 72 hours of learning of an action filed alleging that the lessee or grant holder, or their financial assurance provider, is insolvent or bankrupt.

Section 556.904 Decommissioning Accounts

The Department is finalizing, as proposed, the revision of both the section heading and the term ''abandonment accounts'' throughout the section to read ''decommissioning accounts,'' in accordance with BOEM policy and accepted terminology used in the industry. The words ''lease-specific'' are removed throughout this section to make clear that a decommissioning account can be used for a lease or several leases, a RUE grant, or a pipeline ROW grant, or a combination thereof.

The Department is finalizing, as proposed, revisions to paragraph (a) to remove the term ''lease-specific'' and replace ''abandonment'' with ''decommissioning,'' and the addition of references to the lease base and supplemental financial assurance regulation (§ 556.901(d)), as well as the financial assurance regulations for RUE grants (§ 550.166(b)) and pipeline ROW grants (§ 550.1011(d)), consistent with the changes mentioned in the preceding paragraph. Although the paragraph (a) introductory text continues to allow a lessee or grant holder to establish a decommissioning account at a federally insured financial institution, this final rule eliminates the existing restriction that such deposits not exceed the FDIC/FSLIC insurance limits and the reference to paragraph (a)(3), which is being revised and is no longer relevant to withdrawal of funds from a decommissioning account.

The final rule, as proposed, re-arranges the existing sentence constituting § 556.904(a)(1). The rule also revises paragraph (a)(2) to remove the words ''as estimated by BOEM'' to clarify that BOEM does not estimate decommissioning costs, but rather uses the estimates of decommissioning costs determined by BSEE. The final rule also revises paragraph (a)(2) to require funding of a decommissioning account ''pursuant to a schedule that the Regional Director prescribes,'' as opposed to ''within the timeframe the Regional Director prescribes'' as existing § 556.904(a)(2) now states.

The Department is finalizing revisions to paragraph (a)(3) as proposed to remove the requirement to provide binding instructions to purchase Treasury securities for a decommissioning account under certain circumstances. The final rule replaces the existing language with a new provision providing that if you fail to make the initial payment or any scheduled payment into the decommissioning account, or if you fail to correct a missed payment within 30 days, you must immediately submit, and subsequently maintain, a surety bond or other financial assurance in an amount equal to the remaining unsecured portion of your estimated decommissioning liability. This change reflects BOEM's current policy to order a surety bond or other financial assurance in the event the payments into the decommissioning account are not timely made.

The Department is finalizing, as proposed, revisions to paragraph (b) by removing ''lease-specific'' and substituting ''decommissioning'' and to clarify that the interest paid on funds in the account will become part of the principal funds in the account unless the Regional Director authorizes, in writing, the payment of the interest to the party who deposits the funds.

The Department is finalizing, as proposed, the removal of existing paragraphs (c) and (d), which discuss the use of pledged Treasury securities to fund a decommissioning account. Existing paragraph (e) is redesignated as paragraph (c) except that the word ''pledged'' is removed, and ''other revenue stream'' is added to the list of optional sources for funding the account. In response to comments asserting that parties may elect to dedicate production to fund decommissioning accounts even if the Regional Director does not ''require'' them, the Department is adding to new paragraph (c) that the Regional Director may ''authorize,'' in addition to ''require,'' the optional funding sources.

The Department is finalizing the addition of new paragraph (d) with minor edits from the proposal, which describes the Regional Director's discretion to authorize BOEM to provide funds from a decommissioning account to a party that performs the decommissioning in response to a BOEM or BSEE order.

Section 556.905 Third-Party Guarantees

The Department is finalizing, as proposed, revisions to the section heading to read, ''Third-party guarantees.'' The final rule also revises the section throughout to remove the introductory titles of each paragraph to provide consistency in the format of the final regulatory text.

The Department is finalizing, as proposed, revisions to paragraph (a) to reference § 556.901(d) (related to lease financial assurance), and to cross-reference § 550.166(b) (related to RUEs) and 550.1011(d) (related to pipeline ROWs), to clarify that a third-party guarantee may be used as a type of supplemental financial assurance for not only leases, but RUE grants and pipeline ROW grants as well.

The Department is also finalizing, as proposed, revisions to paragraph (a)(1) to clarify that the guarantor, not the guarantee, as provided in the existing regulation, must meet the criteria in § 556.901(d)(1) or (2), as applicable. BOEM retains existing paragraph (a)(2), but revises it to include a requirement, which is found in existing paragraph (a)(4), that the guarantor or guaranteed party must submit a third-party guarantee agreement containing each of the provisions in proposed paragraph (d). As discussed below, paragraph (d) is revised to no longer use the term ''indemnity agreement'' and to provide instead that the provisions that BOEM previously required a lessee or grant holder to include in indemnity agreements must be included in a third-party guarantee agreement. This terminology is changed to clarify that the government is not required to incur the expenses of decommissioning before demanding compensation from the guarantor. The rule also removes existing paragraphs (a)(3) and (4), which are superseded by other revisions to this section.

The Department is finalizing the proposed new paragraph (b) with edits to allow guarantors to limit their guarantees to a fixed dollar amount, as agreed to by BOEM at the time the third-party guarantee is provided. In response

to comments, the Department is also finalizing additional regulatory text in new paragraph (b) to allow a guarantor, as agreed to by BOEM at the time the third-party guarantee is provided, to limit a guarantee's coverage to one or more specific lease obligations with no fixed dollar amount, notwithstanding § 556.902(a)(3).

The Department is finalizing, as proposed, redesignation of existing paragraph (b) as paragraph (c) and revisions to the introductory text to remove the reference to existing paragraph (c)(3) because the requirements in that paragraph have been superseded in this rule. The final rule replaces this reference with a reference to paragraph (a)(1) as revised. Because the cessation of production is neither desirable nor easily accomplished by an operator, this rule also revises existing paragraph (b)(2) to remove the requirement that, when a guarantor becomes unqualified, you must ''cease production until you comply with the surety bond coverage requirements of this subpart.'' Instead, the language in revised redesignated paragraph (c) provides that you must, within 72 hours, ''[s]ubmit, and subsequently maintain a surety bond or other financial assurance covering those obligations previously secured by the third-party guarantee.'' Additionally, the final rule removes existing paragraph (c) as the language has been superseded by the new language in § 556.905(a).

The Department is finalizing, as proposed, revisions to the paragraph (d)(1) introductory text to read ''If you fail to comply with the terms of any lease or grant covered by the guarantee, or any applicable regulation, your guarantor must either:'' This revision is made for consistency with the revision of paragraph (a) to allow the use of a third-party guarantee for a RUE grant or a pipeline ROW grant.

Additionally, the rule revises, as proposed, paragraph (d)(1)(i) to clarify that the corrective action required is to bring the lease or grant into compliance with its terms, or any applicable regulation, to the extent covered by the guarantee. The rule also revises paragraph (d)(1)(ii) to clarify that the liability only extends to that covered by the guarantee and that payment of some amount less than the whole of the guarantee does not result in the cancellation of the guarantee, but rather a reduction in the remaining value of the guarantee equal to the payment made.

The rule removes existing paragraph (d)(2) for consistency with the revision to remove existing paragraph (c), as proposed. As a result, existing paragraph (d)(3) is redesignated as paragraphs (d)(2) and (4) is redesignated as paragraph (d)(3). The rule revises, as proposed, the redesignated paragraphs (d)(2)(ii) and (iii) to remove the words ''your guarantor's'' and replace them with the word ''the'' to clarify that redesignated paragraph (d)(2) applies to the guarantee itself. Lastly, as proposed, the rule revises redesignated paragraph (d)(3) to replace the term ''a suitable replacement financial assurance'' with ''acceptable replacement financial assurance'' for clarity. The rule revises the paragraph so that it is clear that any replacement financial assurance must be provided before the termination of the period of liability of the third-party guarantee.

The Department is finalizing, as proposed, a new paragraph (e) to provide that BOEM will cancel a third-party guarantee under the same terms and conditions as those in revised § 556.906(b) and/or (d)(3).

The Department is finalizing the addition, as proposed, of new paragraphs (f) through (k) to replace the provisions of existing paragraph (e). The new paragraphs mirror the provisions of existing paragraph (e), while making minor adjustments to accommodate the new format and add clarification. The term ''indemnity agreement'' would be replaced with ''third-party guarantee agreement'' throughout.

Section 556.906 Termination of the Period of Liability and Cancellation of Financial Assurance

The Department is finalizing, as proposed, the replacement of the words ''security'' and ''surety bond'' with ''financial assurance'' and ''surety'' with ''financial assurance provider'' for consistency with the changes throughout the subpart. The section heading is also revised so that ''a bond'' is replaced with ''financial assurance.''

This final rule revises existing paragraph (b)(1) to remove the word ''terminated'' in two instances and replace it with ''cancelled'' to be consistent with the existing paragraph (b) introductory text, which provides that the Regional Director will cancel your previous financial assurance when you provide a replacement, subject to the conditions provided in paragraphs (b)(1) through (3). BOEM is also removing the word ''for'' before ''by the bond'' in paragraph (b)(1) for grammatical reasons.

The Department is finalizing, as proposed, revisions to existing paragraph (b)(2) to add cross-references to § 550.166(a), which is the financial assurance regulation for RUE grants, and § 550.1011(a), which is the financial assurance regulation for pipeline ROW grants, and revising existing paragraph (b)(3) to also reference supplemental financial assurance regulations for RUE grants (§ 550.166(b)) and pipeline ROW grants (§ 550.1011(d)). The Department is finalizing the deletion of the word ''base'' in front of financial assurance to clarify that the new financial assurance would replace whatever financial assurance previously existed, whether that financial assurance consisted of base financial assurance alone or together with any prior supplemental financial assurance.

The Department is finalizing, as proposed, revisions to the introductory text of paragraph (d) to cover financial assurance cancellations and return of pledged security and, in the table, is removing the middle column titled, ''The period of liability will end,'' because it was redundant with the provisions in proposed paragraphs (a) through (c).

In table 1 to paragraph (d), the Department is finalizing revisions to the column headers. In the existing column in the table titled, ''For the following type of bond,'' BOEM is removing the words ''type of bond'' and replacing those words with a colon at the top of the table so that this paragraph would apply to surety bonds or other financial assurance, as applicable. The existing column in the table titled, ''Your bond will be cancelled,'' is revised to read, ''Your financial assurance will be reduced or cancelled, or your pledged financial assurance will be returned,'' to clarify that financial assurance may be reduced or cancelled and pledged financial assurance, or a portion thereof, may be returned, and to specify other circumstances under which the Regional Director may cancel supplemental financial assurance or return pledged financial assurance. While the existing criteria identify most instances when cancellation of financial assurance is appropriate, occasionally there are other circumstances where cancellation would be warranted, as discussed in the paragraphs below.

Paragraph (d)(1) in the table 1 to paragraph (d) is revised to include a cross-reference to base financial assurance submitted under §§ 550.166(a) (for RUE grants) and 550.1011(a) (for pipeline ROW grants). The Department is finalizing revisions to paragraph (d)(2) in the same column to include a reference to supplemental financial assurance submitted under §§ 550.166(b) and 550.1011(d). The rule allows cancellation when BOEM determines, using the criteria set forth in § 556.901(d), § 550.166(b), or

§ 550.1011(d), as applicable, that a lessee or grant holder no longer needs to provide supplemental financial assurance for its lease, RUE grant, or pipeline ROW grant; when the operations for which the supplemental financial assurance was provided ceased prior to accrual of any decommissioning obligation; or when cancellation of the financial assurance is appropriate because BOEM determines such financial assurance never should have been required under the regulations. Additionally, DOI is finalizing, as proposed, the addition of a new paragraph (d)(3) in table 1 to paragraph (d) to address the cancellation of a third-party guarantee.

The Department is finalizing, as proposed, revisions to the introductory text in paragraph (e) to remove the words ''or release'' because the term ''release'' is undefined and not used in practice. Likewise, the rule removes the words ''or released'' from paragraph (e)(2). No substantive change is intended; rather BOEM seeks to clarify the meaning of the existing provision. Additionally, the Department is finalizing the revisions of paragraph (e) to reference RUE grants and pipeline ROW grants to provide that the Regional Director may reinstate the financial assurance on the same grounds as currently provided for reinstatement of lease financial assurance.

Section 556.907 Forfeiture of Bonds or Other Financial Assurance

The rule revises the section heading to read, ''Forfeiture of bonds or other financial assurance'' because the use of ''or'' is sufficient in this instance. The rule revises paragraph (a)(1) to include surety bonds or other financial assurance for RUE grants and pipeline ROW grants, in addition to leases, in the forfeiture provisions of this section. The Department is finalizing, as proposed, the clarification in paragraph (a)(2) that the Regional Director may pursue forfeiture of a surety bond or other financial assurance if you default on one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of financial assurance. Throughout this section, BOEM adds references to a grant, a grant holder, and grant obligations to implement the revisions in paragraph (a)(1). BOEM is revising paragraph (a)(2) to replace ''other form of security'' with ''other form of financial assurance'' for consistent terminology.

The Department is finalizing, as proposed, revisions to paragraph (b) to include surety bonds ''or other financial assurance'' so that BOEM may pursue forfeiture of a surety bond or other financial assurance. The word ''lessee'' is replaced with ''record title holder'' to clarify that the term includes record title holders in those situations where operating rights are subleased.

The Department is finalizing, as proposed, revisions to paragraph (c)(1) to include ''financial institution holding or providing your financial assurance'' as one of the parties the Regional Director would notify of a determination to call for forfeiture because a bank or other financial institution may hold funds subject to forfeiture. This rule revises paragraph (c)(1)(ii) to acknowledge limitations authorized by § 556.905(b) by more precisely stating that the Regional Director will use an estimate of the cost of the corrective action needed to bring a lease into compliance when determining the amount to be forfeited, subject, in the case of a guarantee, to any limitation authorized by § 556.905(b). Additionally, BOEM is replacing existing paragraphs (c)(2)(ii) and (iii) with a new paragraph (c)(2)(ii) that specifies that to avoid forfeiture by promising to take corrective action, any financial assurance provider would have to agree to, and demonstrate that it will, complete the required corrective action to bring the relevant lease into compliance within the timeframe specified by the Regional Director, even if the cost of such compliance exceeds the amount of the financial assurance. The amendments clarify that existing paragraphs (c)(2)(ii) and (iii) apply to all forms of financial assurance, including the caveat that corrective action must be completed even if the cost of compliance exceeds the limit of the financial assurance.

The Department is finalizing, as proposed, revisions to existing paragraphs (d) and (e)(2) by replacing ''leases'' with ''lease or grant'' to extend the applicability of these provisions to include RUE and ROW grants.

Similarly, the Department is finalizing, as proposed, revisions to paragraph (f)(1) to include ''grant'' as well as lease. The Department is revising paragraph (f)(2) to clarify that BOEM may recover additional costs from a third-party guarantor only to the extent covered by the guarantee. This is consistent with the change made at § 556.905(b) to allow the use of limited third-party guarantees. This rule also rewords paragraph (g) for clarity.

In some circumstances, predecessor lessees that have been notified about the failure of their successor lessees to fulfill their decommissioning obligations will initiate the requisite decommissioning activities. In these cases, predecessor lessees or grantees are likely to incur costs that could be funded from financial assurance posted with BOEM on behalf of the current lessee. BOEM has finalized new paragraph (h), as proposed, to make clear that BOEM may provide funds collected from forfeited financial assurance to predecessor lessees or grant holders or to third parties taking corrective actions on the lease or grant.

Part 590—Appeal Procedures

Subpart A—Bureau of Ocean Energy Management Appeal Procedures

The Department is revising the heading of subpart A to remove the outdated reference to ''Offshore Minerals Management.'' The heading now reads ''Bureau of Ocean Energy Management Appeals Procedures'' to reflect the current organization of the DOI more accurately. This outdated reference was identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.1 What is the purpose of this subpart?

The Department is revising the introductory text to remove the outdated references to ''Offshore Minerals Management (OMM) decisions'' and to correct prior erroneous text that stated the decisions and orders which are being appealed under part 590 are issued under subchapter C. The outdated reference and erroneous text were identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.2 Who may appeal?

The Department is revising the introductory text to remove the outdated reference to ''OMM officials'' and to correct that the decisions and orders which are being appealed under part 590 are not issued under subchapter C. The outdated reference and erroneous text were identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.3 What is the time limit for filing an appeal?

The Department is revising the introductory text to remove the outdated reference to ''OMM official's final decision'' and replacing it with the correct reference to ''BOEM.'' This outdated reference was identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.4 How do I file an appeal?

The Department is revising paragraph (a) to remove the outdated reference to ''OEMM officer'' and replacing it with the correct reference to ''BOEM.'' This outdated reference was identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

The Department is finalizing, as proposed, the addition of paragraph (c) to specify that, while a demand for supplemental financial assurance may be appealed to the IBLA, a stay can only be granted if an appeal surety bond for an amount equal to the demand is posted. This is intended to mitigate the risk to the government that, after the appeal is decided, a company will be unable to perform its obligations because of its financial deterioration during pendency of the appeal.

Section 590.7 Do I have to comply with the decision or order while my appeal is pending?

The Department is revising paragraphs (a)(1) and (b) to remove the outdated reference to ''OMM'' and replacing it with the correct reference to ''BOEM.'' This outdated reference was identified after the proposed rule was published. This edit is not substantive and therefore was included in this final rule.

Section 590.8 How do I exhaust my administrative remedies?

The Department is revising paragraph (a) to remove an erroneous reference that previously stated that the decisions and orders, which are being appealed under part 590, are issued under subchapter C.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review, as Amended by Executive Order 14094: Modernizing Regulatory Review, and Executive Order 13563: Improving Regulation and Regulatory Review

E.O. 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is a significant action under E.O. 12866, as amended by E.O. 14094, sec. 3(f)(1). This rulemaking will result in an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product).

E.O. 13563 reaffirms the principles of E.O. 12866, as amended by E.O. 14094, while calling for improvements in the Nation's regulatory system to promote predictability and reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. BOEM has developed this rule in a manner consistent with these requirements.

BOEM prepared an analysis of the potential costs and benefits associated with this action, which are described in the following OMB Circular A–4 Accounting Statement. For further discussion, this analysis, *Risk Management and Financial Assurance for OCS Lease and Grant Obligations Regulatory Impact Analysis,* is available in the docket and is summarized in sections IV.B and IV.C of this preamble.

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OMB Circular A–4 Accounting Statement; Estimates, Annualized over 2024–2043

($2023)

Category	Primary Estimate		Minimum Estimate	Maximum Estimate	Source Citation
	Annualized at 3% discount rate	Annualized at 7% discount rate			
Net Regulatory Benefits ($ millions)					
Annualized monetized benefits (discount rate in parentheses)	N/A	N/A	N/A	N/A	RIA
Unquantified benefits	This rule provides consistent, clear regulations which will provide clarity to the industry on how the Department's financial assurance program will be administered on the OCS. This rule is designed to decrease the risk to the taxpayer of assuming financial responsibility for defaulted decommissioning liabilities while providing the industry flexibility to avoid financial assurance if an entity can demonstrate it poses minimal risk. The rule may also reduce environmental damage by decreasing decommissioning activity lead time.				RIA
Costs ($ millions)					
20-year annualized monetized costs	$573.0	$559.0	N/A	N/A	RIA – **Table 1** (20 year)
Annualized quantified, but unmonetized, costs	N/A	N/A	N/A	N/A	RIA
Qualitative costs (unquantified)	Impacts to secondary markets may result in foregone production and royalties				RIA Section VIII. (E.O. 13211)
Net Monetized Benefits ($ millions)					
20-year annualized monetized benefits	-$573.0	-$559.0	N/A	N/A	
Transfers ($ millions)					
Annualized monetized transfers: "on budget"	$0	$0	$0	$0	RIA

Annualized monetized transfers: "off budget"	$0	$0	$0	$0	RIA
From whom to whom?	N/A				RIA
Effects on State, local, and/or Tribal governments	No material adverse effects.				RIA E.O. 12866
Effects on small businesses	Small entities are responsible for most of the Tier 2 liability. BOEM estimates the annualized compliance costs for Tier 2 small entities to be $421 million in bond premiums.				RFA (RIA Section VII.)
Effects on wages	None				None
Effects on growth	Increased compliance costs for oil and gas lessees could negatively impact the competitiveness of the OCS against other opportunities for investment and development.				RIA Section VIII. (E.O. 13211)

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B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–612, requires agencies to analyze the economic impact of regulations when a significant economic impact on a substantial number of small entities is likely and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. Pursuant to sections 603 and 609(b) of the RFA, BOEM prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule that examined the impacts of the proposed rule on small entities, along with regulatory alternatives that could minimize that impact. A summary of the IRFA is presented in the proposed rule at 88 FR 42157 and was included in the docket for public comment (*Risk Management, Financial Assurance and Loss Prevention Initial Regulatory Impact Analysis,* Docket ID No. BOEM–2023–0027–0002).

As required by section 604 of the RFA, BOEM prepared a final regulatory flexibility analysis for this action. The analysis addresses the issues raised by public comments on the IRFA for the proposed rule. The complete analysis is available for review in the docket (Docket No. BOEM–2023–0027) and is summarized here.

The final rule affects OCS lessees and RUE and pipeline ROW grant holders; this includes approximately 391 companies with ownership interests in OCS leases and grants, of which approximately 271 (69 percent) are considered small. Because all 391 companies are subject to this final rule, BOEM expects the rule will affect a substantial number of small entities.

Under this final rule, BOEM will consider the financial capacity of all co-owners when determining the need for current lessees and grant holders to provide supplemental financial assurance. If one of these entities meets the issuer credit or BOEM proxy credit rating criteria, BOEM will not require the current lessee or grant holder to provide supplemental financial assurance. This will benefit financially strong lessees or grant holders that meet the investment grade credit rating criteria and lessees and grant holders that do not meet the credit rating criteria but are co-owners with investment grade co-lessees or co-grant holders. Certain lessees or grant holders with less-than-investment-grade credit ratings that are solely responsible for their OCS liability (sole liability leases or grants) are already bonded under the current regulations and these lessees will not be impacted. BOEM's analysis assumes that such non-investment-grade lessees and grant holders with non-investment-grade co-lessees or co-grant holders that have avoided financial assurance under the current regulations will be expected to provide financial assurance under this final rule. BOEM's estimates indicate that small entities are responsible for $11.6 billion, or approximately 80 percent, of the current $14.6 billion liability of non-investment-grade owners. Non-investment-grade small entities holding joint and several liabilities with other such companies will incur increased compliance burdens under the rule, assuming they do not meet the minimum 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves. This increased compliance burden will vary substantially by entity; the burden is a function of the small entity's decommissioning liability, reserves, and the price of the premiums paid for its financial assurance. Based on the estimates in Table 7 of the RIA, these premiums could exceed $258 per $1,000 of bond coverage for highly speculative small entities.

The regulatory alternatives evaluated for the rule are discussed in section VI (*Analysis of Regulatory Alternatives*) in the RIA and in section XII.B of the preamble to the proposed rule (88 FR 42157). The regulatory alternatives included both more stringent and less stringent regulatory options, as well as a no action alternative for the proposed rule. For the no action regulatory alternative, BOEM would continue the current regulatory policies and partial implementation of NTL No. 2016–N01. For the more stringent regulatory alternative, BOEM would fully implement NTL No. 2016–N01, which would require supplemental financial assurance from all lessees and grant holders with a credit rating less than AA- without a financially strong co-owner or co-grant holder. For the less

stringent regulatory alternative, BOEM would require supplemental financial assurance for lessees with a credit rating less than BB- and would waive requirements for those lessees if there was a financially strong predecessor lessee.

Under BOEM's less stringent regulatory alternative, small entities with a credit rating lower than BB- currently responsible for a liability that has at least one investment-grade predecessor lessee would benefit by avoiding the need to provide any supplemental financial assurance. However, a regulatory framework permitting financially weaker companies to forgo or delay the posting of supplemental financial assurance may create a private cost advantage for certain entities. This could distort competition and incentivize financially weaker companies to incur investment risks for activities they would otherwise not undertake.

BOEM has elected to maintain the proposed rule credit threshold of investment grade (*i.e.,* BBB-) rather than that of the less stringent alternative (*i.e.,* BB-) to reduce the potential risk imposed on taxpayers from uncovered decommissioning liabilities.

Under the more stringent regulatory alternative in the proposed rule, BOEM evaluated the full implementation of BOEM's 2016 NTL. In this alternative (''Alternative 1''), more small businesses would be required to provide supplemental financial assurance because all companies rated A+ and below (S&P) would be required to provide financial assurance to secure their OCS liabilities. BOEM determined that this alternative would not meaningfully reduce risk in comparison with the proposal and would result in significant new costs to industry. Aside from the prior implementation issues with the NTL, the 2016 NTL did not consider risk reduction provided by reserves. As a result, it would cost approximately $1 billion more in annual premiums, and the additional coverage over the final rule would come from investment grade companies that pose a much lower risk of default. Because A+, A, and A- companies have very low default rates, and any co-lessee or predecessor lessee would have responsibilities of covering decommissioning, the small reduction in risk beyond what is provided in the rule would not justify the cost of this regulatory alternative.

Under BOEM's proposed rule, all lessees without an investment-grade co-lessee were required to provide financial assurance at the P70 level if they did not meet the investment-grade credit rating threshold or have a minimum value of proved reserves to decommissioning liability ratio of 3-to-1. The Department is finalizing provisions that require non-investment-grade lessees responsible for properties to provide financial assurance at the P70 level (unless they qualify for the 3-to-1 ratio of the value of proved reserves to decommissioning liability associated with those reserves exemption).

BOEM has designed its financial assurance program to accommodate small entities, while still fulfilling the goals of minimizing the risk of noncompliance with regulations. BOEM's use of lessee and grant holder issuer or proxy credit ratings and lease reserves for determining whether financial assurance would be required creates a performance standard rather than a prescriptive design standard for all companies operating on the OCS.

Decommissioning obligations and the joint and several liability framework for those obligations are not being changed with this rule. BOEM will not categorically exempt or provide differing compliance requirements for small entities. Categorically exempting small entities from the provisions of this rule based on size would place the taxpayer at unacceptable risk for assuming the decommissioning obligations of small entities. BOEM will use a 3-year, phased compliance approach for all lessees and grant holders to allow additional time to come into compliance in the early years of the rule. This could include arranging to secure financial assurance or suitable partnerships with stronger parties to avoid the necessity of providing financial assurance. Categorically providing small entities with more favorable compliance timetables before requiring financial assurance unreasonably increases risk due to the possible financial deterioration of a given company during that time. BOEM's financial assurance criteria are designed, in part, to provide BOEM ample time to intervene should a company's financial position begin to deteriorate. It is foreseeable that a company not meeting those criteria, but categorically granted additional time to provide financial assurance, could deteriorate more quickly than its compliance timetable and thus not be covered and able to satisfactorily perform its obligations to the public.

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 804(2), requires BOEM to perform a regulatory flexibility analysis, provide guidance, and help small businesses comply with statutes and regulations for major rulemakings. This action is subject to the SBREFA because it has an annual effect on the economy of $100 million or more.

Small businesses are expected to face increased compliance costs from this action, unless they have a financially strong co-lessee. BOEM estimates that the annual compliance cost for small businesses is $421 million (discounted at 7 percent). BOEM must apply the same requirements to all weak companies, regardless of size, in order to ensure that the development of energy in the OCS is safe and protects both the taxpayer and the environment. BOEM acknowledged that small businesses may not have issuer credit ratings in the proposed rule (88 FR 42146) and proposed, and is finalizing, provisions allowing entities without a credit rating to have the BOEM Regional Director assess a proxy credit rating to address this issue. Additionally, these small businesses can be evaluated on the proved reserves of their lease to determine if they may be required to provide additional supplemental financial assurance, also potentially reducing their financial burden. Furthermore, a strong co-lessee will obviate the need for financial assurance from the rest of the co-lessees on the lease. BOEM is also including a phased-in implementation and removal of impediments to the use of decommissioning accounts and third party guarantees to provide flexibility and reduce the financial burden. BOEM is tasked with ensuring that all lessee obligations in the OCS are met and believes this rulemaking is necessary to address insufficient financial resources available in the case of default.

For more information on the small business impacts, see the RFA analysis and the discussion in section IV of this preamble. 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 to the Regional Small Business Regulatory Fairness Board. 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 BOEM, call 1–888–REG–FAIR (1–888–734–3247).

D. Unfunded Mandates Reform Act (UMRA)

The UMRA, 2 U.S.C. 1531–1538, requires BOEM, unless otherwise prohibited by law, to assess the effects

of regulatory actions on State, local, and Tribal governments, and the private sector. Section 202 of UMRA generally requires BOEM to prepare a written statement, including a cost-benefit analysis, for each proposed and final rule with ''federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. This action contains a Federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, BOEM has prepared a written statement required under section 202 of UMRA. The statement is included in the RIA for this action and briefly summarized here.

Because all anticipated private sector expenditures that may result from the proposed rule are analyzed in the proposed rule RIA and in the RIA for this final rule (*i.e.,* expenditures of the offshore oil and gas industry), these documents satisfy the UMRA requirement to estimate any disproportionate budgetary effects of the rule on a particular segment of the private sector. As explained in the final RIA, this final rule is anticipated to have annualized net estimated compliance costs of $559 million annually (7 percent discounting), but provides strengthened financial assurance to protect taxpayers from the costs of decommissioning offshore infrastructure. No comments on the UMRA statement were received during the public comment period.

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 12630 Governmental Actions and Interference With Constitutionally Protected Property Rights

Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights,* ensures that government actions affecting the use of private property are undertaken on a well-reasoned basis with due regard for the potential financial impacts imposed by the government. This action does not affect a taking of private property or otherwise have taking implications under E.O. 12630, and therefore, a takings implication assessment is not required. Additionally, no comments were received on E.O. 12630 during the public comment period.

F. Executive Order 13132 Federalism

Regulatory actions 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 are subject to E.O. 13132. Under the criteria in section 1 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. 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. No comments were received on E.O. 13132 during the public comment period.

G. Executive Order 12988 Civil Justice Reform

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

No comments were received on E.O. 12988 during the public comment period.

H. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 defines polices that have Tribal implications as regulations, legislative comments or proposed legislation, and other policy statements or actions that will or may have a substantial direct effect on one or more Indian Tribes, or on the relationship between the Federal Government and one or more Indian Tribes. Additionally, the DOI's consultation policy for Tribal Nations and ANCSA Corporations, as described in Departmental Manual part 512 chapter 4, expands on the above definition from E.O. 13175 and requires that BOEM invite Indian Tribes and ANCSA Corporations ''early in the planning process to consult whenever a Departmental plan or action with Tribal Implications arises.'' BOEM strives to strengthen its government-to-government relationships with Tribal Nations through a commitment to consultation with Tribes, recognition of their right to self-governance and Tribal sovereignty, and honoring BOEM's trust responsibilities for Tribal Nations.

As discussed in the proposal (88 FR 42161), BOEM evaluated the proposed rule under DOI's consultation policy and under the criteria in E.O. 13175 and determined that, while the proposed rule would likely not cause any substantial direct effects on environmental or cultural resources, there may be resource or economic impacts to one or more federally recognized Indian Tribes or ANCSA Corporations as a result of the proposed rule. BOEM sent letters to all Tribes and ANCSA Corporations on March 31, 2023, to ensure they were aware of the proposed rulemaking, to answer any immediate questions they may have, and to invite formal consultation if they would like to consult. Only one request for consultation was received, and consultation was held with the Red Willow (Southern Ute Tribe) on June 28, 2023, and meeting notes are included in the docket (memorandum titled *Tribal Outreach: Red Willow*). For more details on E.O. 13175, the DOI's consultation policy for Tribal Nations and ANCSA Corporations, and the consultations conducted regarding this rulemaking, see the memo in the docket titled *Tribal Outreach: Summary of Engagement Activities.* BOEM can consult at any time with federally recognized Tribes as sovereign nations.

I. Paperwork Reduction Act (PRA)

The PRA of 1995 (44 U.S.C. 3501–3521) provides that 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. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information and report it to a Federal agency (44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k)). This final rule contains collections of information that were submitted to the OMB for review and approval under 44 U.S.C. 3507(d).

A proposed rule, soliciting comments on this collection of information for 30 days, was published on June 29, 2023 (88 FR 42136). No comments on the collections of information were received.

This final rule references existing information collections (ICs) previously approved by OMB and adds new IC requirements for these Department regulations that have been submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). With this final rule BOEM updates the IC requirements under 30 CFR parts 550 and 556. The

updates associated with the risk management and financial assurance for OCS lease and grant obligations are in the ICs bearing the following OMB control numbers:

- 1010–0006 (BOEM), *Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 CFR parts 550, 556, and 560)* (expires 03/31/2026), and
- 1010–0114 (BOEM), *30 CFR part 550, subpart A, General, and Subpart K, Oil and Gas Production Requirements* (expires 05/31/2026).

This final rule modifies collections of information under 30 CFR part 550, subparts A and J, and 30 CFR part 556, subpart I, concerning financial assurance requirements (such as bonding) for leases, pipeline ROW grants, and RUE grants. OMB has reviewed and approved the existing information collection requirements associated with financial assurance regulations for leases (30 CFR 556.900 through 556.907), pipeline ROW grants (30 CFR 550.1011), and RUE grants (30 CFR 550.160 and 550.166).

BOEM estimates that the number of information collection burden hours for the final rule overall is close to the same as that for the existing regulatory framework. When the rule becomes effective, the new and changed provisions will increase the overall annual burden hours for OMB Control Number 1010–0006 by 77 hours (totaling 22,012 annual burden hours) and 264 responses (totaling 22,090 responses) as justified below. The changed provisions for OMB Control Number 1010–0114 add new and revised requirements in 30 CFR part 550, subpart A, but do not impact the overall burden hours for this control number because the burdens for these provisions are counted under OMB Control Number 1010–0006. However, the regulatory descriptions of new and modified requirements are extensive enough to require an update of the IC bearing that OMB control number.

When needed, BOEM will submit future burden changes (either increases or decreases) of the OMB control numbers with reasoning to OMB for review and approval. Every 3 years, BOEM will also review the burden numbers for changes, seek public comment, and submit any request for changes to OMB for approval.

Title of Collection: 30 CFR part 550, ''Oil and Gas and Sulfur Operations in the Outer Continental Shelf,'' and 30 CFR part 556, ''Leasing of Sulfur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf.''

OMB Control Numbers: 1010–0006 and 1010–0114.

Form Number: None.

Type of Review: Revision of currently approved collections.

Respondents/Affected Public: Federal OCS oil, gas, and sulfur operators and lessees, and RUE grant and pipeline ROW grant holders.

Total Estimated Number of Annual Responses: 22,090 responses for 1010–0006, and 5,621 responses for 1010–0114.

Total Estimated Number of Annual Burden Hours: 22,012 hours for 1010–0006, and 27,849 hours for 1010–0114.

Respondent's Obligation: Responses to these collections of information are mandatory or are required to obtain or retain a benefit.

Frequency of Collection: The frequency of response varies but is primarily on the occasion or as per the requirement.

Total Estimated Annual Non-Hour Burden Cost: No additional non-hour costs. Non-hour costs remain at $766,053 for OMB Control Number 1010–0006, and $165,492 for OMB Control Number 1010–0114.

The following is a brief explanation of how the regulatory changes in this rulemaking affect the various subparts' hour and non-hour cost burdens for OMB Control Number 1010–0114:

Right-of-Use and Easement

BOEM's existing regulations concerning RUE grants supporting an OCS lease and a State lease are found at 30 CFR 550.160 through 550.166. The burdens related to 30 CFR 550.160 and 550.166 are identified in OMB Control Number 1010–0114 but accounted for in OMB Control Number 1010–0006.

Existing § 550.160 provides that an applicant for a RUE that serves an OCS lease must meet bonding requirements, but the regulation does not prescribe a base amount. This rule replaces this requirement with a cross-reference to the specific criteria governing financial assurance demands in § 550.166. Therefore, BOEM is establishing a Federal RUE base financial assurance requirement matching the existing base surety bond requirement for State RUEs. The annual burden hour does not change since RUEs that serve OCS leases are currently already meeting financial assurance requirements under BOEM's agreement-specific conditions of approval.

In § 550.166, BOEM is establishing a $500,000 area-wide RUE financial assurance requirement that guarantees compliance with the regulations and the terms and conditions of any RUE grants an entity holds. Previously, $500,000 in financial assurance for RUEs was only required for RUEs associated with State leases. BOEM is also allowing any lessee that has posted area-wide lease financial assurance to modify that financial assurance to also cover any RUE(s) held by the same entity.

BOEM is also revising the RUE regulations to clarify that any RUE grant holder, whether the RUE serves a State or Federal lease, may be required to provide supplemental financial assurance for the RUE if the grant holders do not meet the credit rating or proxy credit rating criterion. The existing regulations authorized demands for supplemental financial assurance but specified no criteria. The annual burden hour would not change based on these clarifications.

BOEM added § 550.167 to explain the requirements for obtaining and assigning an interest in a RUE. To obtain a RUE or assignment of a RUE, the applicant or assignee must apply for and receive approval from BOEM. Some of the new requirements parallel those for ROW assignments in BSEE's regulations at 30 CFR 250.1018. BOEM is expanding the burden estimate for RUE application requirements to include the application to obtain a RUE or assign a RUE interest in § 550.167. BOEM estimates 9 hours per respondent for requirements related to RUE applications or requests to assign a RUE interest.

The following is the revised burden table and a brief explanation of how the regulatory changes affect the various subparts' hour and non-hour cost burdens for OMB Control Number 1010–0006:

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Burden Table

[*Italics show expansion of existing requirements*; **bold indicates new requirements**; regular font shows current requirements. Where applicable, updated estimates from the current collection are being used.]

30 CFR part 550, subpart J	Reporting Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
1011(a)	Provide *area-wide financial assurance* (form BOEM-2030) and if required, supplemental financial assurance, and required information.	GOM 0.25	52	13
		Pacific 3.5	3	11
		Alaska	1	1
1011(d)	**Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of *financial assurance*, request reduction in amount of supplemental financial assurance required on BOEM-approved forms, *or request phased financial assurance*. Submit required information.**	Burden included in 30 CFR 556.901(d).		
30 CFR part 550, subpart J, TOTAL			**56 Responses**	**25 Hours**
30 CFR part 556 and NTLs	**Reporting Requirement***	**Hour Burden**	**Average No. of Annual Responses**	**Annual Burden Hours**
		Non-Hour Cost Burdens		
Subpart A				
104(b)	Submit confidentiality agreement.	0.25	500	125
106	Cost recovery/service fees; confirmation receipt.	Cost recovery/service fees and associated documentation are covered under individual reqts. throughout this part.		0
107	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the *Federal Register* in accordance with § 560.500.	Burden covered in § 560.500.		0
107	File seals, documents, statements, signatures, etc., to establish legal status of all future submissions (paper and/or electronic).	0.17 (10 min.)	400	67
Subtotal			900	192
Subpart B				
201-204	Submit nominations, suggestions, comments, and information in response to Request for Information/Comments, draft and/or proposed 5-year leasing program, etc., including information from States/local governments, Federal agencies, industry, and others.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
201-204	Submit nominations & specific information requested in draft proposed 5-year leasing program, from States/local governments.	4	69	276
Subtotal			69	276
Subpart C				
301; 302	Submit response & specific information requested in Requests for Industry Interest and Calls for Information and Nominations, etc., on areas proposed for leasing; including information from States/local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4)		0
302(d)	Request summary of interest (non-proprietary information) for Calls for Information/Requests for Interest, etc.	1	5	5
305; 306	States or local governments submit comments, recommendations, other responses on size, timing, or location of proposed lease sale. Request extension; enter agreement.	4	25	100
Subtotal			30	105
Subpart D				
400-402; 405	Establish file for qualification; submit evidence/certification for lessee/bidder qualifications. Provide updates; obtain BOEM approval & qualification number.	2	107	214

403(c)	Request hearing on disqualification.	Requirement not considered IC under 5 CFR 1320.3(h)(8).		0
403; 404	Notify BOEM if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment and suspension requirements; request exception; enter transaction.	1.5	50	75
405	Notify BOEM of all mergers, name changes, or change of business.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
Subtotal			157	289
Subpart E				
500; 501	Submit bids, deposits, and required information, including GDIS & maps; in manner specified. Make data available to BOEM.	5	2,000	10,000
500(e); 517	Request reconsideration of bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
501(e)	Apply for reimbursement.	Burden covered in 1010-0048, 30 CFR part 551.		0
511(b); 517	Submit appeal due to restricted joint bidders list; request reconsideration of bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
513; 514	File statement and detailed report of production. Make documents available to BOEM.	2	100	200
515	Request exemption from bidding restrictions; submit appropriate information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
516	Notify BOEM of tie bid agreement; file agreement on determination of lessee.	3.5	2	7
520; 521; 600(c)	Execute lease (includes submission of evidence of authorized agent/completion and request effective date of lease); submit required data and rental.	1	852	852
520(b)	Provide acceptable bond for payment of a deferred bonus.	0.25	1	1
Subtotal			2,955	11,060
Subparts F, G, H				
Subparts F, G, H	Requests of approval for various operations or submit plans or applications. Burden included with other approved collections for BOEM 30 CFR part 550 (subpart A 1010-0114; subpart B 1010-0151) and for BSEE 30 CFR part 250 (subpart A 1014-0022; subpart D 1014-0018).			0
701(c); 716(b); 801(b); 810(b)	Submit new designation of operator (BOEM-1123).	Burden covered in 1010-0114.		0
700-716	File application and required information for assignment/transfer of record title/lease interest (form BOEM-0150; form is 30 min.) (includes sell, exchange, transfer); request effective date/confidentiality; provide notifications.	1	1,414	1,414
		$198 fee x 1,414 forms = $279,972		
800-810	File application and required information for assignment/transfer of operating interest (Form BOEM-0151) (includes sale, sublease, segregation exchange, severance, transfer); request effective date; provide notifications.	1	421	421
		$198 fee x 421 forms = $83,358		
715(a); 808(a)	File required instruments creating or transferring economic interests, etc., for record purposes.	1	2,369	2,369
		$29 fee x 2,369 filings = $68,701		
715(b); 808(b)	Submit "non-required" documents, for record purposes that respondents want BOEM to file with the lease document. (Accepted on behalf of lessees as a service; BOEM does not require or need them.)	.25	11,518	2,880
		$29 fee x 11,518 filings = $334,022		
Subtotal			15,722	7,084
			$766,053	
Subpart I				
900(a) through (e); **901**; 902; 903(a); **905**	Submit OCS Mineral Lessee's and Operator's Bond (Form BOEM-2028) or other financial assurance and, if required, provide supplemental financial assurance; execute forms.	0.33	405	135
900(c), (d), (f), *(g)*; 901(c),	Demonstrate financial ability to carry out present and future financial obligations, request approval of another form of *financial assurance*, request reduction in amount of supplemental financial assurance required on BOEM-approved forms, *or request*	3.5	160	560

(h), **901(d),** (f); 902; **904**	*phased provision of financial assurance*. Monitor and submit required information.			
900(e); 901; 902; 903(a)	Submit OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (Form BOEM-2028A)*;* execute bond.	0.25	141	35
900(f), *(g), (i)*	Submit authority for Regional Director to sell Treasury or alternate type of *financial assurance*.	2	12	24
901	Submit EP, DPP, DOCDs.	IC burden covered in 1010-0151, 30 CFR part 550, subpart B.		0
901*(g)*	Submit oral/written comment on adjusted *financial assurance* amount and information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
902 (g), (h) NEW	**Request informal resolution or file an appeal of supplemental financial assurance demand**.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
903 (*a), (b);* 905 (c)	Notify BOEM of any lapse in *financial assurance* coverage/action filed alleging lessee, surety, guarantor, or financial institution is insolvent or bankrupt or had its charter or license suspended or revoked.	3	4	12
904	Establish decommissioning account for estimated decommissioning obligation.	12	2	24
905	Provide third-party guarantee, agreement, financial and required information, related notices, reports, and annual update; notify BOEM if guarantor becomes unqualified.	19	46	874
905(d); 906	Provide notice of and request approval to terminate period of liability, cancel *financial assurance*; provide required information.	0.5	378	189
907(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5	80
Subtotal			1153	1,933
Subpart K				
1101	Request relinquishment of lease (form BOEM-0152); submit required information.	1	247	247
1102	Request additional time to bring lease into compliance.	1	1	1
1102(c)	Comment on cancellation.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			248	248
30 CFR part 556 TOTAL			21,234 Responses	21,187 Hours
			$766,053 Non-Hour Cost Burdens	
30 CFR part 560	**Reporting Requirement***	**Hour Burden**	**Average No. of Annual Responses**	**Annual Burden Hours**
560.224(a)	Request BOEM to reconsider field assignment of a lease.	Requirement not considered IC under 5 CFR 1320.3(h)(9)		0
560.500	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the *Federal Register* (e.g., financial assurance info.).	1	800	800
30 CFR part 560 TOTAL			**800 Responses**	**800 Hours**
TOTAL REPORTING FOR COLLECTION			**22,090 Responses**	**22,012 Hours**
			$766,053 Non-Hour Cost Burdens	

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Pipelines and Pipeline Right-of-Way Grants

Section 550.1011(d) relates to BOEM's determination of whether supplemental financial assurance is necessary to ensure compliance with the obligations under a pipeline ROW grant. This determination will be based on whether pipeline ROW grant holders have the ability to carry out present and future

obligations. The new criterion for the determination is an issuer credit rating or a proxy credit rating. The issuer credit rating and the audited financial information on which BOEM determines a proxy credit rating already exist. The burden of determining a proxy credit rating, based on the submitted audited financial information, falls on BOEM. The annual burdens placed on the grant holder are minimal (providing to BOEM information the grant holder already has) and is included in the burden estimates for 30 CFR 556.901(d).

30 CFR part 556, subpart I (OMB Control Number 1010–0006):

Bond or Other Financial Assurance Requirements for Leases

A new provision at 556.900(a) clarifies that supplemental financial assurance required by the Regional Director must be provided before an assignment of a lease is approved. The burden increase for this requirement is included in OMB Control Number 1010–0006. Supplemental financial assurance required by this provision does not significantly impact the burdens due to low occurrence, but BOEM is accounting for the change in the burden table.

Base Bonds and Supplemental Financial Assurance

Section 556.901(d) relates to BOEM's determination of whether supplemental financial assurance is necessary to ensure compliance with the obligations under a lease. The lessee will be required to provide supplemental financial assurance if it does not meet at least one of the criteria outlined in the final regulations in this section.

Section 556.901(d)(1) bases this determination on an investment grade issuer credit rating.

Section 556.901(d)(2) provides that, alternatively, BOEM will consider a proxy credit rating, which must be based on audited financial information for the most recent fiscal year.

Section 556.901(d)(3) provides that BOEM will consider whether the co-lessee or co-grant holder has an issuer credit rating or proxy credit rating that meets the investment-grade threshold. The presence of such co-lessee or co-grant holder will allow the Regional Director to not require financial assurance only to the extent that the lessee or grant-holder and that co-lessee or co-grant holder share accrued liabilities, and the Regional Director may require the lessee or grant holder to provide supplemental financial assurance for decommissioning obligations for which such co-lessee or co-grant holder is not liable.

Section 556.901(d)(4) provides that BOEM will also consider the net present value of proved oil and gas reserves on the lease. Lessees' submission of information on proved reserves would account for additional annual burden hours. The lessee would not need to submit proved reserve information if supplemental financial assurance is not required based on its issuer credit rating or proxy credit rating, or those of its co-lessees.

The existing OMB-approved hour burden for each respondent to prepare and submit the information for the existing evaluation criteria requirements is 3.5 hours. In this rule, the revision of the evaluation criteria results in requiring less time for the respondents to prepare and submit the information, particularly for issuer credit rating. If companies choose to demonstrate that the net present value of proved oil and gas reserves on the lease exceeds three times the undiscounted cost of decommissioning associated with production of those reserves, then the time necessary for companies to prepare and submit information on the proved oil and gas reserves is likely greater than 3.5 hours. Therefore, BOEM is retaining the average 3.5-hour burden to reflect the decrease in time required to prepare and submit issuer credit ratings and audited financials and the increase in time required for preparing and submitting information on proved reserves. When the final rule becomes effective, the related burden hours for all respondents (lessee, co-lessee, grant holder, and co-grant holder) will be included in OMB Control Number 1010–0006.

The OMB-approved number of respondents who currently submit financial information under the existing provision is 166 respondents. Recently, BOEM has seen the number of leases decrease in the Gulf of Mexico. BOEM estimates the new number of respondents will be between 150 and 160 respondents. For this request, BOEM is using the higher number of 160 respondents (minus 6 respondents). This number will be reviewed during the next IC renewal process. When the final rule becomes effective, BOEM will include the new number of respondents in OMB Control Number 1010–0006.

The existing OMB-approved annual burden hours for § 556.901 related to demonstrating financial worth/ability to carry out present and future financial obligations are 581 hours (166 respondents × 3.5 hours). With the changes provided in this rule and described above, BOEM estimates that the annual hour burden will decrease by approximately 21 annual burden hours, and total annual burden hours will equal 560 hours (160 respondents × 3.5 hours). This decrease in annual burden hours will be reflected in OMB Control Number 1010–0006 when the final rule becomes effective.

BOEM is adding paragraph (h) to § 556.901 to establish the limited opportunity to provide the required supplemental financial assurance in installments during the first 3 years after the effective date of this regulation. This provision establishes the timing and proportions of phased supplemental financial assurance that will be required in each installment. The lessee will have the option to submit the supplemental financial assurance once or in installments. If the lessee chooses to provide supplemental financial assurance in installments, the number of submissions of supplemental financial assurance will likely increase, but only in response to demands made during the first 3 years after the effective date of this regulation. OMB has currently approved 45 annual burden hours for supplemental financial assurance submissions (135 submissions which take 20 minutes each to submit). BOEM estimates the burden hours for the proposed installment submissions provision to be 135 annual burden hours (405 submissions × 20 minutes), which is an increase of 90 hours over the existing OMB approval.

General Requirements for Bonds and Other Financial Assurance

The scope of § 556.902(a) has been clarified to include ''grant holder'' and financial assurance posted under the requirements of 30 CFR part 550. This change would clarify that the same general requirements for financial assurance provided by lessees, operating rights owners, or operators also apply to financial assurance provided by RUE and pipeline ROW grant holders. BOEM proposes to keep the burdens the same as the existing OMB burdens.

Decommissioning Accounts

Revisions to § 556.904 allow the Regional Director to authorize a RUE grant holder and a pipeline ROW grant holder, as well as a lessee, to establish a decommissioning account as supplemental financial assurance required under § 556.901(d), § 550.166(b), or § 550.1011(d). Because this change represents a new option for grant holders, there are no existing burdens related to this provision under the current OMB approval. BOEM is capturing the increased opportunity to establish decommissioning accounts in

the burden table. BOEM estimates 24 annual burden hours for grant holders and/or lessees to establish their decommissioning account.

The rule contains a new provision under § 556.904(a)(3), which would require immediate submission of a surety bond or other financial assurance in the amount equal to the remaining unsecured portion of the supplemental financial assurance demand if the initial payment or any scheduled payment into the decommissioning account is not timely made. In the context of paperwork-burden, this provision replaces the existing provision that requires submission of binding instructions. The annual burden hours will remain the same but will shift to the new requirement and will be reflected in OMB Control Number 1010–0006 when the final rule is effective.

Third-Party Guarantees

New § 556.905(a) relates to the guarantor's ability to carry out present and future obligations. New § 556.905 replaces the term indemnity agreement with a third-party guarantee agreement with comparable provisions. This change would not impact annual burden hours. Section 556.905(a)(2) requires the guarantor to submit a third-party guarantee agreement. Paragraph (d) provides that the terms that the existing regulation requires for indemnity agreements must be included in a third-party guarantee agreement. This change is to avoid any inference that the government must incur the expenses of decommissioning before being indemnified by the guarantor. It is a change of the name of the agreement and does not change the associated burden.

New § 556.905(e) provides that a lessee or grant holder and the guarantor under a third-party guarantee may request BOEM to cancel a third-party guarantee. BOEM will cancel a third-party guarantee under the same terms and conditions provided for cancellation of other forms of financial assurance in § 556.906(d)(2). The current OMB-approved burden under § 556.905(d) and § 556.906 is 189 annual burden hours. BOEM will keep the burdens the same as the current OMB approved burdens at 189 annual burden hours.

New § 556.905(c)(2) eliminates the requirement that a lessee must cease production until supplemental financial assurance coverage requirements are met when a guarantor becomes unqualified. The regulatory provision is replaced with a requirement to immediately submit and maintain a substitute surety bond or other financial assurance. Both the existing and new provisions require the lessee to provide replacement surety bond coverage; however, BOEM's current OMB Control Number 1010–0006 does not quantify the burdens. Therefore, BOEM is adding approximately 8 annual burden hours to OMB Control Number 1010–0006 for any lessee whose guarantor becomes unqualified.

New § 56.905 removes the requirement that a guarantee must ensure compliance with all lessees' or grant holders' obligations and the obligations of all operators on the lease or grant. This revision allows a third-party guarantor, with BOEM's agreement, to limit the obligations covered by the third-party guarantee. In some situations, this change could result in additional paperwork burden due to additional surety bonds or other financial assurance that must be provided to BOEM to cover obligations previously covered by a third-party guarantee. BOEM estimates the number of additional financial assurance demands resulting from this revision to be low and the annual burdens are included in the existing burden estimates for OMB Control Number 1010–0006, and will be revised in future IC requests, if needed.

Termination of the Period of Liability and Cancellation of Financial Assurance

Section 556.906(d)(2) is revised to add additional circumstances when BOEM may cancel supplemental financial assurance. Section 556.906(d)(2) requires a cancellation request from the lessee or grant holder, or the surety, based on assertions that one of the stated circumstances is present. BOEM already receives these types of requests and has approved the requests, where warranted, as a departure from the regulations. These burdens are already counted in the existing OMB burden estimate for OMB Control Number 1010–0006.

Once this rule becomes effective and OMB approves the information collection requests, BOEM would revise the existing OMB control numbers to reflect the changes. The IC does not include questions of a sensitive nature. BOEM will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI implementing regulations (43 CFR part 2), 30 CFR 556.104, *Information collection and proprietary information,* and 30 CFR 550.197, *Data and information to be made available to the public or for limited inspection.*

The PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component; and (2) annual operation, maintenance, and purchase of service component. Your estimates should consider the cost to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Is the proposed information collection necessary or useful for BOEM to properly perform its functions?

(2) Are the estimated annual burden hour increases and decreases resulting from the proposed rule reasonable?

(3) Is the estimated annual non-hour cost burden resulting from this information collection reasonable?

(4) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(5) Is there a way to minimize the information collection burden on those who must respond, such as by using appropriate automated digital, electronic, mechanical, or other forms of information technology?

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB—OIRA at (202) 395–5806 (fax) or via the online portal at *https://www.reginfo.gov.* You may view the information collection request(s) at *https://www.reginfo.gov/public/do/PRAMain.* Please provide a copy of your comments to the BOEM Information Collection Clearance Officer (see the **ADDRESSES** section). You may contact Anna Atkinson, BOEM Information Collection Clearance Officer at (703) 787–1025 with any questions. Please reference Risk Management,

Financial Assurance and Loss Prevention (OMB Control No. 1010–0006), in your comments.

J. National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed environmental analysis under NEPA is not required because this final rule is covered by a categorical exclusion (see 43 CFR 46.205). This final rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this action is ''of an administrative, financial, legal, technical, or procedural nature.'' BOEM has also determined that the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

One comment was received on NEPA for the proposed rule. A commenter asserted that a NEPA review of the proposed rule is required. According to the commenter, the rule is highly likely to cause environmental effects because the lack of financial assurance could cause decommissioning to take longer to arrange, resulting in additional damage to the environment and obstacles to navigation.

BOEM disagrees with the commenter's assertion that a NEPA review of the proposed rule is required. BOEM conducted an initial NEPA analysis for the proposed rulemaking and determined that the proposed rule met the criteria for categorical exclusion under 43 CFR 46.210(i) of DOI regulations implementing NEPA. The regulations set forth in this rule are ''of an administrative, financial, legal, technical, or procedural nature.'' The final rule also meets these criteria. The final rule does not authorize any activities and does not alleviate BOEM's responsibility to conduct the appropriate environmental reviews throughout the OCS development process. This rulemaking does not reduce or eliminate BOEM's environmental review of conventional energy activities.

K. Data Quality Act

In promulgating this rule, BOEM did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154). In accordance with the Data Quality Act, the Department has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at the Department's website at: *https://www.doi.gov/ocio/policy-mgmt-support/information-and-records-management/iq*. *No comments were received on the Data Quality Act during the public comment period.*

L. Executive Order 13211 Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, BOEM is required to prepare and submit to OMB a ''Statement of Energy Effects'' for ''significant energy actions.'' This should include a detailed statement of any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) expected to result from the action and a discussion of reasonable alternatives and their effects. BOEM has prepared the required statement and has concluded, for the reason described below, that this action, which is a significant regulatory action under Executive Order 12866, may have a significant adverse effect on the supply, distribution, or use of energy. BOEM has prepared a Statement of Energy Effects for this final rule, which is available in section VIII of the RIA.

BOEM estimates that stronger supplemental financial assurance requirements will increase compliance costs for non-investment grade companies operating on the OCS by approximately $559 million annually (7 percent discounting). Pursuant to OMB's memorandum M–01–27, BOEM recognizes that this action may ''adversely affect in a material way the productivity, competition, or prices in the energy sector.'' By increasing industry compliance costs, the regulation could make the U.S. offshore oil and gas sector less attractive than regions with lower operating costs. Additionally, increased costs may depress the value of offshore assets or cause continuing production to become uneconomic sooner, leading to shorter-than-otherwise useful life and potentially a loss of production.

For additional discussion on the energy effects and regulatory alternatives, please see the RIA for this final rulemaking, available in the docket (Docket No. BOEM–2023–0027).

M. Congressional Review Act (CRA)

This action is subject to the CRA, and BOEM will submit a rule report to each chamber of Congress and to the Comptroller General of the United States. This action meets the criteria in 5 U.S.C. 804(2).

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 556

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Oil and gas exploration, Outer continental shelf, Mineral resources, Reporting and recordkeeping requirements, Rights-of-way.

30 CFR Part 590

Administrative practice and procedure.

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

Steven H. Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, BOEM amends 30 CFR chapter V as follows:

PART 550—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. Revise the heading to part 550 to read as set forth above.

Subpart A—General

■ 3. Amend § 550.101 by revising the introductory text to read as follows:

§ 550.101 Authority and applicability.

The Secretary of the Interior (Secretary) authorized the Bureau of Ocean Energy Management (BOEM) to regulate oil, gas, and sulfur exploration, development, and production operations on the Outer Continental Shelf (OCS). Under the Secretary's authority, the BOEM Director requires that all operations:

* * * * *

■ 4. Amend § 550.102 by revising paragraphs (a) and (b)(16) to read as follows:

§ 550.102 What does this part do?

(a) This part contains the regulations of the BOEM Offshore program that

govern oil, gas, and sulfur exploration, development, and production operations on the OCS. When you conduct operations on the OCS, you must submit requests, applications, and notices, or provide supplemental information for BOEM approval.

(b) * * *

TABLE—WHERE TO FIND INFORMATION FOR CONDUCTING OPERATIONS

For information about	Refer to
* * * * *	
(16) Sulfur operations	30 CFR 250, subpart P.
* * * * *	

■ 5. Revise § 550.103 to read as follows:

§ 550.103 Where can I find more information about the requirements in this part?

BOEM may issue Notices to Lessees and Operators (NTLs) that clarify or provide more detail about certain regulatory requirements. NTLs may also outline what information you must provide, as required by regulation, in your various submissions to BOEM.

■ 6. Revise and republish § 550.105 to read as follows:

§ 550.105 Definitions.

Terms used in this part will have the meanings given in the Act and as defined in this section:

Act means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*)

Affected State means with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved under the provisions of the Act, any State:

(1) The laws of which are declared, under section 4(a)(2) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or according to the proposed activity, will receive oil for processing, refining, or transshipment that was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

Analyzed geological information means data collected under a permit or a lease that have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

Ancillary activities mean those activities on your lease or unit that you:

(1) Conduct to obtain data and information to ensure proper exploration or development of your lease or unit; and

(2) Can conduct without BOEM approval of an application or permit.

Archaeological interest means capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest.

Arctic OCS means the Beaufort Sea and Chukchi Sea Planning Areas (for more information on these areas, see the Proposed Final OCS Oil and Gas Leasing Program for 2012–2017 (June 2012) at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/2012-2017/Program-Area-Maps/index.aspx*).

Arctic OCS conditions means, for the purposes of this part, the conditions operators can reasonably expect during operations on the Arctic OCS. Such conditions, depending on the time of year, include, but are not limited to: extreme cold, freezing spray, snow, extended periods of low light, strong winds, dense fog, sea ice, strong currents, and dangerous sea states. Remote location, relative lack of infrastructure, and the existence of subsistence hunting and fishing areas are also characteristic of the Arctic region.

Assign means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''assign'' is synonymous with ''transfer'' and the two terms are used interchangeably.

Attainment area means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of the Environmental Protection Agency (EPA) to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

Best available and safest technology (BAST) means the best available and safest technologies that the Director determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Best available control technology (BACT) means an emission limitation based on the maximum degree of reduction for each criteria air pollutant and VOC subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The Regional Director will verify the BACT on a case-by-case basis, and it may include reductions achieved through the application of processes, systems, and techniques for the control of each criteria air pollutant and VOC.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, under the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

Competitive reservoir means a reservoir in which there are one or more

producible or producing well completions on each of two or more leases or portions of leases, with different lease operating interests, from which the lessees plan future production.

Correlative rights when used with respect to lessees of adjacent leases, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, minerals from a common source.

Criteria air pollutant means any air pollutant for which the United States Environmental Protection Agency (U.S. EPA) has established a primary or secondary National Ambient Air Quality Standard (NAAQS) pursuant to section 109 of the Clean Air Act.

Data means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Departures mean approvals granted by the appropriate BSEE or BOEM representative for operating requirements/procedures other than those specified in the regulations found in this part. These requirements/procedures may be necessary to control a well; properly develop a lease; conserve natural resources, or protect life, property, or the marine, coastal, or human environment.

Development means those activities that take place following discovery of minerals in paying quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities, and which are for the purpose of producing the minerals discovered.

Development geological and geophysical (G&G) activities means those G&G and related data-gathering activities on your lease or unit that you conduct following discovery of oil, gas, or sulfur in paying quantities to detect or imply the presence of oil, gas, or sulfur in commercial quantities.

Director means the Director of BOEM of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

District Manager means the BSEE officer with authority and responsibility for operations or other designated program functions for a district within a BSEE Region.

Eastern Gulf of Mexico means all OCS areas of the Gulf of Mexico the BOEM Director decides are adjacent to the State of Florida. The Eastern Gulf of Mexico is not the same as the Eastern Planning Area, an area established for OCS lease sales.

Emission offsets mean emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD).

Enhanced recovery operations mean pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations that alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

Existing facility, as used in § 550.303, means an Outer Continental Shelf (OCS) facility described in an Exploration Plan, a Development and Production Plan, or a Development Operations Coordination Document, approved before June 2, 1980.

Exploration means the commercial search for oil, gas, or sulfur. Activities classified as exploration include but are not limited to:

(1) Geophysical and geological (G&G) surveys using magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulfur; and

(2) Any drilling conducted for the purpose of searching for commercial quantities of oil, gas, and sulfur, including the drilling of any additional well needed to delineate any reservoir to enable the lessee to decide whether to proceed with development and production.

Facility, as used in § 550.303, means all installations or devices permanently or temporarily attached to the seabed. They include mobile offshore drilling units (MODUs), even while operating in the ''tender assist'' mode (*i.e.,* with skid-off drilling units) or other vessels engaged in drilling or downhole operations. They are used for exploration, development, and production activities for oil, gas, or sulfur and emit or have the potential to emit any air pollutant from one or more sources. They include all floating production systems (FPSs), including column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

Financial assurance means a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations in this part and under the terms of a lease, a RUE grant, or a pipeline ROW grant.

Flaring means the burning of natural gas as it is released into the atmosphere.

Gas reservoir means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

Gas-well completion means a well completed in a gas reservoir or in the associated gas-cap of an oil reservoir.

Geological and geophysical (G&G) explorations mean those G&G surveys on your lease or unit that use seismic reflection, seismic refraction, magnetic, gravity, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulfur in commercial quantities.

Governor means the Governor of a State, or the person or entity designated by, or under, State law to exercise the powers granted to such Governor under the Act.

H2S absent means:

(1) Drilling, logging, coring, testing, or producing operations have confirmed the absence of H2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H2S; or

(2) Drilling in the surrounding areas and correlation of geological and seismic data with equivalent stratigraphic units have confirmed an absence of H2S throughout the area to be drilled.

H2S present means drilling, logging, coring, testing, or producing operations have confirmed the presence of H2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H2S.

H2S unknown means the designation of a zone or geologic formation where neither the presence nor absence of H2S has been confirmed.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Interpreted geological information means geological knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of data and analyzed geological information.

Interpreted geophysical information means geophysical knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps,

developed by determining the geological significance of geophysical data and analyzed geophysical information.

Lease means an agreement that is issued under section 8 or maintained under section 6 of the Act and that authorizes exploration for, and development and production of, minerals. The term also means the area covered by that authorization, whichever the context requires.

Lease term pipelines mean those pipelines owned and operated by a lessee or operator that are completely contained within the boundaries of a single lease, unit, or contiguous (not cornering) leases of that lessee or operator.

Lessee means a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals. The term lessee also includes the BOEM-approved assignee of the lease, and the owner or the BOEM-approved assignee of operating rights for the lease.

Major Federal action means any action or proposal by the Secretary that is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. (2)(C) (*i.e.,* an action that will have a significant impact on the quality of the human environment requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act).

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

Maximum efficient rate (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir that will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

Maximum production rate (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

Minerals include oil, gas, sulfur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced.

Natural resources include, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power or the use of water for the production of power.

Nonattainment area means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of the U.S. EPA to be reliable) to exceed any primary or secondary NAAQS established by the U.S. EPA.

Nonsensitive reservoir means a reservoir in which ultimate recovery is not decreased by high reservoir production rates.

Oil reservoir means a reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

Oil reservoir with an associated gas cap means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

Oil-well completion means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

Operating rights mean any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operator means the person the lessee(s) designates as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the BOEM-approved or BSEE-approved designated agent of the lessee(s), or the holder of operating rights under a BOEM-approved operating rights assignment.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person includes a natural person, an association (including partnerships, joint ventures, and trusts), a State, a political subdivision of a State, or a private, public, or municipal corporation.

Pipelines are the piping, risers, and appurtenances installed for transporting oil, gas, sulfur, and produced waters.

Processed geological or geophysical information means data collected under a permit or a lease that have been processed or reprocessed. Processing involves changing the form of data to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

Production means those activities that take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover operations.

Production areas are those areas where flammable petroleum gas, volatile liquids or sulfur are produced, processed (*e.g.,* compressed), stored, transferred (*e.g.,* pumped), or otherwise handled before entering the transportation process.

Projected emissions mean emissions, either controlled or uncontrolled, from a source or sources.

Prospect means a geologic feature having the potential for mineral deposits.

Regional Director means the BOEM officer with responsibility and authority for a Region within BOEM.

Regional Supervisor means the BOEM officer with responsibility and authority for operations or other designated program functions within a BOEM Region.

Right-of-Use and Easement (RUE) means a right to use a portion of the seabed, at an OCS site other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, and/or other devices to support the exploration, development, or production of oil, gas, or sulfur resources from an OCS lease or a lease on State submerged lands.

Right-of-way (ROW) pipelines are those pipelines that are contained within:

(1) The boundaries of a single lease or unit, but are not owned and operated by a lessee or operator of that lease or unit;

(2) The boundaries of contiguous (not cornering) leases that do not have a common lessee or operator;

(3) The boundaries of contiguous (not cornering) leases that have a common lessee or operator but are not owned and operated by that common lessee or operator; or

(4) An unleased block(s).

Sensitive reservoir means a reservoir in which the production rate will affect ultimate recovery.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

Suspension means a granted or directed deferral of the requirement to produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).

Transfer means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''transfer'' is synonymous with ''assign'' and the two terms are used interchangeably.

Venting means the release of gas into the atmosphere without igniting it. This includes gas that is released underwater and bubbles to the atmosphere.

Volatile organic compound (VOC) means any organic compound that is emitted to the atmosphere as a vapor. Unreactive compounds are excluded from the preceding sentence of this definition.

Waste of oil, gas, or sulfur means:

(1) The physical waste of oil, gas, or sulfur;

(2) The inefficient, excessive, or improper use, or the unnecessary dissipation of reservoir energy;

(3) The locating, spacing, drilling, equipping, operating, or producing of any oil, gas, or sulfur well(s) in a manner that causes or tends to cause a reduction in the quantity of oil, gas, or sulfur ultimately recoverable under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or

(4) The inefficient storage of oil.

Welding means all activities connected with welding, including hot tapping and burning.

Wellbay is the area on a facility within the perimeter of the outermost wellheads.

Well-completion operations mean the work conducted to establish production from a well after the production-casing string has been set, cemented, and pressure-tested.

Well-control fluid means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

Western Gulf of Mexico means all OCS areas of the Gulf of Mexico except those the BOEM Director decides are adjacent to the State of Florida. The Western Gulf of Mexico is not the same as the Western Planning Area, an area established for OCS lease sales.

Workover operations mean the work conducted on wells after the initial well-completion operation for the purpose of maintaining or restoring the productivity of a well.

You, depending on the context of this part, means a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the individuals listed in this definition.

■ *7.*Amend § 550.160 by:

■ a. Revising the section heading;

■ b. Removing the introductory text; and

■ c. Revising paragraphs (a) introductory text, (b) through (e), and (f)(1) and (2).

The revisions read as follows:

§ 550.160 When will BOEM grant me a right-of-use and easement (RUE), and what requirements must I meet?

(a) A RUE is required to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, and/or other devices at an OCS site other than an OCS lease you own, that are:

* * * * *

(b) You must exercise the RUE according to the terms of the grant and the regulations in this part.

(c) You must meet the qualification requirements at §§ 556.400 through 556.402 of this subchapter and the applicable financial assurance requirements in this section and part 556, subpart I of this subchapter.

(d) If you apply for a RUE on a leased area, you must notify the lessee and give her/him an opportunity to comment on your application; and

(e) You must receive BOEM approval for all platforms, seafloor production equipment, artificial islands, facilities, installations, and/or other devices permanently or temporarily attached to the seabed.

(f) * * *

(1) You obtain a RUE after January 12, 2004; or

(2) You ask BOEM to modify your RUE to change the footprint of the associated platform, seafloor production equipment, artificial island, facility, installation, and/or device.

* * * * *

■ 8. Revise § 550.166 to read as follows:

§ 50.166 If BOEM grants me a RUE, what financial assurance must I provide?

(a) Before BOEM grants you a RUE on the OCS, you must submit or maintain financial assurance of $500,000, which will guarantee compliance with the regulations and the terms and conditions of all RUEs you hold.

(1) You are not required to submit and maintain the financial assurance of $500,000 pursuant to this paragraph (a) if you furnish and maintain area-wide lease financial assurance in excess of $500,000 pursuant to § 556.901(a) of this subchapter, provided that the area-wide lease financial assurance also guarantees compliance with all the terms and conditions of all RUEs you hold in the area.

(2) The Regional Director may reduce the amount required in this paragraph (a) upon a determination that the reduced amount is sufficient to guarantee compliance with the regulations and the terms and conditions of all RUE grant(s) you hold.

(3) The requirements for financial assurance in §§ 556.900(d) through (g) 556.902 of this subchapter apply to the financial assurance required under paragraph (a) of this section.

(b) If BOEM grants you a RUE that serves either an OCS lease or a State lease, the Regional Director may require supplemental financial assurance above the amount required by paragraph (a) of this section, to ensure compliance with the obligations under your RUE grant, based on an evaluation of your ability to carry out present and future obligations on the RUE using the criteria set forth in § 556.901(d)(1) through (3) of this subchapter. This supplemental financial assurance must:

(1) Meet the requirements of §§ 556.900(d) through (g) and 556.902 of this subchapter; and

(2) Cover costs and liabilities for compliance with the obligations of your RUE grants and with applicable BOEM and Bureau of Safety and Environmental Enforcement (BSEE) orders.

(c) If you fail to replace any deficient financial assurance upon demand or fail to provide supplemental financial assurance upon demand, the Regional Director may:

(1) Assess penalties under subpart N of this part;

(2) Request BSEE to suspend operations on your RUE; and/or

(3) Initiate action for cancellation of your RUE grant.

■ 9. Add § 550.167 to read as follows:

§ 550.167 How may I obtain or assign my interest in a RUE?

(a) To obtain a RUE or request an assignment of an interest in a RUE, the applicant or assignee must file an application and provide the information contained in § 550.161 if a change in uses is planned and must obtain BOEM's approval.

(b) An application for approval of an assignment of an interest in a RUE, in whole or in part, must be filed in triplicate with the Regional Director. Such application must be supported by a statement that the assignee agrees to comply with and to be bound by the terms and conditions of the RUE grant. The assignee must satisfy the bonding requirements in § 550.166. No RUE assignment will be recognized unless and until it is first approved, in writing, by the Regional Director. The assignee of an interest in a RUE must pay the same service fee as that listed in § 550.106(a)(1) for a lease record title assignment request.

(c) BOEM may disapprove an assignment in the following circumstances:

(1) When the assignee has unsatisfied obligations under the regulations in this chapter or in chapters II or XII of this title, or under any applicable BOEM or BSEE order;

(2) When an assignment is not acceptable as to form or content (*e.g.,* containing incorrect legal description, not executed by a person authorized to bind the corporation, assignee does not meet the requirements of §§ 556.401 through 556.405 of this subchapter);

(3) When the assignment does not comply with or would conflict with this part, or any other applicable laws or regulations (*e.g.,* Departmental debarment rules); or

(4) When the assignee does not meet the applicable financial assurance requirements in § 550.166 and part 556, subpart I of this subchapter, or has not complied with a BOEM or BSEE order.

■ 10. Amend § 550.199 by revising paragraph (b) to read as follows:

§ 550.199 Paperwork Reduction Act statements—information collection.

* * * * *

(b) Respondents are OCS oil, gas, and sulfur lessees and operators. The requirement to respond to the information collections in this part is mandated under the Act (43 U.S.C. 1331 *et seq.*) and the Act's Amendments of 1978 (43 U.S.C. 1801 *et seq.*). Some responses are also required to obtain or retain a benefit or may be voluntary. Proprietary information will be protected under § 550.197; parts 551 and 552 of this subchapter; and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations at 43 CFR part 2.

* * * * *

Subpart J—Pipelines and Pipeline Rights-of-Way

■ 11. Revise § 550.1011 to read as follows:

§ 550.1011 Financial assurance requirements for pipeline right-of-way (ROW) grant holders.

(a) Except as provided in paragraph (b) of this section, when you apply for, attempt to assign, or are the holder of a pipeline right-of-way (ROW) grant, you must furnish and maintain $300,000 of area-wide financial assurance that guarantees compliance with the regulations and the terms and conditions of all the pipeline ROW grants you hold in an OCS area as defined in § 556.900(b) of this subchapter. The requirement to furnish and maintain area-wide financial assurance for a pipeline ROW grant is separate and distinct from the requirement to provide financial assurance for a lease or right-of-use and easement (RUE).

(b) The requirement to furnish and maintain area-wide pipeline ROW financial assurance under paragraph (a) of this section may be satisfied if your operator or a co-grant holder provides such financial assurance in the required amount that guarantees compliance with the regulations and the terms and conditions of the grant.

(c) The requirements for lease financial assurance in §§ 556.900(d) through (g) and 556.902 of this subchapter apply to the area-wide financial assurance required in paragraph (a) of this section.

(d) The Regional Director, using the criteria set forth in § 556.901(d)(1) through (3) of this subchapter, will evaluate your financial ability to carry out present and future obligations, and as a result, may require supplemental financial assurance (*i.e.,* above the amount required by paragraph (a) of this section) to ensure compliance with the obligations under your pipeline right-of-way grant.

(e) The supplemental financial assurance required under paragraph (d) of this section must:

(1) Meet the requirements of §§ 556.900(d) through (g) and 556.902 of this subchapter, and

(2) Cover costs and liabilities for compliance with the obligations of your ROW grants and with applicable BOEM and BSEE orders.

(f) If you fail to replace any deficient financial assurance upon demand or fail to provide supplemental financial assurance upon demand, the Regional Director may:

(1) Assess penalties under subpart N of this part;

(2) Request BSEE to suspend operations on your pipeline ROW; and/or

(3) Initiate action for forfeiture of your pipeline ROW grant in accordance with § 250.1013 of this title.

PART 556—LEASING OF SULFUR OR OIL AND GAS AND FINANCIAL ASSURANCE REQUIREMENTS IN THE OUTER CONTINENTAL SHELF

■ 12. The authority citation for part 556 is revised to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 6213; 43 U.S.C. 1334.

■ 13. Revise the heading to part 556 to read as set forth above.

Subpart A—General Provisions

■ 14. Amend § 556.104 by revising paragraph (a)(4) to read as follows:

§ 556.104 Information collection and proprietary information.

(a) * * *

(4) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, by mail to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

* * * * *

■ 15. Amend § 556.105 by:

■ a. In paragraph (a), removing the acronyms ''EPA'' and ''GOMESA''; and

■ b. Revising and republishing paragraph (b).

The revision read as follows:

§ 556.105 Acronyms and definitions.

* * * * *

(b) As used in this part, each of the terms and phrases listed below has the meaning given in the Act or as defined in this section.

Act means the Outer Continental Shelf Lands Act, as amended (OCSLA) (43 U.S.C. 1331–1356a).

Affected State means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of OCSLA, any State:

(i) The laws of which are declared, pursuant to section 4(a)(2) of OCSLA (43 U.S.C. 1333(a)(2)), to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(ii) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of OCSLA (43 U.S.C. 1333(a)(1));

(iii) Which is receiving, or in accordance with the proposed activity

will receive, oil for processing, refining, or transshipment that was extracted from the OCS and transported directly to that State by means of one or more vessels or by a combination of means, including a vessel;

(iv) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment; or a State in which there will be significant changes in the social, governmental, or economic infrastructure resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(v) In which the Secretary finds that because of such activity, there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from one or more vessels, pipelines, or other transshipment facilities.

Aliquot or Aliquot part means an officially designated subdivision of a lease's area, which can be a half of a lease (1/2), a quarter of a lease (1/4), a quarter of a quarter of a lease (1/4 1/4), or a quarter of a quarter of a quarter of a lease (1/4 1/4 1/4).

Assign means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''assign'' is synonymous with ''transfer'' and the two terms are used interchangeably.

Authorized officer means any person authorized by law or by delegation of authority to or within BOEM to perform the duties described in this part.

Average daily production means the total of all production in an applicable production period that is chargeable under § 556.514 divided by the exact number of calendar days in the applicable production period.

Barrel means 42 U.S. gallons. All measurements of crude oil and natural gas liquids under this section must be at 60 °F.

(i) For purposes of computing production and reporting of natural gas, 5,626 cubic feet of natural gas at 14.73 pounds per square inch equals one barrel.

(ii) For purposes of computing production and reporting of natural gas liquids, 1.454 barrels of natural gas liquids at 60 °F equals one barrel of crude oil.

Bidding unit means one or more OCS blocks, or any portion thereof, that may be bid upon as a single administrative unit and will become a single lease. The term 'tract,'' as defined in this section, may be used interchangeably with the term ''bidding unit.''

BOEM means Bureau of Ocean Energy Management of the U.S. Department of the Interior.

Bonus or royalty credit means a legal instrument or other written documentation approved by BOEM, or an entry in an account managed by the Secretary, that a bidder or lessee may use in lieu of any other monetary payment for a bonus or a royalty due on oil or gas production from certain leases, as specified in, and permitted by, the Gulf of Mexico Energy Security Act of 2006, Pub. L. 109–432 (Div. C, Title 1), 120 Stat. 3000 (2006), codified at 43 U.S.C. 1331, note.

BSEE means Bureau of Safety and Environmental Enforcement of the U.S. Department of the Interior.

Central Planning Area (CPA) means that portion of the Gulf of Mexico that lies southerly of Louisiana, Mississippi, and Alabama. Precise boundary information is available from the BOEM Leasing Division, Mapping and Boundary Branch (MBB).

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inland to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the water therein and thereunder), strongly influenced by each other and in proximity to the shorelines of one or more of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, whose zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shore lines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inland boundaries of which may be identified by the several coastal States, under section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972, 16 U.S.C. 1454(b)(1).

Coastline means the line of mean ordinary low water along that portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters.

Crude oil means a mixture of liquid hydrocarbons, including condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, but does not include liquid hydrocarbons produced from tar sand, gilsonite, oil shale, or coal.

Designated operator means a person authorized to act on your behalf and fulfill your obligations under the Act, the lease, and the regulations, who has been designated as an operator by all record title holders and all operating rights owners that own an operating rights interest in the aliquot/depths in which the designated operator, to which the Designation of Operator form applies, will be operating, and who has been approved by BOEM to act as designated operator.

Desoto Canyon OPD means the Official Protraction Diagram (OPD) designated as Desoto Canyon that has a western edge located at the universal transverse mercator (UTM) X coordinate 1,346,400 in the North American Datum of 1927 (NAD27).

Destin Dome OPD means the Official Protraction Diagram (OPD) designated as Destin Dome that has a western edge located at the Universal Transverse Mercator (UTM) X coordinate 1,393,920 in the NAD27.

Development block means a block, including a block susceptible to drainage, which is located on the same general geologic structure as an existing lease having a well with indicated hydrocarbons; a reservoir may or may not be interpreted to extend on to the block.

Director means the Director of the BOEM of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

Eastern Planning Area means that portion of the Gulf of Mexico that lies southerly and westerly of Florida. Precise boundary information is available from the BOEM Leasing Division, Mapping and Boundary Branch (MBB).

Economic interest means any right to, or any right dependent upon, production of crude oil, natural gas, or natural gas liquids and includes, but is not limited to: a royalty interest; an overriding royalty interest, whether payable in cash or kind; a working interest that does not include a record title interest or an operating rights interest; a carried working interest; a net profits interest; or a production payment.

Financial assurance means a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations in this part and under the terms of a lease, a RUE grant, or a pipeline ROW grant.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Initial period or primary term means the initial period referred to in 43 U.S.C. 1337(b)(2).

Investment grade credit rating means an issuer credit rating of BBB- or higher (S&P Global Ratings and Fitch Ratings, Inc.), Baa3 or higher (Moody's Investors Service Inc.), or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.

Issuer credit rating means a credit rating assigned to an issuer of corporate debt by S&P Global Ratings, by Moody's Investors Service Inc., by Fitch Ratings, Inc., or by another nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.

Joint bid means a bid submitted by two or more persons for an oil and gas lease under section 8(a) of the Act.

Lease means an agreement that is issued under section 8 or maintained under section 6 of the Act and that authorizes exploration for, and development and production of, minerals on the OCS. The term also means the area covered by that agreement, whichever the context requires.

Lease interest means one or more of the following ownership interests in an OCS oil and gas or sulfur lease: a record title interest, an operating rights interest, or an economic interest.

Lessee means a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals and is therefore a record title owner of the lease, or the BOEM-approved assignee-owner of a record title interest. The term lessee also includes the BOEM-approved sublessee- or assignee-owner of an operating rights interest in a lease.

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Mineral means oil, gas, and sulfur; it also includes sand, gravel, and salt used to facilitate the development and production of oil, gas, and sulfur.

Natural gas means a mixture of hydrocarbons and varying quantities of non-hydrocarbons that exist in the gaseous phase.

Natural gas liquids means liquefied petroleum products produced from reservoir gas and liquefied at surface separators, field facilities, or gas processing plants worldwide, including any of the following:

(i) Condensate—natural gas liquids recovered from gas well gas (associated and non-associated) in separators or field facilities; or

(ii) Gas plant products—natural gas liquids recovered from natural gas in gas processing plants and from field facilities. Gas plant products include the following, as classified according to the standards of the Natural Gas Processors Association (NGPA) or the American Society for Testing and Materials (ASTM):

(A) Ethane—C2H6;

(B) Propane—C3H8;

(C) Butane—C4H10, including all products covered by NGPA specifications for commercial butane, including isobutane, normal butane, and other butanes—all butanes not included as isobutane or normal butane;

(D) Butane-Propane Mixtures—All products covered by NGPA specifications for butane-propane mixtures;

(E) Natural Gasoline—A mixture of hydrocarbons extracted from natural gas, that meets vapor pressure, end point, and other specifications for natural gasoline set by NGPA;

(F) Plant Condensate—A natural gas plant product recovered and separated as a liquid at gas inlet separators or scrubbers in processing plants or field facilities; and

(G) Other Natural Gas plant products meeting refined product standards (*i.e.,* gasoline, kerosene, distillate, etc.).

Operating rights means an interest created by sublease out of the record title interest in an oil and gas lease, authorizing the owner to explore for, develop, and/or produce the oil and gas contained within a specified area and depth of the lease (*i.e.,* operating rights tract).

Operating rights owner means the holder of operating rights.

Operating rights tract means the area within the lease from which the operating rights have been severed on an aliquot basis from the record title interest, defined by a beginning and ending depth.

Operator means the person designated as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the operating rights owner, or a designated agent of the lessee or the operating rights owner.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in the Submerged Lands Act (43 U.S.C. 1301–1315) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Outer Continental Shelf Lands Act (OCSLA) means the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356a), as amended.

Owned, as used in the context of restricted joint bidding or a statement of production, means:

(i) With respect to crude oil—having either an economic interest in or a power of disposition over the production of crude oil;

(ii) With respect to natural gas—having either an economic interest in or a power of disposition over the production of natural gas; and

(iii) With respect to natural gas liquids—having either an economic interest in or a power of disposition over any natural gas liquids at the time of completion of the liquefaction process.

Pensacola OPD means the Official Protraction Diagram (OPD) designated as Pensacola that has a western edge located at the UTM X coordinate 1,393,920 in the NAD27.

Person means a natural person, where so designated, or an entity, such as a partnership, association, State, political subdivision of a State or territory, or a private, public, or municipal corporation.

Planning area means a large portion of the OCS, consisting of contiguous OCS blocks, defined for administrative planning purposes.

Predecessor means a prior lessee or owner of operating rights, or a prior holder of a right-of-use and easement grant or a pipeline right-of-way grant. A predecessor is liable for obligations that accrued or began accruing while it held an ownership interest in that lease or grant.

Primary term or initial period means the initial period referred to in 43 U.S.C. 1337(b)(2).

Regional Director means the BOEM officer with responsibility and authority for a Region within BOEM.

Regional Supervisor means the BOEM officer with responsibility and authority for leasing or other designated program functions within a BOEM Region.

Right-of-Use and Easement (RUE) means a right to use a portion of the

seabed at an OCS site other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, and/or other devices to support the exploration, development, or production of oil, gas, or sulfur resources from an OCS lease or a lease on State submerged lands.

Right-of-Way (ROW) means an authorization issued by BSEE under the authority of section 5(e) of the OCSLA (43 U.S.C. 1334(e)) for the use of submerged lands of the Outer Continental Shelf for pipeline purposes.

Secretary means the Secretary of the Interior or an official or a designated employee authorized to act on the Secretary's behalf.

Single bid means a bid submitted by one person for an oil and gas lease under section 8(a) of the Act.

Six-month bidding period means the 6-month period of time:

(i) From May 1 through October 31; or

(ii) from November 1 through April 30.

Statement of production means, in the context of joint restricted bidders, the following production during the applicable prior production period:

(i) The average daily production in barrels of crude oil, natural gas, and natural gas liquids which it owned worldwide;

(ii) The average daily production in barrels of crude oil, natural gas, and natural gas liquids owned worldwide by every subsidiary of the reporting person;

(iii) The average daily production in barrels of crude oil, natural gas, and natural gas liquids owned worldwide by any person or persons of which the reporting person is a subsidiary; and

(iv) The average daily production in barrels of crude oil, natural gas, and natural gas liquids owned worldwide by any subsidiary, other than the reporting person, of any person or persons of which the reporting person is a subsidiary.

Tract means one or more OCS blocks, or any leasable portion thereof, that will be part of a single oil and gas lease. The term tract may be used interchangeably with the term ''bidding unit.''

Transfer means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, ''transfer'' is synonymous with ''assign'' and the two terms are used interchangeably.

We, us, and our mean BOEM or the Department of the Interior, depending on the context in which the word is used.

Western Planning Area (WPA) means that portion of the Gulf of Mexico that lies south and east of Texas. Precise boundary information is available from the Leasing Division, Mapping and Boundary Branch.

You, depending on the context of this part, means a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the individuals listed in this definition.

Subpart G—Transferring All or Part of the Record Title Interest in a Lease

■ 16. Amend § 556.703 by revising paragraph (a) to read as follows:

§ 556.703 What is the effect of the approval of the assignment of 100 percent of the record title in a particular aliquot(s) of my lease and of the resulting lease segregation?

(a) The financial assurance requirements of subpart I of this part apply separately to each segregated lease.

* * * * *

■ 17. Amend § 556.704 by revising the section heading and paragraphs (a) introductory text, and (a)(1) and (2) to read as follows:

§ 556.704 When may BOEM disapprove an assignment or sublease of an interest in my lease?

(a) BOEM may disapprove an assignment or sublease of all or part of your lease interest(s):

(1) When the transferor, transferee, or sublessee is not in compliance with all applicable regulations and orders, including financial assurance requirements;

(2) When a transferor attempts a transfer that is not acceptable as to form or content (*e.g.,* not on standard form, containing incorrect legal description, not executed by a person authorized to bind the corporation, transferee does not meet the requirements of § 556.401); or

* * * * *

Subpart H—Transferring All or Part of the Operating Rights in a Lease

■ 18. Amend § 556.802 by revising the section heading, introductory text, and paragraphs (a) and (b) to read as follows:

§ 556.802 When may BOEM disapprove the transfer of all or part of my operating rights interest?

BOEM may disapprove a transfer of all or part of your operating rights interest:

(a) When the transferor or transferee is not in compliance with all applicable regulations and orders, including financial assurance requirements;

(b) When a transferor attempts a transfer that is not acceptable as to form or content (*e.g.,* not on standard form, containing incorrect legal description, not executed in accordance with corporate governance, transferee does not meet the requirements of § 556.401); or

* * * * *

■ 19. Revise the heading to subpart I to read as follows:

Subpart I—Financial Assurance

■ 20. Amend § 556.900 by:

■ a. Revising the section heading and introductory text;

■ b. Revising paragraphs (a) introductory text, (g) introductory text, and (h); and

■ c. Adding paragraph (i).

The revisions and addition read as follows:

§ 556.900 Financial assurance requirements for an oil and gas or sulfur lease.

This section establishes financial assurance requirements for the lessee of an OCS oil and gas or sulfur lease.

(a) Before BOEM will issue a new lease to you as the lessee, you or another lessee for the lease must comply with one of the options in paragraphs (a)(1) through (3) of this section. Before BOEM will approve the assignment of a record title interest in an existing lease to you as the lessee, you or another lessee for the lease must provide any supplemental financial assurance required by the Regional Director and also comply with one of the options in paragraphs (a)(1) through (3).

* * * * *

(g) You may provide alternative types of financial assurance instead of providing a surety bond if the Regional Director determines that the alternative financial assurance protects the interests of the United States to the same extent as a surety bond.

* * * * *

(h) If you fail to replace deficient financial assurance or to provide supplemental financial assurance upon demand, the Regional Director may:

(1) Assess penalties under part 550, subpart N of this subchapter;

(2) Request BSEE to suspend production and other operations on your lease in accordance with § 250.173 of this title; and/or

(3) Initiate action to cancel your lease.

(i) In the event you amend your area-wide surety bond covering lease obligations, or obtain a new area-wide lease surety bond, to cover the financial

assurance requirements for any RUE(s), your area-wide lease surety bond may be called in whole or in part to cover any or all the obligations on which you default that are associated with your RUE(s) located in the area covered by such area-wide lease surety bond.

■ 21. Amend § 556.901 by:
■ a. Revising the section heading;
■ b. Revising paragraphs (a) introductory text and (a)(1)(i);
■ c. Revising paragraphs (b) introductory text and (b)(1)(i);
■ d. Revising paragraphs (c) through (f); and
■ e. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

§ 556.901 Base and supplemental financial assurance.

(a) You must provide the following financial assurance before commencing any lease exploration activities.

(1) * * *

(i) You must furnish the Regional Director $200,000 in lease exploration financial assurance that guarantees compliance with all the terms and conditions of the lease by the earliest of:

* * * * *

(b) This paragraph (b) explains what financial assurance you must provide before lease development and production activities commence.

(1) * * *

(i) You must furnish the Regional Director $500,000 in lease development financial assurance that guarantees compliance with all the terms and conditions of the lease by the earliest of:

* * * * *

(c) If you can demonstrate to the satisfaction of the Regional Director that you can satisfy your decommissioning and other lease obligations for less than the amount of financial assurance required under paragraph (a)(1) or (b)(1) of this section, the Regional Director may accept financial assurance in an amount less than the prescribed amount but not less than the amount of the cost for decommissioning.

(d) The Regional Director may determine that supplemental financial assurance (*i.e.,* financial assurance above the amounts prescribed in §§ 550.166(a) and 550.1011(a) of this subchapter, § 556.900(a), or paragraphs (a) and (b) of this section) is required to ensure compliance with your lease obligations, including decommissioning obligations; the regulations in this chapter; and the regulations in chapters II and XII of this title. The Regional Director may require you to provide supplemental financial assurance if you do not meet at least one of the following criteria:

(1) You have an investment grade credit rating. If any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, provides a credit rating for you that differs from that of any other nationally recognized statistical rating organization, BOEM will apply the highest rating for purposes of determining your financial assurance requirements.

(2) You have a proxy credit rating determined by the Regional Director that they determine reflects creditworthiness equivalent to an investment grade credit rating, which must be based on audited financial information for the most recent fiscal year (which must include an income statement, balance sheet, statement of cash flows, and the auditor's certificate).

(i) The audited financial information for your most recent fiscal year must cover a continuous twelve-month period within the twenty-four-month period prior to your receipt of the Regional Director's determination that you must provide supplemental financial assurance.

(ii) In determining your proxy credit rating, the Regional Director may include the total value of the offshore decommissioning liabilities associated with any lease(s) or grants in which you have an ownership interest. Upon the request of the Regional Director, you must provide the information that the Regional Director determines is necessary to properly evaluate the total value of your offshore decommissioning liabilities, including joint ownership interests and liabilities associated with your OCS leases and grants.

(3) Your co-lessee or co-grant holder has an issuer credit rating or proxy credit rating that meets the criterion set forth in paragraph (d)(1) or (2) of this section, as applicable. However, the presence of such co-lessee or co-grant holder will allow the Regional Director to not require financial assurance from you only to the extent that you and that co-lessee or co-grant holder share accrued liabilities, and the Regional Director may require you to provide supplemental financial assurance for decommissioning obligations for which such co-lessee or co-grant holder is not liable.

(4) There are proved oil and gas reserves on the lease, unit, or field, as defined by the SEC Regulation S–X at 17 CFR 210.4–10 and SEC Regulation S–K at 17 CFR 229.1200, the discounted value of which exceeds three times the estimated undiscounted cost of the decommissioning associated with the production of those reserves, and that value must be based on proved reserve reports submitted to the Regional Director and reported on a per-lease, unit, or field basis. BOEM will determine the decommissioning costs associated with the production of your reserves, and will use the following undiscounted decommissioning cost estimates:

(i) Where BSEE-generated probabilistic estimates are available, BOEM will use the estimate at the level at which there is a 70 percent probability that the actual cost of decommissioning will be less than the estimate (P70).

(ii) If there is no BSEE probabilistic estimate available, BOEM will use the BSEE-generated deterministic estimate.

(e) You may satisfy the Regional Director's demand for supplemental financial assurance by increasing the amount of your existing financial assurance or providing additional surety bonds or other types of acceptable financial assurance.

(f) The Regional Director will use the BSEE P70 decommissioning probabilistic estimate to determine the amount of supplemental financial assurance required to guarantee compliance when there is no lessee or co-lessee that meets the criterion in paragraph (d)(1) or (2) of this section. In making this determination, the Regional Director will also consider your potential underpayment of royalty and cumulative decommissioning obligations. Note that BOEM will use these P-values only in the context of determining how much financial assurance is required, and not in the context of bond forfeiture. Regardless of whether you are required to provide supplemental financial assurance at the P70 level, you remain liable for the full costs of decommissioning, and your surety remains liable for the full amount of decommissioning up to the limit of assurance provided.

(g) If your cumulative potential obligations and liabilities either increase or decrease, the Regional Director may adjust the amount of supplemental financial assurance required.

(1) If the Regional Director proposes an adjustment, the Regional Director will:

(i) Notify you and your financial assurance provider of any proposed adjustment to the amount of financial assurance required; and

(ii) Give you an opportunity to submit written or oral comment on the adjustment.

(2) If you request a reduction of the amount of supplemental financial assurance required, or oppose the amount of a proposed adjustment, you

must submit evidence to the Regional Director demonstrating that the projected amount of royalties due to the United States Government and the estimated costs of decommissioning are less than the required financial assurance amount. Upon review of your submission, the Regional Director may reduce the amount of financial assurance required.

(h) During the first 3 years from June 24, 2024, you may, upon receipt of a demand letter for supplemental financial assurance under this section, request that the Regional Director allow you to provide, in three equal installments payable according to the schedule provided under this paragraph (h), the full amount of supplemental financial assurance required.

(1) If the Regional Director allows you to provide the amount required on such a phased basis, you must comply with the following:

(i) You must provide the initial one-third of the total supplemental financial assurance required within the timeframe specified in the demand letter or, if no timeframe is specified, within 60 calendar days of the date of receipt of the demand letter.

(ii) You must provide the second one-third of the required supplemental financial assurance to BOEM within 24 months of the date of receipt of the demand letter.

(iii) You must provide the final one-third of the required supplemental financial assurance to BOEM within 36 months of the date of receipt of the demand letter.

(2) If the Regional Director allows you to meet your supplemental financial assurance requirement in a phased manner, as set forth in this section, and you fail to timely provide the required supplemental financial assurance to BOEM, the Regional Director will notify you of such failure. You will no longer be eligible to meet your supplemental financial assurance requirement in the manner prescribed in this paragraph (h), and the remaining amount due will become due 10 calendar days after such notification is received.

■ 22. Amend § 556.902 by revising the section heading, paragraphs (a) and (e)(2), and adding paragraphs (g) and (h) to read as follows:

§ 556.902 General requirements for bonds or other financial assurance.

(a) Any surety bond or other financial assurance that you, as record title owner, operating rights owner, grant holder, or operator, provide under this part, or under part 550 of this subchapter, must:

(1) Be payable upon demand to the Regional Director;

(2) Guarantee compliance with all your obligations under the lease or grant, the regulations in chapters II and XII of this title, and all BOEM and BSEE orders; and

(3) Except as stated in § 556.905(b), guarantee compliance with the obligations of all record title owners, operating rights owners, and operators on the lease, and all grant-holders on a grant.

* * * * *

(e) * * *

(2) A pledge of Treasury securities, as provided in § 556.900(f);

* * * * *

(g) If you believe that BOEM's supplemental financial assurance demand is unjustified, you may request an informal resolution of your dispute in accordance with the requirements of § 590.6 of this chapter. Your request for an informal resolution will not affect your right to request to meet your supplemental financial assurance requirement in a phased manner under § 556.901(h).

(h) You may file an appeal of a supplemental financial assurance demand with the Interior Board of Land Appeals (IBLA) pursuant to the regulations in part 590 of this chapter. However, if you request that the IBLA stay the demand pending a final ruling on your appeal, you must post an appeal surety bond equal to the amount of the demand that you seek to stay before any such stay is effective.

■ 23. Revise § 556.903 to read as follows:

§ 556.903 Lapse of financial assurance.

(a) If your surety, guarantor, or the financial institution holding or providing your financial assurance becomes bankrupt or insolvent, or has its charter or license suspended or revoked, any financial assurance coverage from such surety, guarantor, or financial institution must be replaced. You must notify the Regional Director within 72 hours of learning of such event, and, within 30 calendar days of learning of such event, you must provide other financial assurance from a different financial assurance provider in the amount required under §§ 556.900 and 556.901, or § 550.166 of this subchapter, or § 550.1011 of this subchapter.

(b) You must notify the Regional Director within 72 hours of learning of any action filed alleging that you are insolvent or bankrupt or that your surety, guarantor, or financial institution is insolvent or bankrupt or has had its charter or license suspended or revoked.

All surety bonds or other financial assurance instruments must require the surety, guarantor, or financial institution to timely provide this required notification both to you and directly to BOEM.

■ 24. Revise § 556.904 to read as follows:

§ 556.904 Decommissioning accounts.

(a) The Regional Director may authorize you to establish a decommissioning account(s) in a federally insured financial institution to satisfy a supplemental financial assurance demand made pursuant to § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter. The decommissioning account must be set up in such a manner that funds may not be withdrawn without the written approval of the Regional Director.

(1) Funds in the account must be used only to meet your decommissioning obligations and must be payable upon demand to BOEM.

(2) You must fully fund the account to cover all decommissioning costs as estimated by BSEE, to the amount, and pursuant to the schedule, that the Regional Director prescribes.

(3) If you fail to make the initial payment or any scheduled payment into the decommissioning account and you fail to correct a missed payment within 30 days, you must immediately submit, and subsequently maintain, a surety bond or other financial assurance in an amount equal to the remaining unfulfilled portion of the supplemental financial assurance demand.

(b) Any interest paid on funds in a decommissioning account will become part of the principal funds in the account unless the Regional Director authorizes in writing the payment of the interest to the party who deposits the funds.

(c) The Regional Director may authorize or require you to create an overriding royalty, production payment obligation, or other revenue stream for the benefit of an account established as financial assurance for the decommissioning of your lease(s) or RUE or pipeline ROW grant(s). The obligation may be associated with oil and gas or sulfur production from a lease other than a lease or grant secured through the decommissioning account.

(d) BOEM may provide funds from the decommissioning account to the party that performs the decommissioning in response to a BOEM or BSEE order to perform such decommissioning or to cover the costs thereof. BOEM will

distribute the funds from the decommissioning account upon presentation of paid invoices for reasonable and necessary costs incurred by the party performing the decommissioning.

■ 25. Revise § 556.905 to read as follows:

§ 556.905 Third-party guarantees.

(a) The Regional Director may accept a third-party guarantee to satisfy a supplemental financial assurance demand made pursuant to § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter, if:

(1) The guarantor meets the credit rating or proxy credit rating criterion set forth in § 556.901(d)(1) or (2), as applicable; and

(2) The guarantor or guaranteed party submits a third-party guarantee agreement containing each of the provisions in paragraph (d) of this section.

(b) Notwithstanding § 556.902(a)(3), a third-party guarantor may, as agreed to by BOEM at the time the third-party guarantee is provided, limit its cumulative obligations to a fixed dollar amount or limit its obligations so as to cover the performance of one or more specific lease obligations (with no fixed dollar amount).

(c) If, during the life of your third-party guarantee, your guarantor no longer meets the criterion referred to in paragraph (a)(1) of this section, you must, within 72 hours of so learning:

(1) Notify the Regional Director; and

(2) Submit, and subsequently maintain, a surety bond or other financial assurance covering those obligations previously secured by the third-party guarantee.

(d) Your third-party guarantee must contain each of the following provisions:

(1) If you fail to comply with the terms of any lease or grant covered by the guarantee, or any applicable regulation, your guarantor must either:

(i) Take corrective action to bring the lease or grant into compliance with its terms or any applicable regulation, to the extent covered by the guarantee; or

(ii) Be liable under the third-party guarantee agreement to provide, within 7 calendar days, sufficient funds for the Regional Director to complete such corrective action to the extent covered by the guarantee. Such payment does not result in the cancellation of the guarantee, but instead reduces the remaining value of the guarantee in an amount equal to the payment.

(2) If your guarantor wishes to terminate the period of liability under its guarantee, it must:

(i) Notify you and the Regional Director at least 90 calendar days before the proposed termination date;

(ii) Obtain the Regional Director's approval for the termination of the period of liability for all or a specified portion of the guarantee; and

(iii) Remain liable for all liabilities that accrued or began accruing prior to the termination and responsible for all work and workmanship performed during the period of liability.

(3) Before the termination of the period of liability of the third-party guarantee, you must provide acceptable replacement financial assurance.

(e) If you or your guarantor request BOEM to cancel your third-party guarantee, BOEM will cancel the guarantee under the same terms and conditions provided for cancellation of supplemental financial assurance and return of pledged financial assurance in § 556.906(b) and/or (d)(3).

(f) The guarantor or guaranteed party must submit a third-party guarantee agreement that meets the following criteria:

(1) The third-party guarantee agreement must be executed by your guarantor and all persons and parties bound by the agreement.

(2) The third-party guarantee agreement must bind, jointly and severally, each person and party executing the agreement.

(3) When your guarantor is a corporate entity, two corporate officers who are authorized to bind the corporation must sign the third-party guarantee agreement.

(g) Your corporate guarantor and any other corporate entities bound by the third-party guarantee agreement must provide the Regional Director copies of:

(1) The authorization of the signatory corporate officials to bind their respective corporations;

(2) An affidavit certifying that the agreement is valid under all applicable laws; and

(3) Each corporation's corporate authorization to enter into the third-party guarantee agreement.

(h) If your third-party guarantor or another party bound by the third-party guarantee agreement is a partnership, joint venture, or syndicate, the third-party guarantee agreement must:

(1) Bind each partner or party who has a beneficial interest in your guarantor; and

(2) Provide that each member of the partnership, joint venture, or syndicate is jointly and severally liable for the obligations secured by the guarantee.

(i) The third-party guarantee agreement must provide that, in the event forfeiture is called for under § 556.907, your guarantor will either:

(1) Take corrective action to bring your lease or grant into compliance with its terms, and the regulations, to the extent covered by the guarantee; or

(2) Provide sufficient funds within 7 calendar days to permit the Regional Director to complete such corrective action to the extent covered by the guarantee.

(j) The third-party guarantee agreement must contain a confession of judgment. It must provide that, if the Regional Director determines that you are in default of the lease or grant covered by the guarantee or not in compliance with any regulation applicable to such lease or grant, the guarantor:

(1) Will not challenge the determination; and

(2) Will remedy the default to the extent covered by the guarantee.

(k) Each third-party guarantee agreement is deemed to contain all terms and conditions contained in paragraphs (d), (i), and (j) of this section, even if the guarantor has omitted these terms from the third-party guarantee agreement.

■ 26. Revise § 556.906 to read as follows:

§ 556.906 Termination of the period of liability and cancellation of financial assurance.

This section defines the terms and conditions under which BOEM will terminate the period of liability of, or cancel, financial assurance. Terminating the period of liability ends the period during which obligations continue to accrue, but does not relieve the financial assurance provider of the responsibility for obligations that accrued during the period of liability. Canceling a financial assurance instrument relieves the financial assurance provider of all liability. The liabilities that accrue during a period of liability include obligations that started to accrue prior to the beginning of the period of liability and had not been met, and obligations that begin accruing during the period of liability.

(a) When you or your financial assurance provider request termination:

(1) The Regional Director will terminate the period of liability under your financial assurance within 90 calendar days after BOEM receives the request; and

(2) If you intend to continue operations, or have not met all decommissioning obligations, within 90 calendar days after BOEM receives your termination request, you must provide replacement financial assurance of an equivalent amount.

(b) If you provide replacement financial assurance, the Regional Director will cancel your previous financial assurance and the previous financial assurance provider will not retain any liability, provided that:

(1) The amount of the new financial assurance is equal to or greater than that of the financial assurance that was cancelled, or you provide an alternative form of financial assurance, and the Regional Director determines that the alternative form of financial assurance provides a level of security equal to or greater than that provided by the financial assurance that is proposed to be cancelled;

(2) For financial assurance submitted under § 556.900(a), § 556.901(a) or (b), § 550.166(a) of this subchapter, or § 550.1011(a) of this subchapter, the new financial assurance provider agrees to assume all outstanding obligations that accrued during the period of liability that was terminated; and

(3) For supplemental financial assurance submitted under § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter, the new financial assurance provider agrees to assume that portion of the outstanding obligations that accrued during the period of liability that was terminated and that the Regional Director determines may exceed the coverage of the financial assurance submitted under § 556.900(a), § 556.901(a) or (b), § 550.166(a) of this subchapter, or § 550.1011(a) of this subchapter. The Regional Director will notify the provider of the new financial assurance of the amount required.

(c) This paragraph (c) applies if the period of liability is terminated, but the financial assurance is not replaced with financial assurance of an equivalent amount pursuant to paragraph (b) of this section. The financial assurance provider will continue to be responsible for obligations that accrued prior to the termination of the period of liability:

(1) Until the obligations are satisfied; and

(2) For additional periods of time in accordance with paragraph (d) of this section.

(d) BOEM will cancel the financial assurance for your lease or grant, and the Regional Director will return any pledged financial assurance, as shown in the following table:

For the following:	Your financial assurance will be reduced or cancelled, or your pledged financial assurance will be returned:
(1) Financial assurance submitted under § 556.900(a), § 556.901(a) or (b), § 550.166(a) of this subchapter, or § 550.1011(a) of this subchapter..	(i) 7 years after the lease or grant expires or is terminated, 6 years after the Regional Director determines that you have completed all covered obligations, or at the conclusion of any appeals or litigation related to your covered obligations, whichever is the latest. The Regional Director will reduce the amount of your financial assurance or return a portion of your pledged financial assurance if the Regional Director determines that less than the full amount of the financial assurance or pledged financial assurance is required to cover any potential obligations. (ii) [Reserved]
(2) Financial assurance submitted under § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter..	(i) When the lease or grant expires or is terminated and the Regional Director determines you have met your covered obligations, unless the Regional Director: (A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of the financial assurance submitted under § 556.900(a), § 556.901(a) or (b), § 550.166(a) of this subchapter, or § 550.1011(a) of this subchapter; and (B) Notifies the provider of financial assurance submitted under § 556.901(d), § 550.166(b) of this subchapter, or 550.1011(d) of this subchapter that the Regional Director will wait 7 years before cancelling all or a part of such financial assurance (or longer period as necessary to complete any appeals or judicial litigation related to your secured obligations). (ii) At any time when: (A) BOEM has determined, using the criteria set forth in § 556.901(d)(1), as applicable, that you no longer need to provide the supplemental financial assurance for your lease, RUE grant, or pipeline ROW grant. (B) The operations for which the supplemental financial assurance was provided ceased prior to accrual of any decommissioning obligation; or, (C) Cancellation of the financial assurance is appropriate because, under the regulations, BOEM determines such financial assurance never should have been required.
(3) Third-party Guarantee under § 556.901(d), § 550.166(b) of this subchapter, or § 550.1011(d) of this subchapter..	(i) When the Regional Director determines you have met your obligations secured by the guarantee (or longer period as necessary to complete any appeals or judicial litigation related to your obligations secured by the guarantee). (ii) [Reserved]

(e) For all financial assurance, the Regional Director may reinstate your financial assurance as if no cancellation had occurred if:

(1) A person makes a payment under the lease, RUE grant, or pipeline ROW grant, and the payment is rescinded or must be returned by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership; or

(2) The responsible party represents to BOEM that it has discharged its obligations under the lease, RUE grant, or pipeline ROW grant and the representation was materially false when the financial assurance was cancelled.

■ 27. Revise § 556.907 to read as follows:

§ 556.907 Forfeiture of bonds or other financial assurance.

This section explains how a bond or other financial assurance may be forfeited.

(a) The Regional Director will call for forfeiture of all or part of the bond, or other form of financial assurance, including a guarantee you provide under this part, if:

(1) You, or any party with the obligation to comply, refuse to comply with any term or condition of your

lease, RUE grant, pipeline ROW grant, or any BOEM or BSEE order, or any applicable regulation, or the Regional Director determines that you are unable to so comply; or

(2) You default on one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of financial assurance.

(b) The Regional Director may pursue forfeiture of your surety bond or other financial assurance without first making demands for performance against any other record title owner, operating rights owner, grant holder, or other person authorized to perform lease or grant obligations.

(c) The Regional Director will:

(1) Notify you, your surety, guarantor, or the financial institution holding or providing your financial assurance, of a determination to call for forfeiture of your financial assurance, whether it takes the form of a surety bond, guarantee, funds, or other type of financial assurance.

(i) This notice will be in writing and will provide the reason for the forfeiture and the amount to be forfeited.

(ii) The Regional Director will determine the amount to be forfeited based upon an estimate of the total cost of corrective action to bring your lease or grant into compliance, subject, in the case of a guarantee, to any limitation in the guarantee authorized by § 556.905(b).

(2) Advise you and your financial assurance provider that forfeiture may be avoided if, within five business days:

(i) You agree to and demonstrate that you will bring your lease or grant into compliance within the timeframe the Regional Director prescribes; or

(ii) The provider of your financial assurance agrees to and demonstrates that it will complete the corrective action to bring your lease or grant into compliance within the timeframe the Regional Director prescribes, even if the cost of compliance exceeds the amount of that financial assurance.

(d) If the Regional Director finds you are in default under paragraph (a)(1) or (2) of this section, the Regional Director may cause the forfeiture of any financial assurance provided to ensure your compliance with BOEM and BSEE orders, the terms and conditions of your lease or grant, and the regulations in this chapter and chapters II and XII of this title.

(e) If the Regional Director determines that your financial assurance is forfeited, the Regional Director will:

(1) Collect the forfeited amount; and

(2) Use the funds collected to bring your lease or grant into compliance and to correct any default.

(f) If the amount the Regional Director collects under your financial assurance is insufficient to pay the full cost of corrective action, the Regional Director may:

(1) Take or direct action to obtain full compliance with your lease or grant and the regulations in this chapter; and

(2) Recover from you, any other record title owner, operating rights owner, co-grant holder or, to the extent covered by the guarantee, any third-party guarantor responsible under this subpart, all costs in excess of the amount the Regional Director collects under your forfeited financial assurance.

(g) If the amount that the Regional Director collects under your forfeited financial assurance exceeds the costs of taking the corrective action required to bring your lease or grant into compliance with its terms and the regulations in this chapter, BOEM and BSEE orders, and chapters II and XII of this title, the Regional Director will return the excess funds to the party from whom they were collected.

(h) The Regional Director may pay the funds from the forfeited financial assurance to a co- or predecessor lessee or third party who is taking the corrective action required to obtain partial or full compliance with the regulations, BOEM or BSEE orders, and/or the terms of your lease or grant.

Subchapter C—Appeals

PART 590—APPEAL PROCEDURES

■ 28. The authority citation for part 590 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 29. Revise the heading to subpart A to read as follows:

Subpart A—Bureau of Ocean Energy Management Appeal Procedures

■ 30. Revise § 590.1 to read as follows:

§ 590.1 What is the purpose of this subpart?

The purpose of this subpart is to explain the procedures for appeals of Bureau of Ocean Energy Management (BOEM) decisions and orders.

■ 31. Revise § 590.2 to read as follows:

§ 590.2 Who may appeal?

If you are adversely affected by a BOEM official's final decision or order issued under chapter V of this title, you may appeal that decision or order to the Interior Board of Land Appeals (IBLA). Your appeal must conform with the procedures found in this subpart and 43 CFR part 4, subpart E. A request for reconsideration of a BOEM decision concerning a lease bid, authorized in § 556.517(b), § 581.21(a)(2), or § 585.118(c)(1) of this chapter, is not subject to the procedures found in this part.

■ 32. Revise § 590.3 to read as follows:

§ 590.3 What is the time limit for filing an appeal?

You must file your appeal within 60 days after you receive BOEM's final decision or order. The 60-day time period applies rather than the time period provided in 43 CFR 4.411(a). A decision or order is received on the date you sign a receipt confirming delivery or, if there is no receipt, the date otherwise documented.

■ 33. Amend § 590.4 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 590.4 How do I file an appeal?

* * * * *

(a) A written Notice of Appeal, together with a copy of the decision or order you are appealing, in the office of the BOEM officer that issued the decision or order. You cannot extend the 60-day period for that office to receive your Notice of Appeal; and

* * * * *

(c) You may file an appeal of a BOEM supplemental financial assurance demand with the IBLA. However, if you request that the IBLA stay the demand pending a final ruling on your appeal, you must post an appeal surety bond equal to the amount of the demand that you seek to stay before any such stay is effective.

■ 34. Amend § 590.7 by revising paragraphs (a)(1) and (b) to read as follows:

§ 590.7 Do I have to comply with the decision or order while my appeal is pending?

(a) * * *

(1) BOEM notifies you that the decision or order, or some portion of it, is suspended during this period because there is no likelihood of immediate and irreparable harm to human life, the environment, any mineral deposit, or property; or

* * * * *

(b) This section applies rather than 43 CFR 4.21(a) for appeals of BOEM orders.

* * * * *

■ 35. Amend § 590.8 by revising paragraph (a) to read as follows:

§ 590.8 How do I exhaust my administrative remedies?

(a) If you receive a decision or order issued under this chapter, you must appeal that decision or order to the IBLA under 43 CFR part 4, subpart E, to exhaust administrative remedies.

* * * * *

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