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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0510; Project Identifier MCAI–2022–00158–R; Amendment 39–22139; AD 2022–17–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. This AD was prompted by reports of the air conditioning system (ACS) malfunctioning. This AD requires deactivating the ACS and prohibits installing the affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 27, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find the EASA material on the EASA website at *https://ad.easa.europa.eu*. For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX, 75052, United States; phone: (972) 641–0000 or (800) 232–0323; or at: *www.airbus.com/helicopters/services/technical-support.html*. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0510; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Stephanie Sunderbruch, Aerospace Engineer, Safety Risk Management Section, Systems Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4659; email *Stephanie.L.Sunderbruch@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0023, dated February 3, 2022 (EASA AD 2022–0023), to correct an unsafe condition for certain Airbus Helicopters Deutschland GmbH (AHD) (formerly Eurocopter Deutschland GmbH, Eurocopter España S.A.) Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 T2+, EC635 P2+, EC635 P3, EC635 T1, and EC635 T3 helicopters, all variants, serial numbers (S/N) from 0008 to 0869 inclusive, except S/N 0831 and S/N 0864.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters, S/N from 0008 to 0869 inclusive, except S/N 0831 and S/N 0864. The NPRM published in the **Federal Register** on May 10, 2022 (87 FR 27954). The NPRM was prompted by reports of the ACS malfunctioning; investigation into the malfunction has identified that certain ACS soft start units are the root cause. The NPRM proposed to require deactivating the ACS and prohibit installing the affected parts, as specified in EASA AD 2022–0023.

The FAA is issuing this AD to prevent possible overheating of the ACS. See EASA AD 2022–0023 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. However, after the NPRM was issued, the FAA determined that the unsafe condition statement was misleading in that a malfunctioning ACS would not result in reduced helicopter control. Although overheating of the ACS could result in an overvoltage of the ACS and subsequent failure of the electrical system segment connected to the ACS, there is robust separation of the system I and system II DC power buses and both systems provide electrical redundancy for flight critical systems. Any over-voltage on the system II side (which occurred for this safety issue) cannot lead to an event classified as hazardous (HAZ) or catastrophic (CAT) due to the separation of DC power supply paths and electrical redundancy. Instead, the FAA has determined that the unsafe condition could result in increased pilot workload and has revised this AD accordingly. Except for this and other minor editorial changes, this AD is adopted as proposed in the

NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0023 requires deactivating the ACS soft start unit part number (P/N) ES59185–2 on helicopters with a compressor/condenser pallet P/N 135–0553–1 or P/N 135–0566–2 installed. EASA AD 2022–0023 also prohibits installing soft start unit P/N ES59185–2 or a compressor/condenser pallet P/N 135–0553–1 or P/N 135–0566–2 on any helicopter.

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

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin ASB EC135–21A–024, Revision 0, dated February 2, 2022. This service information specifies procedures for deactivating the soft part unit of the compressor/condenser pallet and specifies that compressor/condenser pallet P/N 135–0553–1 or 135–0566–2 with soft start unit P/N ES59185–2 installed must not be installed on any helicopter.

Interim Action

The FAA considers this AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Differences Between This AD and the EASA AD

EASA 2022–0023 applies to Model EC635P2+, EC635P3, EC635T1, EC635T2+, and EC635T3 helicopters, whereas this AD does not because these models are not FAA type-certificated and are not included on the U.S. type certificate data sheet except where the U.S. type certificate data sheet explains that the Model EC635T2+ helicopter having serial number 0858 was converted from Model EC635T2+ to Model EC135T2+.

Costs of Compliance

The FAA estimates that this AD affects 341 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Deactivating the ACS takes about 1 work-hour, for an estimated cost of $85 per helicopter and up to $28,985 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–17–01 Airbus Helicopters Deutschland GmbH (AHD): Amendment 39–22139; Docket No. FAA–2022–0510; Project Identifier MCAI–2022–00158–R.

(a) Effective Date

This airworthiness directive (AD) is effective September 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters, serial numbers (S/N) from 0008 to 0869 inclusive, except S/N 0831 and S/N 0864, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2100, Air Conditioning System.

(e) Unsafe Condition

This AD was prompted by reports of the air conditioning system (ACS) malfunctioning. The FAA is issuing this AD to prevent possible overheating of the ACS. The unsafe condition, if not addressed, could result in an overvoltage of the ACS, resulting in overheating of the surrounding area, failure of the helicopter electrical system connected to the ACS, and a subsequent loss of electrical power which could result in increased pilot workload.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0023, dated February 3, 2022 (EASA AD 2022–0023).

(h) Exceptions to EASA AD 2022–0023

(1) Where EASA AD 2022–0023 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0023 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2022–0023.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0023 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*.

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

(k) Related Information

For more information about this AD, contact Stephanie Sunderbruch, Aerospace Engineer, Safety Risk Management Section, Systems Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4659; email *Stephanie.L.Sunderbruch@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0023, dated February 3, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0023, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find the EASA material on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0510.

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

Issued on August 2, 2022.

Christina Underwood,

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

[FR Doc. 2022–18091 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0586; Project Identifier MCAI–2021–01262–T; Amendment 39–22136; AD 2022–16–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2016–26–05 and AD 2019–21–02, which applied to certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. AD 2016–26–05 and AD 2019–21–02 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary, and that new airplanes have been added to the applicability. This AD continues to require the actions in AD 2019–21–02, and also requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 27, 2022.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 29, 2019 (84 FR 57313, October 25, 2019).

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *ad.easa.europa.eu*. For Airbus service information identified in this final rule, contact Airbus SAS, Airworthiness Office-EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* internet *www.airbus.com*. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0586.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0586; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0248, dated November 15, 2021 (EASA AD 2021–0248) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model Airbus A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–841, and A330–941 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016–26–05, Amendment 39 18763 (82 FR 1170, January 5, 2017) (AD 2019–21–02) and AD 2019–21–02, Amendment 39–19768 (84 FR 57313, October 25, 2019) (AD 2019–21–02). AD 2019–21–02 applied to certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes, and specifies that accomplishing the revision required by that AD terminates all requirements of AD 2016–26–05. The NPRM published

in the **Federal Register** on May 20, 2022 (87 FR 30840). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary, and that new airplanes have been added to the applicability. The NPRM proposed to continue to require the actions in AD 2019–21–02 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0248.

The FAA is issuing this AD to address a safety-significant latent failure (that is not annunciated) that, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0248 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits, and adds new models to the applicability.

This AD also requires Airbus A330 Airworthiness Limitations Section (ALS) Part 3-Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018; and Airbus A330 ALS Part 3-Certification Maintenance Requirements (CMR), Variation 6.1, dated June 28, 2019; which the Director of the Federal Register approved for incorporation by reference as of November 29, 2019 (84 FR 57313, October 25, 2019).

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

Costs of Compliance

The FAA estimates that this AD affects 138 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–21–02 to be $7,650 (90 work-hours × $85 per work-hour).

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2016–26–05, Amendment 39–18763 (82 FR 1170, January 5, 2017); and Airworthiness Directive 2019–21–02, Amendment 39–19768 (84 FR 57313, October 25, 2019); and

■ b. Adding the following new airworthiness directive:

2022–16–07 Airbus SAS: Amendment 39–22136; Docket No. FAA–2022–0586; Project Identifier MCAI–2021–01262–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 27, 2022.

(b) Affected ADs

This AD replaces AD 2016–26–05, Amendment 39–18763 (82 FR 1170, January 5, 2017) (AD 2016–26–05); and AD 2019–21–02, Amendment 39–19768 (84 FR 57313, October 25, 2019) (AD 2019–21–02).

(c) Applicability

This AD applies to Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 1, 2021.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary, and that new airplanes have been added to the applicability. The FAA is issuing this AD to address a safety-significant latent failure (that is not annunciated) that, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

(f) Compliance

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

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

This paragraph restates the requirements of paragraph (g) of AD 2019–21–02, with no changes. For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 15, 2018: Within 90 days after November 29, 2019 (the effective date of AD 2019–21–02), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 3—Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018, as supplemented by Airbus A330 ALS Part 3—Certification Maintenance Requirements (CMR), Variation 6.1, dated June 28, 2019. The initial compliance times for doing the tasks is at the time specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 3—Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018, as supplemented by Airbus A330 ALS Part 3—Certification Maintenance Requirements (CMR), Variation 6.1, dated June 28, 2019, or within 90 days after November 29, 2019, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained No Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2019–21–02, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

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

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0248, dated November 15, 2021 (EASA AD 2021–0248). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2021–0248

(1) Where EASA AD 2021–0248 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0248 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0248 specifies revising ''the approved AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0248 is at the applicable ''associated thresholds,'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0248, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0248 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0248 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0248.

(l) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (m) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(ii) AMOCs approved previously for AD 2019–21–02 are approved as AMOCs for the corresponding provisions of EASA AD 2021–0248 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on September 27, 2022.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0248, dated November 15, 2021.

(ii) [Reserved]

(4) The following service information was approved for IBR on November 29, 2019 (84 FR 57313, October 25, 2019).

(i) Airbus A330 Airworthiness Limitations Section (ALS) Part 3—Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018.

(ii) Airbus A330 ALS Part 3—Certification Maintenance Requirements (CMR), Variation 6.1, dated June 28, 2019.

(5) For EASA AD 2021–0248, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(6) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office-EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* internet *www.airbus.com.*

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

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

Issued on July 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–18114 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0522; Project Identifier MCAI–2022–00340–T; Amendment 39–22135; AD 2022–16–06]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, and A330–900 series airplanes; and all Model A340–200 and A340–300 series airplanes. This AD was prompted by recent tests that demonstrated that when the upper secondary load path (SLP) of the trimmable horizontal stabilizer actuator (THSA) is engaged, the THSA might not stall, with consequently no indication of SLP engagement. This AD requires modifying the THSA installation, implementing the electrical load sensing device (ELSD) wiring provisions, and installing and activating the ELSD, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 27, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *www.regulations.gov* under Docket No. FAA–2022–0522.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* under Docket No. FAA–2022–0522; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0039, dated March 8, 2022 (EASA AD 2022–0039) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, and A330–941 airplanes; and all Model A340–211, A340–212, A340–213, A340–311, A340–312, and A340–313 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, and A330–941 airplanes; and all Model A340–211, A340–212, A340–213, A340–311, A340–312, and A340–313 airplanes. The NPRM published in the **Federal Register** on May 19, 2022 (87 FR 30434). The NPRM was prompted by recent tests that demonstrated that when the upper SLP of the THSA is engaged, the THSA might not stall, with consequently no indication of SLP engagement. The NPRM proposed to require modifying the THSA installation, implementing the ELSD wiring provisions, and installing and activating the ELSD, as specified in EASA AD 2022–0039.

The FAA is issuing this AD to address the unsafe condition on these products. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International, which supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0039 specifies procedures for modification to the THSA by installation and activation of the ELSD, and installation of the wiring provisions for the ELSD. The installation and activation of the ELSD include installation of the ELSD on the THSA, modification of the electrical harness, and modification of the circuit breaker in the auxiliary power unit (APU) control box. The installation of the wiring provisions for the ELSD includes modifying the structure at frame 87, installing the brackets at frame 87, installing the electrical dummy connectors, rerouting the wire between frame 56 and frame 69, modifying the circuit breaker box, modifying the electrical harness, and rerouting the wiring.

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

Costs of Compliance

The FAA estimates that this AD affects 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
57 work-hours × $85 per hour = $4,845	Up to $23,000	Up to $27,845	Up to $3,341,400.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–16–06 Airbus SAS: Amendment 39–22135; Docket No. FAA–2022–0522; Project Identifier MCAI–2022–00340–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) and (2) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0039, dated March 8, 2022 (EASA AD 2022–0039).

(1) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, and –941 airplanes.

(2) Model A340–211, –212, –213, –311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This proposed AD was prompted by recent tests that demonstrated that when the upper secondary load path (SLP) of the trimmable horizontal stabilizer actuator (THSA) is engaged, the THSA might not stall, with consequently no indication of SLP engagement. The FAA is issuing this AD to prevent damage on the upper THSA SLP attachment, with consequent mechanical disconnection of the THSA, possibly resulting in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0039.

(h) Exceptions to EASA AD 2022–0039

(1) Where EASA AD 2022–0039 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0039 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of

the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0039, dated March 8, 2022.

(ii) [Reserved]

(3) For the service information identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on July 28, 2022.

Christina Underwood,

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

[FR Doc. 2022–18112 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0590; Project Identifier MCAI–2021–01395–T; Amendment 39–22134; AD 2022–16–05]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by a determination that a certain nondestructive test (NDT) procedure associated with a certain airworthiness limitation for inspecting surface and subsurface fatigue cracks at certain fuselage stations does not address all required inspections. This AD requires using a revised NDT procedure when performing an airworthiness limitation task. This AD also prohibits the use of earlier revisions of that NDT procedure. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 27, 2022.

ADDRESSES: For service information identified in this final rule, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* internet *www.mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0590.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0590; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–47, dated December 13, 2021 (TCCA AD CF–2021–47) (also referred to as the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. You may examine the MCAI in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0590.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The NPRM published in the **Federal Register** on May 31, 2022 (87 FR 32365). The NPRM was prompted by a determination that a certain NDT procedure associated with a certain airworthiness limitation for inspecting surface and subsurface fatigue cracks at fuselage station (FS) 460 and FS513 does not address all required inspections. The NPRM proposed to require using a revised NDT procedure when performing an airworthiness limitation task. The NPRM also proposed to prohibit the use of earlier revisions of that NDT procedure. The FAA is issuing this AD to address such fatigue cracks, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

MHI RJ Aviation ULC has issued MHI RJ CRJ200 NDTM Temporary Revision 53–109, dated March 5, 2021. This temporary revision describes an NDT procedure to do a special detailed inspection (eddy current inspection) for surface and subsurface cracks at FS460 and FS513. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD will affect 427 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$0	$510	$217,770

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–16–05 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22134; Docket No. FAA–2022–0590; Project Identifier MCAI–2021–01395–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 8079 inclusive, on which Bombardier Service Bulletin 601R–53–067 and/or Bombardier Service Bulletin 601R–53–077 has been incorporated.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that a certain nondestructive test procedure associated with a certain airworthiness limitation for inspecting surface and subsurface fatigue cracks at fuselage station (FS) 460 and FS513 does not address all required inspections. The FAA is issuing this AD to address such fatigue cracks, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight.

(f) Compliance

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

(g) Maintenance Procedure Limitation

As of the effective date of this AD, use MHI RJ CRJ200 Nondestructive Testing Manual (NDTM) Part 6—Eddy Current, procedure number 53–41–194, Special Detailed Inspection of the Pressure Floor at FS460.00 and/or FS513.00 Between LBL18.00 and RBL18.00, as specified in MHI RJ CRJ200 NDTM Temporary Revision 53–109, dated March 5, 2021, when performing airworthiness limitation task number 53–41–194.

Note 1 to paragraph (g): MHI RJ CRJ200 NDTM Temporary Revision 53–109, dated March 5, 2021, revises procedure number 53–41–194 specified in airworthiness limitation task number 53–41–194, which can be found in Appendix B, Airworthiness Limitations, in Part 2, Airworthiness Requirements, of the MHI RJ CL–600–2B19 Maintenance Requirements Manual, CSP A–053.

(h) Maintenance Procedure Prohibition

As of the effective date of this AD, it is prohibited to use MHI RJ CRJ200 NDTM Part 6—Eddy Current, procedure number 53–41–194, dated October 10, 2020, or earlier revisions when performing airworthiness limitation task number 53–41–194.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the airplane can be inspected, provided the flight is a non-revenue flight.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–47, dated December 13, 2021, for related information. This MCAI may be found in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0590.

(2) For more information about this AD, contact Deep Gaurav, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; email: *deep.gaurav@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) MHI RJ CRJ200 Nondestructive Testing Manual Temporary Revision 53–109, dated March 5, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* internet *www.mhirj.com.*

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

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

Issued on July 28, 2022.

Christina Underwood,

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

[FR Doc. 2022–18113 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0242; Airspace Docket No. 20–AWP–8]

RIN 2120–AA66

Removal of Class E Airspace and Modification of Class D and Class E Airspace; Point Mugu NAS (Naval Base Ventura Co) Airport, CA

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

ACTION: Final rule.

SUMMARY: This action removes the Class E airspace, designated as an extension to a Class D or Class E surface area, at Point Mugu Naval Air Station (NAS) Airport, Oxnard, CA. This action also modifies the Class E airspace extending upward from 700 feet above the surface. Furthermore, this action removes the Class E airspace extending upward from 1,200 feet above the surface and the Class E airspace extending upward from 5,000 feet mean sea level (MSL), as both of these areas are contained within the Los Angeles Class E en route airspace and duplication is not necessary. Lastly, this action updates the Class D and Class E5 airspace legal descriptions. These actions ensure the safety and management of visual flight rules (VFR) and instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the **Federal Register** approves this incorporation by reference under Title 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2021–0242 (87 FR 34597; June 7, 2022) to remove the Class E airspace designated as an extension to a Class D or Class E surface area, modify the Class D airspace, modify the Class E airspace beginning at 700 feet above the surface, and remove the Class E airspace beginning at both 1,200 feet above the surface and 5,000 feet MSL at Point Mugu NAS (Naval Base Ventura Co) Airport, Oxnard, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication of the NPRM, the FAA identified a discrepancy in the proposed Point Mugu NAS Airport's Class D airspace legal description. The FAA's definition of the acronym ''NOTAM'' changed from ''Notice to Airmen'' to ''Notice to Air Missions'' and the legal description in the NPRM was not correct. The legal description for the Class D surface area at Point Mugu NAS Airport now reflects this change. Additionally, the FAA identified a discrepancy in the proposed removal of Class E airspace at Point Mugu NAS Airport, CA. The NPRM proposed to remove ''the Class E airspace extending upward from 5,000 feet above the surface.'' This proposal should have stated ''the Class E airspace extending upward from 5,000 feet MSL.''

Class D, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document

will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the ''**ADDRESSES**'' section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by removing the Class E airspace, designated as an extension to a Class D or Class E surface area, at Point Mugu NAS Airport, Oxnard, CA. This airspace area is southwest of the airport and is no longer required to contain IFR arrivals descending below 1,000 feet above the surface.

Also, this action modifies the Class E airspace extending upward from 700 feet above the surface. This airspace is designed to contain arriving IFR aircraft descending below 1,500 feet above the surface and departing IFR aircraft until they reach 1,200 feet above the surface. The current area is larger than required and this airspace area is reduced to a 6.8-mile radius of the airport.

Further, this action removes the Class E airspace extending upward from 1,200 feet above the surface and the Class E airspace extending upward from 5,000 feet MSL. The two airspace areas are wholly contained within the Los Angeles en route airspace area and duplication is not necessary.

Lastly, this action makes several administrative modifications to the Class D and Class E5 legal descriptions. To match the FAA database, the city name in the first line of the Class D text header is modified from ''Point Mugu NAWS'' to ''Oxnard.'' To match the FAA database, the airport name in the second line of the Class D and Class E5 text headers is modified to read ''Point Mugu NAS (Naval Base Ventura Co) Airport, CA.'' To match the FAA database, the geographic coordinates in the third line of the Class D and Class E5 text headers are modified to read ''lat. 34°07′09″ N, long. 119°07′11″ W.'' As the Point Mugu NAS Airport's Class D airspace abuts the Class D areas for Oxnard and Camarillo Airports, the geographic coordinates for Point Mugu NAS Airport's Class D are updated to more accurately define the common borders of the Class D areas, which do not represent a change to the current boundaries. Finally, the term ''Airport/Facility Directory'' in the last sentence of the Class D airspace description is outdated and is changed to read ''Chart Supplement.''

Class D, E4 and E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and became effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR 71

Airspace, incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Oxnard, CA [Amended]

Point Mugu NAS (Naval Air Station Ventura Co) Airport, CA
(Lat. 34°07′09″ N, long. 119°07′11″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.3-mile radius of the Point Mugu NAS, excluding that portion north and west of a line beginning at lat. 34°09′18.02″ N, long. 119°02′40.92″ W; to lat. 34°10′34.70″ N, long. 119°04′1.71″ W; to lat. 34°10′22″ N, long. 119°09′27″ W; to lat. 34°07′44.53″ N, long. 119°12′18.39″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP CA E4 Point Mugu NAWS, CA [Removed]

Point Mugu NAWS, CA
(Lat. 34°07′13″ N, long. 119°07′15″ W)
Point Mugu TACAN
(Lat. 34°07′24″ N, long. 119°07′19″ W)

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

* * * * *

AWP CA E5 Oxnard, CA [Amended]

Point Mugu NAS (Naval Air Station Ventura Co) Airport, CA.
(Lat. 34°07′09″ N, long. 119°07′11″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Point Mugu NAS Airport.

Issued in Des Moines, Washington, on August 17, 2022.

B.G. Chew,

Group Manager Operations Support Group Western Service Center.

[FR Doc. 2022–18104 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31444; Amdt. No. 567]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: Effective 0901 UTC, September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

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

The Rule

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

CONCLUSION

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on April 15, 2022.

Thomas J. Nichols,

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

Note: This document was received by the Office of the Federal Register on August 18, 2022.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, June 03, 2010.

PART 95—IFR Altitudes

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

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

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

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT

[Amendment 567 Effective Date September 08, 2022]

From	To	MEA
§ Color Routes		
§ 95.60 Blue Federal Airway B5 Is Amended to Delete		
CAPE LISBURNE, AK NDB/DME	POINT HOPE, AK NDB	4000
§ 95.6 Blue Federal Airway B25 Is Amended to Delete		
Orca Bay, AK NDB *6600—MCA SHOPE, AK FIX, N BND	*SHOPE, AK FIX	*4900
SHOPE, AK FIX	GLENNALLEN, AK NDB	10000
GLENNALLEN, AK NDB *8000—MCA DELTA JUNCTION, AK NDB, SE BND **11500—MOCA	*DELTA JUNCTION, AK NDB	**12000

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3207 RNAV Route T207 Is Amended by Adding			
FOXAM, FL WP	MMKAY, FL WP	1800	17500
MMKAY, FL WP	WALEE, FL WP	2000	17500
Is Amended to Delete			
ORMOND BEACH, FL VORTAC	CARRA, FL WP	2300	15000
CARRA, FL WP	MONIA, GA FIX	1900	15000
MONIA, GA FIX	WAYCROSS, GA VORTAC	2300	15000
§ 95.3210 RNAV Route T210 Is Amended by Adding			
HADDE, FL FIX	MISSM, FL WP	1900	17500
MISSM, FL WP	OHLEE, FL WP	2500	17500
OHLEE, FL WP	MMKAY, FL WP	2500	17500
Is Amended to Delete			
MARQO, FL WP	OHLEE, FL WP	1900	9000
OHLEE, FL WP	BRADO, FL FIX	1900	9000
BRADO, FL FIX	MMKAY, FL WP	1800	17500
Is Amended to Read in Part			
MMKAY, FL WP	MRUTT, FL WP	2500	17500
MRUTT, FL WP	*GUANO, FL FIX	*2500	17500
*1900—MCA GUANO, FL FIX, S BND			
GUANO, FL FIX	KIZER, FL FIX	2800	17500
KIZER, FL FIX	EMSEE, FL WP	2800	17500
§ 95.3222 RNAV Route T222 Is Amended by Adding			
CABOT, AK FIX	WOGAX, AK WP	*5000	17500
*1400—MOCA			
WOGAX, AK WP	IKUFU, AK FIX	*5000	17500
*2600—MOCA			
IKUFU, AK FIX	JILSI, AK WP	*5000	17500
*3200—MOCA			
JILSI, AK WP	CYCAS, AK WP	*5000	17500
*3500—MOCA			
CYCAS, AK WP	UTICE, AK WP	*5000	17500
*3700—MOCA			
UTICE, AK WP	MC GRATH, AK VORTAC	5000	17500
Is Amended to Delete			
BAERE, AK WP	ST PAUL ISLAND, AK NDB/DME	3600	17500
Is Amended to Read in Part			
ST PAUL ISLAND, AK NDB/DME	BETHEL, AK VORTAC	*3000	17500
*2400—MOCA			
BETHEL, AK VORTAC	CABOT, AK FIX	*5000	17500
*1500—MOCA			
§ 95.3275 RNAV Route T275 Is Amended by Adding			
ZIKNI, AK WP	BETHEL, AK VORTAC	*5900	17500
*3600—MOCA			
BETHEL, AK VORTAC	DAVBE, AK WP	*5900	17500
*3200—MOCA			
DAVBE, AK WP	YELLW, AK WP	*5900	17500
*4700—MOCA			
YELLW, AK WP	VUSUY, AK FIX	*5900	17500
*5100—MOCA			
VUSUY, AK FIX	JERDN, AK WP	*5900	17500
*4400—MOCA			
JERDN, AK WP	UNALAKLEET, AK VOR/DME	*5900	17500
*4000—MOCA			
§ 95.3308 RNAV Route T308 Is Added to Read			
EMMONAK, AK VOR/DME	WEREL, AK WP	5000	17500

From	To	MEA	MAA
§ 95.3336 RNAV Route T336 Is Amended by Adding			
TROYR, FL WP	FUTSY, FL WP	2500	17500
FUTSY, FL WP	OMMNI, FL WP	1900	17500
OMMNI, FL WP	VIZTA, FL WP	1800	17500
VIZTA, FL WP	PUNQU, FL WP	2000	17500
DEARY, FL FIX	VALKA, FL FIX	1800	17500
Is Amended to Delete			
TROYR, FL WP	OMMNI, FL WP	2500	17500
OMMNI, FL WP	PUNQU, FL WP	2000	17500
DEARY, FL FIX	WIXED, FL WP	1800	17500
§ 95.3337 RNAV Route T337 Is Amended to Delete			
SWENY, FL WP	RISKS, FL WP	2000	17500
RISKS, FL WP	WEZER, FL WP	2000	17500
§ 95.3339 RNAV Route T339 Is Amended by Adding			
CARNU, FL FIX	DEEDS, FL FIX	1800	17500
Is Amended to Delete			
KARTR, FL FIX	DEEDS, FL FIX	1700	17500
§ 95.3341 RNAV Route T341 Is Amended to Read in Part			
CUSEK, FL WP	YELLZ, FL WP	1900	17500
YELLZ, FL WP	WEZER, FL WP	2000	17500
VARZE, FL WP	DULFN, FL WP	1800	17500
DULFN, FL WP	OMMNI, FL WP	1800	17500
OMMNI, FL WP	WHOOU, FL WP	2100	12000
WHOOU, FL WP	MARQO, FL WP	1900	12000
§ 95.3343 RNAV Route T343 Is Amended by Adding			
COOFS, FL FIX	CUSEK, FL WP	1800	17500
Is Amended to Delete			
WORPP, FL FIX	CUSEK, FL WP	1800	17500
§ 95.3345 RNAV Route T345 Is Amended by Adding			
LLNCH, FL FIX	VALKA, FL FIX	1800	17500
Is Amended to Delete			
LLNCH, FL FIX	DEARY, FL FIX	1800	17500
§ 95.3347 RNAV Route T347 Is Amended by Adding			
SHANC, FL FIX	BOBOE, FL WP	1700	17500
DURRY, FL WP	CLEFF, FL WP	1700	17500
BAIRN, FL FIX	ODDEL, FL FIX	2700	17500
ODDEL, FL FIX	SABOT, FL FIX	2700	17500
Is Amended to Read in Part			
SABOT, FL FIX	*CROPY, FL FIX	*1800	17500
*2000—MCA CROPY, FL FIX, N BND			
CROPY, FL FIX	KIZER, FL FIX	2800	17500
KIZER, FL FIX	GUANO, FL FIX	2800	17500
§ 95.3349 RNAV Route T349 Is Amended by Adding			
VARZE, FL WP	MILOW, FL WP	1900	17500
MILOW, FL WP	MURDE, FL WP	1900	17500
MURDE, FL WP	TROYR, FL WP	1900	17500
§ 95.3353 RNAV Route T353 Is Amended by Adding			
FOXAM, FL WP	COBOK, FL FIX	1700	17500
COBOK, FL FIX	SUBER, FL FIX	*1700	17500

From	To	MEA	MAA
*1200—MOCA			
SUBER, FL FIX	STARY, GA FIX	*1700	17500
*1200—MOCA			
Is Amended to Delete			
FOXAM, FL WP	ASTOR, FL FIX	1700	17500
Is Amended to Read in Part			
EMSEE, FL WP	KIZER, FL FIX	2800	17500
KIZER, FL FIX	GUANO, FL FIX	2800	17500
§ 95.3366	**RNAV Route T366 Is Added to Read**		
VANTY, AK WP	CABGI, AK WP	4000	17500
CABGI, AK WP	SUPGY, AK WP	4000	17500
SUPGY, AK WP	JODGU, AK WP	2200	17500
JODGU, AK WP	FILEV, AK WP	1900	17500
FILEV, AK WP	BARROW, AK VOR/DME	*1900	17500
*1400—MOCA			
BARROW, AK VOR/DME	JATIL, AK WP	1800	17500
§ 95.3372	**RNAV Route T372 Is Added to Read**		
BIG LAKE, AK VORTAC	WUNTU, AK WP	*6600	17500
*7500—MCA WUNTU, AK WP, NE BND			
WUNTU, AK WP	CAGOP, AK WP	*10000	17500
*8100—MOCA			
CAGOP, AK WP	FITAT, AK WP	*10000	17500
*8200—MOCA			
FITAT, AK WP	TOYOC, AK WP	*10000	17500
*8400—MOCA			
TOYOC, AK WP	ZAMUP, AK WP	*10000	17500
*9100—MOCA			
ZAMUP, AK WP	CANGI, AK WP	*10000	17500
*9100—MOCA			
CANGI, AK WP	WAPRU, AK WP	*10000	17500
*8600—MOCA			
WAPRU, AK WP	HOSON, AK WP	*10000	17500
*7700—MOCA			
HOSON, AK WP	SMOKY, AK FIX	7200	17500
SMOKY, AK FIX	GULKANA, AK VOR/DME	5300	17500
GULKANA, AK VOR/DME	BEFTI, AK WP	5200	17500
BEFTI, AK WP	*CEBUN, AK WP	*5200	17500
*5700—MCA CEBUN, AK WP, NE BND			
CEBUN, AK WP	*HIGOL, AK WP	6900	17500
*7800—MCA HIGOL, AK WP, NE BND			
HIGOL, AK WP	*JOLOB, AK WP	**11000	17500
*8200—MCA JOLOB, AK WP, SW BND			
**8600—MOCA			
JOLOB, AK WP	*WEBOL, AK WP	7100	17500
*6400—MCA WEBOL, AK WP, SW BND			
WEBOL, AK WP	NORTHWAY, AK VORTAC	5200	17500
NORTHWAY, AK VORTAC	U.S. CANADIAN BORDER	5800	17500
§ 95.3373	**RNAV Route T373 Is Added to Read**		
KOWOK, AK FIX	RAGES, AK FIX	4400	17500
RAGES, AK FIX	*ZUDSO, AK WP	5500	17500
*6600—MCA ZUDSO, AK WP, W BND			
ZUDSO, AK WP	MAYHW, AK WP	7400	17500
MAYHW, AK WP	*FEXOP, AK WP	7400	17500
*5200—MCA FEXOP, AK WP, SE BND			
FEXOP, AK WP	*ZETNU, AK WP	4900	17500
*4800—MCA ZETNU, AK WP, E BND			
ZETNU, AK WP	BETHEL, AK VORTAC	3700	17500
BETHEL, AK VORTAC	WEREL, AK WP	3900	17500
§ 95.3375	**RNAV Route T375 Is Added to Read**		
BETTLES, AK VOR/DME	*FEDEN, AK WP	4500	17500
*5300—MCA FEDEN, AK WP, N BND			
FEDEN, AK WP	HEKDU, AK WP	6600	17500
HEKDU, AK WP	TOUTS, AK WP	6900	17500

From	To	MEA	MAA
*7000—MCA TOUTS, AK WP, NW BND			
TOUTS, AK WP	ZEBUR, AK WP	7100	17500
ZEBUR, AK WP	RUTTY, AK WP	7300	17500
RUTTY, AK WP	FERKA, AK WP	7800	17500
FERKA, AK WP	ZENSA, AK WP	8100	17500
ZENSA, AK WP	*HAKSA, AK W	8100	17500
*6900—MCA HAKSA, AK WP, S BND			
HAKSA, AK WP	DERIK, AK FIX	5800	17500
§ 95.3381	**RNAV Route T381 Is Added to Read**		
BIG LAKE, AK VORTAC	TALKEETNA, AK VOR/DME	3000	17500
TALKEETNA, AK VOR/DME	*HUMUB, AK WP	3000	17500
*4000—MCA HUMUB, AK WP, NW BND			
HUMUB, AK WP	*WEGNO, AK WP	4600	17500
*5400—MCA WEGNO, AK WP, N BND			
WEGNO, AK WP	ZALVI, AK WP	6200	17500
ZALVI, AK WP	ZEKLI, AK WP	6400	17500
ZEKLI, AK WP	*CEKED, AK WP	6400	17500
*6600—MCA CEKED, AK WP, N BND			
CEKED, AK WP	EBIME, AK WP	*9000	17500
*7100—MOCA			
EBIME, AK WP	JOTSO, AK WP	*9000	17500
*7900—MOCA			
JOTSO, AK WP	PAWKY, AK WP	*9000	17500
*8200—MOCA			
PAWKY, AK WP	WIVEN, AK WP	*9000	17500
*7800—MOCA			
WIVEN, AK WP	*WUKIR, AK WP	**9000	17500
*7100—MCA WUKIR, AK WP, S BND			
**7700—MOCA			
WUKIR, AK WP	*SOYAS, AK WP	6700	17500
*5300—MCA SOYAS, AK WP, S BND			
SOYAS, AK WP	GLOWS, AK FIX	4000	17500
GLOWS, AK FIX	PERZO, AK WP	3600	17500
PERZO, AK WP	*FAIRBANKS, AK VORTAC	3600	17500
*3700—MCA FAIRBANKS, AK VORTAC, N BND			
FAIRBANKS, AK VORTAC	*CHATA, AK FIX	5000	17500
*5000—MCA CHATA, AK FIX, N BND			
CHATA, AK FIX	*BURMA, AK FIX	7400	17500
*4100—MCA BURMA, AK FIX, S BND			
BURMA, AK FIX	BIJOU, AK FIX	3000	17500
BIJOU, AK FIX	FORT YUKON, AK VORTAC	2800	17500
§ 95.3390	**RNAV Route T390 Is Added to Read**		
WANKI, AK WP	RANND, AK FIX	*4800	17500
*2800—MOCA			
RANND, AK FIX	DIBWO, AK FIX	*4800	17500
*1200—MOCA			
DIBWO, AK FIX	ALEUT, AK WP	*6600	17500
*1500—MOCA			
ALEUT, AK WP	ZEBUV, AK FIX	*6600	17500
*3000—MOCA			
ZEBUV, AK FIX	TESPE, AK FIX	*6000	17500
*2600—MOCA			
TESPE, AK FIX	KING SALMON, AK VORTAC	*9000	17500
*2200—MOCA			
KING SALMON, AK VORTAC	*OLAYA, AK FIX	**4100	17500
*4100—MCA OLAYA, AK FIX, SW BND			
**2100—MOCA			
OLAYA, AK FIX	*TOMMY, AK FIX	**3100	17500
*6000—MCA TOMMY, AK FIX, NE BND			
**2600—MOCA			
TOMMY, AK FIX	BISAY, AK WP	*6000	17500
*2100—MOCA			
BISAY, AK WP	NUTUW, AK FIX	*6000	17500
*1300—MOCA			
NUTUW, AK FIX	DUMZU, AK WP	*6000	17500
*3800—MOCA			
§ 95.3396	**RNAV Route T396 Is Added to Read**		
NOME, AK VOR/DME	EZATY, AK FIX	3000	17500

From	To	MEA	MAA
EZATY, AK FIX	*HALUS, AK WP	4500	17500
*3600—MCA HALUS, AK WP, W BND			
HALUS, AK WP	*JAYQE, AK FIX	3000	17500
*4000—MCA JAYQE, AK FIX, E BND			
JAYQE, AK FIX	JAGGU, AK FIX	5900	17500
JAGGU, AK FIX	DIBVY, AK FIX	2600	17500
DIBVY, AK FIX	GALENA, AK VOR/DME	3100	17500
§ 95.3400	**RNAV Route T400 Is Added to Read**		
LLUKY, NE WP	IMUPP, SD WP	3700	17500
IMUPP, SD WP	DURWN, MN WP	3400	17500
DURWN, MN WP	MEMCO, MN WP	3300	17500
MEMCO, MN WP	ZOSAG, MN WP	2900	17500
*2400—MOCA			
§ 95.3415	**RNAV Route T415 Is Added to Read**		
WRNGL, AK WP	GRYNE, AK WP	7400	17500
GRYNE, AK WP	*DUYZI, AK WP	730	17500
*6600—MCA DUYZI, AK WP, E BND			
DUYZI, AK WP	GULKANA, AK VOR/DME	4700	17500
§ 95.3417	**RNAV Route T417 Is Added to Read**		
CEBUN, AK WP	HATIX, AK WP	9100	17500
HATIX, AK WP	EGAXE, AK FIX	9100	17500
§ 95.3418	**RNAV Route T418 Is Added to Read**		
LAMAR, CO VOR/DME	DRAWL, KS FIX	5600	17500
DRAWL, KS FIX	TOTOE, KS WP	5000	17500
TOTOE, KS WP	MITBEE, OK VORTAC	*5000	17500
*4400—MOCA			
§ 95.3431	**RNAV Route T431 Is Added to Read**		
KENTO, NM FIX	ADEOS, OK WP	6700	17500
ADEOS, OK WP	TOTOE, KS WP	5600	17500
TOTOE, KS WP	MOZEE, KS WP	4800	17500
MOZEE, KS WP	KNSAS, KS WP	3900	17500
§ 95.3435	**RNAV Route T435 Is Added to Read**		
HOLIM, AK WP	*RAYMD, AK FIX	4200	17500
*5300—MCA RAYMD, AK FIX, N BND			
RAYMD, AK FIX	*FEPAB, AK WP	8400	17500
*7500—MCA FEPAB, AK WP, S BND			
FEPAB, AK WP	WIXER, AK WP	6000	17500
WIXER, AK WP	OBUKE, AK FIX	2600	17500
OBUKE, AK FIX	ZILKO, AK FIX	*3700	17500
*1200—MOCA			
ZILKO, AK FIX	KING SALMON, AK VORTAC	*3300	17500
*1600—MOCA			
§ 95.3768	**RNAV Route T768 Is Added to Read**		
INTERNATIONAL FALLS, MN VOR/DME	YUPNU, MN WP	2900	17500
YUPNU, MN WP	CIVLU, MN FIX	3000	17500
CIVLU, MN FIX	U.S. CANADIAN BORDER	3000	1750
§ 95.4000 High Altitude RNAV Routes Is Amended by Adding § 95.4022 RNAV Route Q22			
TWOUP, GA WP	BURGG, SC WP	18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BURGG, SC WP	NYBLK, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
Is Amended to Delete			
TWOUP, GA WP	SPARTANBURG, SC VORTAC	*18000	45000
*18000—GNSS MEA			

From	To	MEA	MAA
*DME/DME/IRU MEA SPARTANBURG, SC VORTAC *18000—GNSS MEA *DME/DME/IRU MEA	NYBLK, NC WP	*18000	45000
§ 95.4034 RNAV Route Q34 Is Amended by Adding			
WAKOL, TN WP *18000—GNSS MEA *DME/DME/IRU MEA #BNA, PXV	HITMN, TN WP	*18000	45000
HITMN, TN WP *18000—GNSS MEA *DME/DME/IRU MEA	SWAPP, TN FIX	*18000	45000
§ 95.4060 RNAV Route Q60 Is Amended to Delete			
SPARTANBURG, SC VORTAC *18000—GNSS MEA *DME/DME/IRU MEA	BYJAC, NC FIX	*18000	45000
BYJAC, NC FIX *18000—GNSS MEA *DME/DME/IRU MEA	EVING, NC WP	*18000	45000
Is Amended by Adding			
BURGG, SC WP *18000—GNSS MEA *DME/DME/IRU MEA	EVING, NC WP	*18000	45000
JAXSN, VA FIX *18000—GNSS MEA *DME/DME/IRU MEA	SHIRY, VA WP	*18000	45000
SHIRY, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	HURTS, VA WP	*18000	45000
Is Amended to Read in Part			
EVING, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	JAXSN, VA FIX	*18000	45000
§ 95.4063 RNAV Route Q63 Is Amended to Delete			
DOOGE, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	HAPKI, KY WP	*18000	45000
HAPKI, KY WP *18000—GNSS MEA *DME/DME/IRU MEA	TONIO, KY WP	*18000	45000
TONIO, KY WP *18000—GNSS MEA *DME/DME/IRU MEA	OCASE, KY WP	*18000	45000
OCASE, KY WP *18000—GNSS MEA *DME/DME/IRU MEA	HEVAN, IN WP	*18000	45000
§ 95.4075 RNAV Route Q75 Is Amended to Read in Part			
JERSY, NJ WP *18000—GNSS MEA *DME/DME/IRU MEA	FARLE, NY FIX	*18000	45000
FARLE, NY FIX *18000—GNSS MEA *DME/DME/IRU MEA	BIZEX, NY WP	*18000	45000
§ 95.4085 RNAV Route Q85 Is Amended by Adding			
SMPRR, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	PBCUP, NC WP	*18000	45000
PBCUP, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	MOXXY, NC WP	*18000	45000
MOXXY, NC WP *18000—GNSS MEA	CRPLR, VA WP	*18000	45000

From	To	MEA	MAA
*DME/DME/IRU MEA			
§ 95.4087 RNAV Route Q87 Is Amended by Adding			
LCAPE, SC WP	ALWZZ, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ALWZZ, NC WP	ASHEL, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ASHEL, NC WP	DADDS, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
DADDS, NC WP	NOWAE, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
NOWAE, NC WP	RIDDN, VA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
RIDDN, VA WP	GEARS, VA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
GEARS, VA WP	HURTS, VA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4097 RNAV Route Q97 Is Amended by Adding			
ELLDE, NC WP	YEASO, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
YEASO, NC WP	PAACK, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
PAACK, NC WP	KOHLS, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
KOHLS, NC WP	SAWED, VA FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
SAWED, VA FIX	KALDA, VA FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
KALDA, VA FIX	ZJAAY, MD WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ZJAAY, MD WP	DLAAY, MD WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
DLAAY, MD WP	BRIGS, NJ FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BRIGS, NJ FIX	HEADI, NJ WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
HEADI, NJ WP	SAILN, OA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
SAILN, OA WP	CALVERTON, NY VOR/DME	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
CALVERTON, NY VOR/DME	NTMEG, CT WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
NTMEG, CT WP	VENTE, MA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
VENTE, MA WP	BLENO, NH WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BLENO, NH WP	BEEKN, ME WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BEEKN, ME WP	FRIAR, ME FIX	*18000	45000

From	To	MEA	MAA
*GNSS REQUIRED FRIAR, ME FIX *GNSS REQUIRED	PRESQUE ISLE, ME VOR/DME	*18000	45000
§ 95.4099 RNAV Route Q99 Is Amended by Adding			
POLYY, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	RAANE, NC WP	*18000	45000
RAANE, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	OGRAE, NC WP	*18000	45000
OGRAE, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	PEETT, NC WP	*18000	45000
PEETT, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	SHIRY, VA WP	*18000	45000
SHIRY, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	UMBRE, VA WP	*18000	45000
UMBRE, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	QUART, VA WP	*18000	45000
QUART, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	HURLE, VA WP	*18000	45000
§ 95.4101 RNAV Route Q101 Is Added to Read			
SKARP, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	PRANK, NC WP	*18000	45000
PRANK, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	BGBRD, NC WP	*18000	45000
BGBRD, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	HYPAL, VA WP	*18000	45000
HYPAL, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	TUGGR, VA WP	*18000	45000
§ 95.4107 RNAV Route Q107 Is Added to Read			
GARIC, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	ZORDO, NC WP	*18000	45000
ZORDO, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	JAAMS, NC WP	*18000	45000
JAAMS, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	ALINN, NC WP	*18000	45000
ALINN, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	HURTS, VA WP	*18000	45000
§ 95.4109 RNAV Route Q109 Is Amended by Adding			
LAANA, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	TINKK, NC WP	*18000	45000
TINKK, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	DFENC, NC WP	*18000	45000
§ 95.4111 RNAV Route Q111 Is Added to Read			
ZORDO, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	LARKE, NC WP	*18000	45000
LARKE, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	RUKRR, VA WP	*18000	45000

From	To	MEA	MAA
RUKRR, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	GEARS, VA WP	*18000	45000
GEARS, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	SWNGR, VA WP	*18000	45000
SWNGR, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	ALXEA, VA WP	*18000	45000
§ 95.4113 RNAV Route Q113 Is Amended by Adding			
SARKY, SC WP *18000—GNSS MEA *DME/DME/IRU MEA	MARCL, NC WP	*18000	45000
MARCL, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	AARNN, NC WP	*18000	45000
AARNN, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	RIDDN, VA WP	*18000	45000
§ 95.4117 RNAV Route Q117 Is Added to Read			
YLEEE, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	CUDLE, NC WP	*18000	45000
CUDLE, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	SUSSA, NC WP	*18000	45000
SUSSA, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	KTEEE, NC WP	*18000	45000
KTEEE, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	SAWED, VA FIX	*18000	45000
§ 95.4131 RNAV Route Q131 Is Added to Read			
ZILLS, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	YLEEE, NC WP	*18000	45000
YLEEE, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	EARZZ, NC WP	*18000	45000
EARZZ, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	ODAWG, VA WP	*18000	45000
ODAWG, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	KALDA, VA FIX	*18000	45000
KALDA, VA FIX *18000—GNSS MEA *DME/DME/IRU MEA	ZJAAY, MD WP	*18000	45000
§ 95.4133 RNAV Route Q133 Is Added to Read			
CHIEZ, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	BENCH, NC WP	*18000	45000
BENCH, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	KOOKI, NC WP	*18000	45000
KOOKI, NC WP *18000—GNSS MEA *DME/DME/IRU MEA	PYSTN, VA WP	*18000	45000
PYSTN, VA WP *18000—GNSS MEA *DME/DME/IRU MEA	KALDA, VA FIX	*18000	45000
KALDA, VA FIX *18000—GNSS MEA *DME/DME/IRU MEA	CONFR, MD WP	*18000	45000
CONFR, MD WP *18000—GNSS MEA	MGERK, DE WP	*18000	45000

From	To	MEA	MAA
*DME/DME/IRU MEA			
MGERK, DE WP	LEEAH, NJ FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
LEEAH, NJ FIX	MYRCA, NJ WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
MYRCA, NJ WP	KENNEDY, NY VOR/DME	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
KENNEDY, NY VOR/DME	LLUND, NY FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
LLUND, NY FIX	FARLE, NY FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
FARLE, NY FIX	GANDE, NY FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
GANDE, NY FIX	PONCT, NY WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4135 RNAV Route Q135 Is Amended by Adding			
RAPZZ, NC WP	ZORDO, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ZORDO, NC WP	CUDLE, NC WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4162 RNAV Route Q162 Is Amended to Delete			
NTELL, CA WP	CABAB, CA WP	*24000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
CABAB, CA WP	VIKSN, CA WP	*28000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
VIKSN, CA WP	KENNO, NV WP	*28000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
KENNO, NV WP	ESSAA, NV WP	*28000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ESSAA, NV WP	TUMBE, NV WP	*28000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
TUMBE, NV WP	MYCAL, NV WP	*28000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4166 RNAV Route Q166 Is Amended to Delete			
VIKSN, CA WP	UHILL, CA WP	*23000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
UHILL, CA WP	BIKKR, CA WP	*23000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4167 RNAV Route Q167 Is Added to Read			
ZJAAY, MD WP	PAJET, DE WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
PAJET, DE WP	CAANO, DE WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
CAANO, DE WP	TBONN, OA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
TBONN, OA WP	ZIZZI, NJ FIX	*18000	45000

From	To	MEA	MAA
*18000—GNSS MEA *DME/DME/IRU MEA			
ZIZZI, NJ FIX	YAZUU, NJ FIX	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
YAZUU, NJ FIX	TOPRR, OA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
TOPRR, OA WP	EMJAY, NJ FIX	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
EMJAY, NJ FIX	SPDEY, OA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
SPDEY, OA WP	RIFLE, NY FIX	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
RIFLE, NY FIX	HOFFI, NY FIX	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
HOFFI, NY FIX	ORCHA, NY WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
ORCHA, NY WP	ALBOW, NY WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
ALBOW, NY WP	GRONC, NY WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
GRONC, NY WP	NESTT, RI WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
NESTT, RI WP	BUZRD, MA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
BUZRD, MA WP	SSOXS, MA FIX	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4176 RNAV Route Q176 Is Amended to Delete			
KENTO, NM FIX	LIBERAL, KS TACAN	*18000	45000
*GNSS REQUIRED			
LIBERAL, KS TACAN	WICHITA, KS VORTAC	*18000	45000
*GNSS REQUIRED			
WICHITA, KS VORTAC	BUTLER, MO VORTAC	*18000	45000
*GNSS REQUIRED			
Is Amended to Read in Part			
KENTO, NM FIX	TOTOE, KS WP	*22000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
TOTOE, KS WP	WRIGL, KS WP	*22000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
WRIGL, KS WP	BUTLER, MO VORTAC	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4409 RNAV Route Q409 Is Amended by Adding			
MRPIT, NC WP	DEEEZ, NC WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
DEEEZ, NC WP	GUILD, NC WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
GUILD, NC WP	CRPLR, VA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
CRPLR, VA WP	TRPOD, MD WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			

From	To	MEA	MAA
TRPOD, MD WP	GNARO, DE WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
GNARO, DE WP	VILLS, NJ FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
VILLS, NJ FIX	COYLE, NJ VORTAC	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
COYLE, NJ VORTAC	WHITE, NJ FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4445 RNAV Route Q445 Is Added to Read			
PAACK, NC WP	JAMIE, VA FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
JAMIE, VA FIX	CONFR, MD WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
CONFR, MD WP	RADDS, DE FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
RADDS, DE FIX	WNSTN, NJ WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
WNSTN, NJ WP	AVALO, NJ FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
AVALO, NJ FIX	BRIGS, NJ FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BRIGS, NJ FIX	SHAUP, OA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
SHAUP, OA WP	VALCO, OA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
VALCO, OA WP	KYSKY, NY WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4481 RNAV Route Q481 Is Added to Read			
CONFR, MD WP	MGERK, DE WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
MGERK, DE WP	LEEAH, NJ FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
LEEAH, NJ FIX	ZIGGI, NJ FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ZIGGI, NJ FIX	DEER PARK, NY VOR/DME	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			

From	To	MEA
§ 95.6001 VICTOR Routes—U.S **§ 95.6007 VOR Federal Airway V7 Is Amended to Delete**		
GREEN BAY, WI VORTAC	MENOMINEE, MI VOR/DME	2600
MENOMINEE, MI VOR/DME	SAWYER, MI VOR/DME	2900
Is Amended to Read in Part		
POCKET CITY, IN VORTAC	PRINC, IN FIX.	
	N BND	2300
	S BND	4500

From	To	MEA
§ 95.6010 VOR Federal Airway V10 Is Amended to Read in Part		
LAMAR, CO VOR/DME	ADEER, KS FIX	*5700
ADEER, KS FIX	GARDEN CITY, KS VORTAC.	
	W BND	*5700
	E BND	*5000
*4400—MOCA		
§ 95.6011 VOR Federal Airway V11 Is Amended to Read in Part		
POCKET CITY, IN VORTAC	MACKY, IN FIX.	
	N BND	2300
	S BND	3000
MACKY, IN FIX	CLOWN, IN FIX.	
	N BND	*3000
	S BND	*6000
*2100—MOCA		
§ 95.6013 VOR Federal Airway V13 Is Amended to Read in Part		
NEVAD, IA FIX	ALOCK, IA FIX	*3300
*2800—MOCA		
§ 95.6017 VOR Federal Airway V17 Is Amended to Read in Part		
MITBEE, OK VORTAC	GARDEN CITY, KS VORTAC	4800
§ 95.6026 VOR Federal Airway V26 Is Amended to Delete		
GREEN BAY, WI VORTAC	NEROE, WI WP	3000
#GREEN BAY R–115 TO YULNU UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS		
NEROE, WI WP	WELKO, MI WP	*5000
*2400—MOCA		
WELKO, MI WP.		
WHITE CLOUD, MI VOR/DME	4000.	
#WHITE CLOUD R–303 TO YULNU UNUSABLE EXCEPT FOR AIRCRAFT EQUIPPED WITH SUITABLE RNAV SYSTEM WITH GPS		
§ 95.6044 VOR Federal Airway V44 Is Amended to Delete		
CENTRALIA, IL VORTAC	SAMSVILLE, IL VOR/DME	2400
§ 95.6052 VOR Federal Airway V52 Is Amended to Read in Part		
TROY, IL VORTAC	KENBE, IL FIX	3000
KENBE, IL FIX	*CRATS, IL FIX	**4000
*5000—MCA CRATS, IL FIX, SE BND		
**2600—MOCA		
CRATS, IL FIX	OFEND, IL FIX	*5000
*1900—MOCA		
OFEND, IL FIX	POCKET CITY, IN VORTAC	*4500
*2100—MOCA		
§ 95.6082 VOR Federal Airway V82 Is Amended to Read in Part		
GOPHER, MN VORTAC	FARMINGTON, MN VORTAC	*3500
*2800—MOCA		
§ 95.6120 VOR Federal Airway V120 Is Amended to Read in Part		
MASON CITY, IA VOR/DME	AREDA, IA FIX	3000
§ 95.6161 VOR Federal Airway V161 Is Amended to Read in Part		
LEMIG, TX FIX	CENTER POINT, TX VORTAC	4100
NEVAD, IA FIX	ALOCK, IA FIX	*3300
*2800—MOCA		
FARMINGTON, MN VORTAC	GOPHER, MN VORTAC	*3500

From	To	MEA
*2800—MOCA		
§ 95.6170 VOR Federal Airway V170 Is Amended to Delete		
SIOUX FALLS, SD VORTAC	WORTHINGTON, MN VOR/DME	3400
§ 95.6175 VOR Federal Airway V175 Is Amended to Delete		
MALDEN, MO VORTAC	BUNKS, MO WP	*4000
*2700—MOCA		
BUNKS, MO WP	VICHY, MO VOR/DME	3000
WORTHINGTON, MN VOR/DME	REDWOOD FALLS, MN VOR/DME	3400
§ 95.6193 VOR Federal Airway V193 Is Amended to Delete		
MUSKY, MI FIX	PULLMAN, MI VOR/DME	(#)
#UNUSABLE		
PULLMAN, MI VOR/DME	CLOCK, MI WP	(#)
#UNUSABLE		
CLOCK, MI WP	WHITE CLOUD, MI VOR/DME	(#)
#UNUSABLE		
WHITE CLOUD, MI VOR/DME	TRAVERSE CITY, MI VOR/DME	(#)
#UNUSABLE		
§ 95.6210 VOR Federal Airway V210 Is Amended to Delete		
LAMAR, CO VOR/DME	LIBERAL, KS TACAN	*6000
*5300—MOCA		
LIBERAL, KS TACAN	ROLLS, OK FIX	*12000
*4400—MOCA		
*5000—GNSS MEA		
ROLLS, OK FIX	WAXEY, OK FIX.	
	W BND	*11000
	E BND	*9300
*3800—MOCA		
*4000—GNSS MEA		
WAXEY, OK FIX	WILL ROGERS, OK VORTAC.	
	W BND	*9300
	E BND	*5000
*3300—MOCA		
*4000—GNSS MEA		
§ 95.6217 VOR Federal Airway V217 Is Amended to Read in Part		
GREEN BAY, WI VORTAC	WISOM, WI FIX.	
	SE BND	*2700
	NW BND	*3600
*2400—MOCA		
§ 95.6234 VOR Federal Airway V234 Is Amended to Delete		
DALHART, TX VORTAC	BRAKR, OK WP	5700
BRAKR, OK WP	LIBERAL, KS TACAN	*5700
*4700—MOCA		
LIBERAL, KS TACAN	FLACK, KS FIX	4600
FLACK, KS FIX	KRIER, KS FIX	*5000
*4100—MOCA		
KRIER, KS FIX	BYWAY, KS FIX	*7100
*4000—MOCA		
BYWAY, KS FIX	GABIE, KS FIX.	
	E BND	*4500
	W BND	*7100
*3800—MOCA		
GABIE, KS FIX	HUTCHINSON, KS VOR/DME.	
	E BND	3800
	W BND	4500
§ 95.6250 VOR Federal Airway V250 Is Amended to Delete		
YANKTON, SD VOR/DME	WORTHINGTON, MN VOR/DME	3400
WORTHINGTON, MN VOR/DME	MANKATO, MN VOR/DME	3400
§ 95.6285 VOR Federal Airway V285 Is Amended to Delete		
VICTORY, MI VOR/DME	CLOCK, MI WP	(#)

From	To	MEA
#UNUSABLE CLOCK, MI WP #UNUSABLE	WHITE CLOUD, MI VOR/DME	(#)
§ 95.6289 VOR Federal Airway V289 Is Amended to Read in Part		
HONEE, TX FIX *2000—MOCA	LUFKIN, TX VORTAC	*3000
§ 95.6305 VOR Federal Airway V305 Is Amended to Read in Part		
POCKET CITY, IN VORTAC	AUGUS, IN FIX. N BND S BND	 2400 3500
AUGUS, IN FIX *1900—MOCA	WEGEE, IN FIX	*3500
§ 95.6341 VOR Federal Airway V341 Is Amended to Delete		
GREEN BAY, WI VORTAC MENOMINEE, MI VOR/DME HAVEL, MI WP	MENOMINEE, MI VOR/DME HAVEL, MI WP IRON MOUNTAIN, MI VOR/DME	2600 2500 3300
§ 95.6350 VOR Federal Airway V350 Is Amended to Delete		
LIBERAL, KS TACAN *4500—MOCA	WICHITA, KS VORTAC	*8000
§ 95.6446 VOR Federal Airway V446 Is Amended to Delete		
TROY, IL VORTAC	SAMSVILLE, IL VOR/DME	2600
§ 95.6477 VOR Federal Airway V477 Is Amended to Read in Part		
HUMBLE, TX VORTAC *2100—MOCA	LEONA, TX VORTAC	*3000
§ 95.6493 VOR Federal Airway V493 Is Amended to Delete		
MENOMINEE, MI VOR/DME	RHINELANDER, WI VOR/DME	3500
§ 95.6507 VOR Federal Airway V507 Is Amended to Delete		
MITBEE, OK VORTAC LIBERAL, KS TACAN	LIBERAL, KS TACAN GARDEN CITY, KS VORTAC	4700 4700

From	To	MEA	MAA
§ 95.7001 Jet Routes **§ 95.7019 Jet Route J19 Is Amended to Delete**			
PHOENIX, AZ VORTAC ZUNI, NM VORTAC #MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.	ZUNI, NM VORTAC BUKKO, NM FIX	19000 18000	45000 45000
BUKKO, NM FIX FORT UNION, NM VORTAC LIBERAL, KS TACAN WICHITA, KS VORTAC BUTLER, MO VORTAC	FORT UNION, NM VORTAC LIBERAL, KS TACAN WICHITA, KS VORTAC BUTLER, MO VORTAC ST LOUIS, MO VORTAC	18000 18000 18000 18000 18000	45000 45000 45000 45000 45000
§ 95.7020 Jet Route J20 Is Amended to Delete			
LAMAR, CO VOR/DME LIBERAL, KS TACAN	LIBERAL, KS TACAN WILL ROGERS, OK VORTAC	18000 18000	45000 45000
§ 95.7022 Jet Route J22 Is Amended to Delete			
MERIDIAN, MS VORTAC VULCAN, AL VORTAC VOLUNTEER, TN VORTAC PULASKI, VA VORTAC	VULCAN, AL VORTAC VOLUNTEER, TN VORTAC PULASKI, VA VORTAC MONTEBELLO, VA VOR/DME	18000 18000 18000 18000	45000 45000 45000 45000

From	To	MEA	MAA
§ 95.7031 Jet Route J31 Is Amended to Delete			
MERIDIAN, MS VORTAC	VULCAN, AL VORTAC	18000	45000
§ 95.7039 Jet Route J39 Is Amended to Delete			
MONTGOMERY, AL VORTAC	VULCAN, AL VORTAC	18000	45000
VULCAN, AL VORTAC	NASHVILLE, TN VORTAC	18000	45000
NASHVILLE, TN VORTAC	LOUISVILLE, KY VORTAC	18000	45000
LOUISVILLE, KY VORTAC	ROSEWOOD, OH VORTAC	18000	45000
§ 95.7048 Jet Route J48 Is Amended to Delete			
MONTEBELLO, VA VOR/DME	FOOTHILLS, SC VOR/DME	18000	41000
§ 95.7052 Jet Route J52 Is Amended to Delete			
LAMAR, CO VOR/DME	LIBERAL, KS TACAN	18000	45000
LIBERAL, KS TACAN	ARDMORE, OK VORTAC	18000	45000
§ 95.7069 Jet Route J69 Is Amended to Delete			
SEMMES, AL VORTAC	DELBE, AL FIX	22000	45000
DELBE, AL FIX	VULCAN, AL VORTAC	18000	45000
§ 95.7098 Jet Route J98 Is Amended to Delete			
LIBERAL, KS TACAN	MITBEE, OK VORTAC	18000	45000
§ 95.7118 Jet Route J118 Is Amended to Delete			
MEMPHIS, TN VORTAC	CHOO CHOO, TN VORTAC	18000	45000
CHOO CHOO, TN VORTAC	SPARTANBURG, SC VORTAC	18000	45000
§ 95.7134 Jet Route J134 Is Amended to Delete			
CIMARRON, NM VORTAC	LIBERAL, KS TACAN	18000	45000
LIBERAL, KS TACAN	WICHITA, KS VORTAC	18000	45000
§ 95.7145 Jet Route J145 Is Amended to Delete			
FOOTHILLS, SC VOR/DME	CHARLESTON, WV VOR/DME	18000	45000
§ 95.7186 Jet Route J186 Is Amended to Delete			
FOOTHILLS, SC VOR/DME	SNOWBIRD, TN VORTAC	18000	45000
SNOWBIRD, TN VORTAC	APPLETON, OH VORTAC	18000	45000
§ 95.7231 Jet Route J231 Is Amended to Delete			
ANTON CHICO, NM VORTAC	LIBERAL, KS TACAN	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point V234 Is Amended to Delete Changeover Point			
DALHART, TX VORTAC	LIBERAL, KANSAS VORTAC	45	DALHART.
§ 95.8005 Jet Route Changeover Points J19 Is Amended to Delete Changeover Point			
FORT UNION, NM VORTAC	GALLUP, NM VORTAC	80	FORT UNION.
J118 Is Amended to Delete			
MEMPHIS, TN VORTAC	CHOO CHOO, TN VORTAC	130	MEMPHIS.

[FR Doc. 2022–18141 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

[Docket No. Fiscal–2021–0007]

RIN 1530–AA21

Debt Collection Authorities Under the Debt Collection Improvement Act of 1996; Correction

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: The Department of the Treasury (''Treasury''), Bureau of the Fiscal Service (''Fiscal Service'') is correction a final rule that appeared in the **Federal Register** on August 16, 2022. The document amends the regulations of the Treasury, Fiscal Service, regarding the Treasury Offset Program (''TOP'') and the Cross-Servicing program. The primary reason for amending the regulation is to inform the public about how Fiscal Service will use Social Security numbers in mailings, as required by the Social Security Number Fraud Prevention Act of 2017, which requires Fiscal Service to have final regulations in place by September 15, 2022.

DATES: This correction is effective September 15, 2022.

FOR FURTHER INFORMATION CONTACT: Tawanna Edmonds, Director, Receivables Management & Debt Services Division, Debt Management Services, Bureau of the Fiscal Service at (202) 874–6810.

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–17117 appearing on page 52046 in the **Federal Register** of Tuesday, August 16, 2022, the following correction is made:

§ 285.12 [Corrected]

■ 1. On page 50249, in the first column, the first line of instruction 7, ''Section 285.12(a) is amended by:'', is corrected to read ''Section 285.12 is amended by:''

Dated: August 17, 2022.

Lela Anderson,

Attorney-Advisor.

[FR Doc. 2022–18076 Filed 8–22–22; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2021–OS–0048]

RIN 0790–AL13

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense (Department or DoD) is issuing a final rule to amend its regulations to exempt portions of the system of records titled DoD–0008, ''Freedom of Information Act and Privacy Act Records,'' from certain provisions of the Privacy Act of 1974.

DATES: This rule is effective September 22, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION:

Discussion of Comments and Changes

The proposed rule published in the **Federal Register** (86 FR 72536–72540) on December 22, 2021. Comments were accepted for 60 days until February 22, 2022. A total of two comments regarding the proposed rule were received. Please see a summary of the comments and the Department's response below:

DoD received one substantive comment and one non-substantive comment on the NPRM. The substantive comment expressed a concern that the application of exemptions to this system of records would globally shield all FOIA case processing records from disclosure. This rulemaking would not globally or improperly shield a requester's ability to seek access to the case processing of records of a FOIA or Privacy Act case. The Privacy Act (5 U.S.C. 552a) generally provides that any person has a right (enforceable in court) of access to federal agency records about themselves, except to the extent that the information is *protected from disclosure* by one of ten exemptions. To the extent that the case processing records are ''records'' as defined in the Privacy Act to which an individual has a Privacy Act right of access, this rule will deny the individual access to those records only to the extent a claimed exemption applies. In addition, records in the DoD–0008 Freedom of Information Act and Privacy Act Records system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record. Applying Privacy Act exemptions allows agencies to withhold records from access for particular reasons as articulated by the exemption rule. Having considered the public comment, the Department will implement the rulemaking as proposed.

I. Background

In finalizing this rule, DoD is seeking to exempt portions of this system of records titled, DoD–0008 Freedom of Information Act and Privacy Act Records, from certain provisions of the Privacy Act. This system of records covers DoD's maintenance of records about individuals who submit access requests and administrative appeals under the Freedom of Information Act, and who submit access and amendment requests and administrative appeals under the Privacy Act. This system of records data includes information regarding the individual requesters and their attorneys or representatives, the original request for access and any administrative appeal, and other supporting documentation to include related memoranda, correspondence, notes, and, in some instances, copies of requested records and records under administrative appeal.

II. Privacy Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemption. The OSD is amending 32 CFR part 310 to add a new Privacy Act exemption rule for this system of records. The DoD is adding an exemption for this system of records because some of its records may contain investigatory material compiled for law enforcement purposes, classified national security information, protective services information pursuant to 18 U.S.C. 3056, and testing or examination information pursuant to 5 U.S.C.

552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(5), (k)(6), and (k)(7). The DoD is claiming an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain recordkeeping and notice requirements, to avoid, among other harms, frustrating the underlying purposes for which the information was gathered.

Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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, distribute 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. It has been determined that this rule is not a significant regulatory action under these Executive Orders.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, in any one year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Executive Order 13132, ''Federalism''

It has been determined that this rule does not have federalism implications. This rule does 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.

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or effects the distribution of power and responsibilities between the federal government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDEMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

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

■ 2. Section 310.13 is amended by adding paragraph (e)(7) to read as follows:

§ 310.13 Exemptions for DoD-wide systems.

* * * * *

(e) * * *

(7) *System identifier and name:* DoD–0008, ''Freedom of Information Act and Privacy Act Records''

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1); (e)(2); (e)(3); (e)(4)(G), (H), and(I); (e)(5); (e)(8); (f) and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(5), (k)(6), and (k)(7).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsection (c)(3), (d)(1), and (d)(2)*—(*1*) *Exemption (j)(2).* Records in this system of records may contain information recompiled from other systems of records maintained by a DoD component or other agency which performs as its principal function activities pertaining to the enforcement of criminal laws and contain investigatory material compiled for criminal law enforcement purposes, including information identifying criminal offenders and alleged offenders, information compiled for the purpose of criminal investigation, or reports compiled during criminal law enforcement proceedings. Application of exemption (j)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties or disciplinary measures; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD or the other agency's ability to obtain information from future confidential sources and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(*2*) *Exemption (k)(1).* Records in this system of records may contain information that is properly classified pursuant to executive order.

Application of exemption (k)(1) may be necessary because access to and amendment of the records, or release of the accounting of disclosures for such records, could reveal classified information. Disclosure of classified records to an individual may cause damage to national security.

(*3*) *Exemption (k)(2).* Records in this system of records may contain information recompiled from other systems of records pertaining to investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Application of exemption (k)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could: inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records or the accounting of records to avoid criminal penalties, civil remedies, or disciplinary measures; interfere with a civil or administrative action or investigation by allowing the subject to tamper with witnesses or evidence, and to avoid detection or apprehension, which may undermine the entire investigatory process; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(*4*) *Exemption (k)(3).* Records in this system of records may contain information recompiled from other systems of records pertaining to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) for such records may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could compromise the effectiveness of protective services, the safety of the individuals protected pursuant to 18 U.S.C. 3056, and the safety of the personnel providing protective services.

(*5*) *Exemption (k)(5).* Records in this system of records may contain information recompiled from other systems of records concerning investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. In some cases, such records may contain information pertaining to the identity of a source who furnished information to the Government under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Privacy Act, under an implied promise). Application of exemption (k)(5) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could identify these confidential sources who might not have otherwise come forward to assist the Government; hinder the Government's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(*6*) *Exemption (k)(6).* Records in this system of records may contain information recompiled from other systems of records relating to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service. Application of exemption (k)(6) may be necessary when access to and amendment of the records, or release of the accounting of disclosure for such records, may compromise the objectivity and fairness of the testing or examination process. Amendment of such records could also impose a highly impracticable administrative burden by requiring testing and examinations to be continuously re-administered.

(*7*) *Exemption (k)(7).* Records in this system of records may contain evaluation material recompiled from other systems of records used to determine potential for promotion in the Armed Forces of the United States. In some cases, such records may contain information pertaining to the identity of a source who furnished information to the Government under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Privacy Act, under an implied promise). Application of exemption (k)(7) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could identify these confidential sources who might not have otherwise come forward to assist the Government; hinder the Government's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others.

(B) *Subsection (c)(4), (d)(3) and (4).* These subsections are inapplicable to the extent that an exemption is being claimed from subsections (d)(1) and (2).

(C) *Subsection (e)(1).* In the collection of information for investigatory or law enforcement purposes, it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required disciplinary and prosecutorial determinations. Additionally, records within this system may be properly classified pursuant to executive order. Further, it is not always possible to determine relevancy or necessity of specific information in the earlier stages of responding to a FOIA or Privacy Act request or in litigation case development, including with respect to records pertaining to suitability determinations or armed services promotion evaluations that contain information about sources who were granted an express promise of confidentiality, or pertaining to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process. Such information may later be deemed unnecessary upon further assessment. Accordingly, application of exemptions (j)(2), (k)(1), (k)(2), (k)(3), (k)(5), (k)(6), or (k)(7) may be necessary.

(D) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations. Collection of information only from the individual accused of criminal activity or misconduct could also subvert discovery of relevant evidence and subvert the course of justice. Accordingly, application of exemption (j)(2) may be necessary.

(E) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

Accordingly, application of exemption (j)(2) may be necessary.

(F) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent an exemption is claimed from subsections (d)(1) and (2).

(G) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad information currently published in the system notice concerning categories of sources of records in the system, an exemption from this provision is necessary to protect the confidentiality of sources of information, the privacy and physical safety of witnesses and informants, and testing or examination material used solely to determine individual qualifications for appointment of promotion in the Federal service. Accordingly, application of exemptions (j)(2), (k)(1), (k)(2), (k)(5), (k)(6), and (k)(7) may be necessary.

(H) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to maintain an accurate record of the investigatory activity to preserve the integrity of the investigation and satisfy various Constitutional and evidentiary requirements, such as mandatory disclosure of potentially exculpatory information in the investigative file to a defendant. It is also necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined through judicial processes. Accordingly, application of exemption (j)(2) may be necessary.

(I) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(J) *Subsection (f).* To the extent that portions of the system are exempt from the provisions of the Privacy Act concerning individual access and amendment of records, DoD is not required to establish rules concerning procedures and requirements relating to such provisions. Accordingly, application of exemptions (j)(2), (k)(1), (k)(2), (k)(5), (k)(6), and (k)(7) may be necessary.

(K) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act to which the civil remedies provisions pertain.

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

* * * * *

Dated: August 16, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17977 Filed 8–22–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2022–0012]

RIN 2127–AM41

Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2020 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2020

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination that there are no new model year 2020 light duty truck lines subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard. The agency determined no new models were high-theft or had major parts that are interchangeable with a majority of the covered major parts of passenger car or multipurpose passenger vehicle lines. This final rule also identifies those vehicle lines that have been granted an exemption from the parts-marking requirements because they are equipped with antitheft devices determined to meet certain criteria.

DATES: This final rule is effective August 23, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: The theft prevention standard (49 CFR part 541) applies to (1) all passenger car lines; (2) all multipurpose passenger vehicle (MPV) lines with a gross vehicle weight rating (GVWR) of 6,000 pounds or less; (3) low-theft light-duty truck (LDT) lines with a GVWR of 6,000 pounds or less that have major parts that are interchangeable with a majority of the covered major parts of passenger car or MPV lines; and (4) high-theft LDT lines with a GVWR of 6,000 pounds or less.

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines subject to the requirements of the standard.

49 U.S.C. 33104(d) provides that once a line has become subject to the theft prevention standard, the line remains subject to the requirements of the standard unless it is exempted under 49 U.S.C. 33106. Section 33106 provides that a manufacturer may petition annually to have one vehicle line exempted from the requirements of section 33104, if the line is equipped with an antitheft device meeting certain conditions as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

49 CFR part 543 establishes the process through which manufacturers may seek an exemption from the theft prevention standard. Manufacturers may request an exemption under 49 CFR 543.6 by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking

requirements,[1] or manufacturers may request an exemption under a more streamlined process outlined in 49 CFR 543.7 if the vehicle line is equipped with an antitheft device (an ''immobilizer'') as standard equipment that complies with one of the standards specified in that section.[2] If the exemption is sought under 49 CFR 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing; if the petition is sought under section 49 CFR 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

NHTSA annually publishes the names of LDT lines NHTSA has determined to be high theft pursuant to 49 CFR part 541, LDT lines that NHTSA has determined to have major parts that are interchangeable with a majority of the covered major parts of passenger car or MPV lines, and vehicle lines that NHTSA has exempted from the theft prevention standard. Appendix A to part 541 identifies those LDT lines subject to the theft prevention standard beginning in a given model year. Appendix A–I to part 541 also lists those vehicle lines that NHTSA has exempted from the theft prevention standard.

For MY 2020, there are no new LDT lines that will be subject to the theft prevention standard in accordance with the procedures published in 49 CFR part 542.

Appendix A–I identifies those vehicle lines that have been exempted by the agency from the parts-marking requirements of part 541 and is amended to include eleven MY 2020 vehicle lines newly exempted in full. The eleven exempted vehicle lines are the Hyundai Genesis G70, Honda Acura TLX, Jeep Gladiator, Nissan Versa, Toyota C–HR, GM Buick Encore, Porsche Taycan, Ford Lincoln Corsair, BMW 2 series, Jaguar Land Rover E-Pace and the Tesla Model Y. NHTSA has either previously granted these exemption requests and published the determination in the **Federal Register** if the exemption was sought under 49 CFR 543.6, or has notified the manufacturer of the grant of exemption if the exemption was sought under 49 CFR 543.7.

Each year the agency also amends the appendices to part 541 to remove vehicle lines that have not been manufactured for the United States market in over 5 years. We believe that including those vehicle lines would be unnecessary. Therefore, the agency is removing the BMW X1, Ford Taurus, Jaguar XK, Land Rover LR2 and the Mazda 5 vehicle lines from the Appendix A–I listing. However, NHTSA will continue to maintain a comprehensive database of all exemptions on our website.

The changes made in this notice are purely informational. The eleven vehicle lines that will be added to appendix A–I of part 541 were granted exemptions in accordance with the procedures of 49 CFR part 543 and 49 U.S.C. 33106 and notices of the grants of those exemptions were published in the **Federal Register**, or the manufacturer was notified by grant letter. Therefore, NHTSA finds good cause under 5 U.S.C. 553(b)(3)(B) that notice and opportunity for comment on this final rule is unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. chapter 331. For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds good cause under 5 U.S.C. 553(d)(3) to make the amendment made by this notice effective on the date this notice is published in the **Federal Register**.

Regulatory Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget (OMB) under Executive Order (E.O.) 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures. The purpose of this final rule is to provide information to the public about vehicle lines that must comply with the parts-marking requirements of NHTSA's theft prevention standard and vehicles that NHTSA has exempted from those requirements. Since the purpose of the final rule is to inform the public of actions NHTSA has already taken, either determining that new lines are subject to parts-marking requirements or exempting vehicle lines from those requirements, the final rule will not impose any new burdens.

B. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment as it merely informs the public about previous agency actions. Accordingly, no environmental assessment is required.

C. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. As discussed above, this final rule only provides information to the public about previous agency actions.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually ($120.7 million as adjusted annually for inflation with base year of 1995). The assessment may be combined with other assessments, as it is here.

This final rule will not result in expenditures by State, local or tribal governments or automobile manufacturers and/or their suppliers of more than $120.7 million annually. This document informs the public of previously granted exemptions. Since the only purpose of this final rule is to inform the public of previous actions taken by the agency, no new costs or burdens will result.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,''[3] the agency has considered whether this final rule has any retroactive effect. We conclude that it would not have such an effect as it only informs the public of previous agency actions. In accordance with section 49 U.S.C. 33118, when a Federal theft prevention standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

[1] 49 CFR 543.6.

[2] 49 CFR 543.7.

[3] *See* 61 FR 4729, February 7, 1996.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. There are no information collection requirements associated with this final rule.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

PART 541—[AMENDED]

■ 1. The authority citation for part 541 continues to read as follows:

Authority: 49 U.S.C. 33101, 33102, 33103, 33104, 33105 and 33106; delegation of authority at 49 CFR 1.95.

■ 2. Appendix A–I to Part 541 is revised to read as follows:

Appendix A–I to Part 541—Lines With Antitheft Devices Which Are Exempted From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	Subject lines
BMW	MINI, MINI Countryman (MPV), X1 (MPV), X1, X2 (MPV), X3 (MPV), X4 (MPV), X5 (MPV), Z4, 2 Series,[1] 3 Series, 4 Series, 5 Series, 6 Series, 7 Series, 8 Series.
CHRYSLER	200, 300, Dodge Charger, Dodge Challenger, Dodge Dart, Dodge Journey, Fiat 500, Fiat 124 Spider, Jeep Cherokee, Jeep Compass, Jeep Grand Cherokee (MPV), Jeep Gladiator,[1] Jeep Patriot, Jeep Wrangler/Wrangler JK,[2] Jeep Wrangler JL (new), Town and Country MPV.
FORD MOTOR CO	C-Max, EcoSport, Edge, Escape, Explorer, Fiesta, Focus, Fusion, Lincoln Corsair,[1] Lincoln MKC, Lincoln MKX, Lincoln Nautilus, Mustang.
GENERAL MOTORS	Buick LaCrosse/Regal, Buick Encore,[1] Buick Verano, Cadillac ATS, Cadillac CTS, Cadillac SRX, Cadillac XTS, Cadillac XT4, Chevrolet Bolt, Chevrolet Camaro, Chevrolet Corvette, Chevrolet Cruze, Chevrolet Equinox, Chevrolet Impala/Monte Carlo, Chevrolet Malibu, Chevrolet Sonic, Chevrolet Spark, Chevrolet Volt, GMC Terrain.
HONDA	Accord, Acura TLX,[1] Acura MDX, Civic, CR–V, Passport, Pilot.
HYUNDAI	Azera, Equus, Genesis G70,[1] Genesis G80,[3] IONIQ.
JAGUAR	F-Type, XE, XF, XJ, Land Rover Discovery Sport, Land Rover E-Pace,[1] Land Rover F-Pace, Land Rover Range Rover Evoque, Land Rover Velar.
KIA	Niro, Stinger.
MASERATI	Ghibli, Levante (SUV), Quattroporte.
MAZDA	2, 3, 5, 6, CX–3, CX–5, CX–9, MX–5 Miata.
MERCEDES–BENZ	smart Line Chassis, smart USA fortwo, SL-Line Chassis (SL-Class), (the models within this line are): SL400/SL450, SL550, SL 63/AMG, SL 65/AMG, SLK-Line Chassis (SLK-Class/SLC-Class), (the models within this line are): SLK 250, SLK 300, SLK 350, SLK 55 AMG, SLC 300 AMG, SLC 43, S-Line Chassis (S/CL/S-Coupe Class/S-Class Cabriolet/Mercedes Maybach), (the models within this line are): S400 Hybrid, S550, S600, S63 AMG, S65 AMG, Mercedes-Maybach S560, Mercedes-Maybach S650, CL550, CL600, CL63 AMG, CL65 AMG, NGCC Chassis Line (CLA/GLA/B-Class/A-Class), (the models within this line are): A220, B250e, CLA250, CLA45 AMG, GLA250, GLA45 AMG, C-Line Chassis (C-Class/CLK/GLK-Class/GLC-Class), (the models within this line are): C63 AMG, C240, C250, C300, C350, CLK 350, CLK 550, CLK 63AMG, GLK250, GLK350, E-Line Chassis (E-Class/CLS Class), (the models within this line are): E55, E63 AMG, E320 BLUETEC, E350 BLUETEC, E320/E320DT CDi, E350/E500/E550, E400 HYBRID, CLS400, CLS500/550, CLS55 AMG, CLS63 AMG.
MITSUBISHI	Eclipse Cross, iMiEV, Lancer, Outlander, Outlander Sport, Mirage.
NISSAN	Altima, Juke, Leaf, Maxima, Murano, NV200 Taxi, Pathfinder, Quest, Rogue, Kicks, Sentra, Infiniti Q70, Infiniti Q50/60, Infiniti QX50, Infiniti QX60, Versa.[1]
PORSCHE	911, Boxster/Cayman, Macan, Panamera, Taycan.[1]
SUBARU	Ascent, Forester, Impreza, Legacy, Outback, WRX, XV Crosstrek/Crosstrek.[4]
TESLA	Model 3, Model S, Model X, Model Y.[1]
TOYOTA	Avalon, Camry, Corolla, C–HR,[1] Highlander, Lexus ES, Lexus GS, Lexus LS, Lexus NX, Lexus RX, Prius, RAV4, Sienna.
VOLKSWAGEN	Atlas, Beetle, Eos, Jetta, Passat, Tiguan, Golf/Golf Sport wagen/eGolf/Alltrack, Audi A3, Audi A4, Audi A4Allroad MPV, Audi A6, Audi A8, Audi Q3, Audi Q5, Audi TT.
VOLVO	S60.

[1] Granted an exemption from the parts-marking requirements beginning with MY 2020.
[2] Jeep Wrangler (2009–2019) nameplate changed to Jeep Wrangler JK, JK discontinued after MY 2018.
[3] Hyundai discontinued use of its parts-marking exemption for the Genesis vehicle line beginning with the 2010 model year, line was reintroduced as the Genesis G80.
[4] Subaru XV Crosstrek nameplate changed to Crosstrek beginning with MY 2016.

Issued under authority delegated in 49 CFR 1.95 and 501.5.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–18074 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 87, No. 162
Tuesday, August 23, 2022

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1060; Project Identifier MCAI–2022–00251–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–14–08, which applies to all Airbus SAS Model A319–151N, A319–153N, A319–171N, A320–251N, A320–252N, A320–273N, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes. AD 2021–14–08 requires revising the existing airplane flight manual (AFM) to include a procedure to reinforce the airspeed check during the take-off phase and provide instructions to abort take-off in certain cases. This AD was prompted by the development of a software update to the elevator aileron computer (ELAC) to address the unsafe condition. This proposed AD would continue to require the actions in AD 2021–14–08 and would require replacing each affected ELAC and removing the AFM revision required by AD 2021–14–08, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 7, 2022.

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

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

For EASA material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1060.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1060; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1060; Project Identifier MCAI–2022–00251–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–14–08, Amendment 39–21635 (86 FR 34933, July 1, 2021) (AD 2021–14–08), for all Airbus SAS Model A319–151N, A319–153N, A319–171N, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–

272NX airplanes. AD 2021–14–08 requires revising the existing AFM to include a procedure to reinforce the airspeed check during the take-off phase and provide instructions to abort take-off in certain cases. The FAA issued AD 2021–14–08 to address airspeed discrepancies, which could lead to an unstable flight path after take-off, possibly resulting in reduced control of the airplane.

Actions Since AD 2021–14–08 Was Issued

The preamble to AD 2021–14–08 explains that the FAA considers that AD to be interim action and that further action might follow. Since the FAA issued AD 2021–14–08, the manufacturer developed a software update to the ELAC to address the unsafe condition, and the FAA has determined that further rulemaking is necessary. Installation of this software update would eliminate the need for the AFM revision required by AD 2021–14–08.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0028, dated February 22, 2022 (EASA AD 2022–0028) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A319–151N, –153N, and –171N airplanes; Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

This proposed AD was prompted by the development of a software update to the ELAC to address the unsafe condition. The FAA is proposing this AD to address airspeed discrepancies, which could lead to an unstable flight path after take-off, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–14–08, this proposed AD would retain all of the requirements of AD 2021–14–08. Those requirements are referenced in EASA AD 2022–0028, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0028 specifies procedures for, among other actions, revising the AFM to include a procedure to reinforce the airspeed check during the take-off phase and provide instructions to abort take-off in certain cases (*e.g.,* and unreliable airspeed situation or certain airspeed differences); replacing each affected ELAC with a serviceable ELAC (one with the updated ELAC software standard); and removing the AFM revision required by AD 2021–14–08. EASA AD 2022–0028 also prohibits installation of affected ELACs. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2021–14–08. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0028 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD, and except as discussed under ''Differences Between this AD and the MCAI.''

Differences Between This AD and the MCAI

Paragraph (3) of EASA AD 2022–0028 requires revising the minimum equipment list (MEL) to incorporate an EASA master minimum equipment list (MMEL) change to mandate that the integrated standby instrument system (ISIS) airspeed indication must be operative. However the FAA MMEL does not provide relief for an inoperative ISIS airspeed indication function. Therefore, paragraph (3) of EASA AD 2022–0028 is unnecessary for this AD.

EASA AD 2022–0028 requires operators to ''inform all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0028 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0028 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0028 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0028. Service information required by EASA AD 2022–0028 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2022–1060 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 204 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–14–08	1 work-hour × $85 per hour = $85	$0	$85	$17,340
New proposed actions	3 work-hours × $85 per hour = $355	150	405	82,620

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–14–08, Amendment 39–21635 (86 FR 34933, July 1, 2021); and

■ b. Adding the following new airworthiness directive:

Airbus SAS: Docket No. FAA–2022–1060; Project Identifier MCAI–2022–00251–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 7, 2022.

(b) Affected ADs

This AD replaces AD 2021–14–08, Amendment 39–21635 (86 FR 34933, July 1, 2021) (AD 2021–14–08).

(c) Applicability

This AD applies to all Airbus SAS Model airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model A319–151N, –153N, and –171N airplanes.

(2) Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(3) Model A321–251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Control System; 34, Navigation.

(e) Unsafe Condition

This AD was prompted by reports of an increasing number of operational disruptions due to airspeed discrepancies, and the development of a software update to the elevator aileron computer (ELAC) to address the unsafe condition. The FAA is issuing this AD to address airspeed discrepancies, which could lead to an unstable flight path after take-off, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0028, dated February 22, 2022 (EASA AD 2022–0028).

(h) Exceptions to EASA AD 2022–0028

(1) Where EASA AD 2022–0028 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0028 refers to June 28, 2021 (the effective date of EASA AD 2021–0150, dated June 21, 2021; corrected June 25, 2021), this AD requires using July 1, 2021 (the effective date of AD 2021–14–08).

(3) Paragraph (3) of EASA AD 2022–0028 does not apply to this AD.

(4) Where paragraphs (1) and (5) of EASA AD 2022–0028 specify to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(5) The ''Remarks'' section of EASA AD 2022–0028 does not apply to this AD.

(i) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(ii) AMOCs approved previously for AD 2022–14–08 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0028 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those

procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For EASA AD 2022–0028, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at regulations.gov by searching for and locating Docket No. FAA–2022–1060.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

Issued on August 17, 2022.

Christina Underwood,

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

[FR Doc. 2022–18064 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1004; Airspace Docket No. 22–ACE–16]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Liberal, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Liberal, KS. The FAA is proposing this action as the result of an airspace review as part of the decommissioning of the Liberal very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name and geographic coordinates of the airport and the name of the navigational aid would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before October 7, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1004/Airspace Docket No. 22–ACE–16 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E surface airspace, and the Class E airspace extending upward from 700 feet above the surface at Liberal Mid-America Regional Airport, Liberal, KS, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1004/Airspace Docket No. 22–ACE–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed

in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E surface airspace at Liberal Mid-America Regional Airport, Liberal, KS, by removing the Liberal VORTAC and associated extensions from the airspace legal description; updating the name (previously Liberal Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and updating the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

And amending the Class E airspace extending upward from 700 feet above the surface within a 6.7-mile (increased form a 6.4-mile) radius of Liberal Mid-America Regional Airport; removing the Liberal VORTAC and associated extensions from the airspace legal description; updating the extension south of the airport to 3.9 (increased from 3) miles each side of the 180° bearing from the Liberal Mid-America Regional: RWY 35–LOC (previously ILS localizer course) extending from the 6.7-mile (increased from 6.4-mile) radius of the airport to 11.9 (decreased from 12) miles south of the airport; and updating the name (previously Liberal Municipal Airport) and geographic coordinates of the airport and the name of the Liberal Mid-America Regional: RWY 35–LOC (previously Liberal Municipal Airport ILS) to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review as part of the decommissioning of the Liberal VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ACE KS E2 Liberal, KS [Amended]

Liberal Mid-America Regional Airport, KS
(Lat. 37°02′38″ N, long. 100°57′36″ W)

Within a 4.2-mile radius of Liberal Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ACE KS E5 Liberal, KS [Amended]

Liberal Mid-America Regional Airport, KS
(Lat. 37°02′38″ N, long. 100°57′36″ W)
Liberal Mid-America Regional: RWY 35–LOC
(Lat. 37°03′27″ N, long. 100°57′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Liberal Mid-America Regional Airport; and within 3.9 miles each side of the 180° bearing from the Liberal Mid-America Regional: RWY 35–LOC extending from the 6.7-mile radius of the airport to 11.9 miles south of the airport.

Issued in Fort Worth, Texas, on August 17, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18009 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1002; Airspace Docket No. 22–ASW–20]

RIN 2120–AA66

Proposed Amendment and Revocation of Class E Airspace; Bartlesville and Miami, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend and remove Class E airspace at Bartlesville and Miami, OK. The FAA is proposing this action due to airspace reviews conducted as part of the decommissioning of the Oswego very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name and geographic coordinates of the airports and navigation aids would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before October 7, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of

Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1002/Airspace Docket No. 22–ASW–20 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Bartlesville Municipal Airport, Bartlesville, OK; amend the Class E airspace extending upward from 700 feet above the surface at Miami Regional Airport, Miami, OK; and remove the Class E airspace extending upward from 700 feet above the surface at Jane Phillips Medical Center Heliport, Bartlesville, OK, and Baptist Regional Health Center Heliport, Miami, OK, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1002/Airspace Docket No. 22–ASW–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E airspace surface airspace to within a 4.1-mile (decreased from 4.3-mile) radius of Bartlesville Municipal Airport, Bartlesville, OK; and within 1 mile each side of the 359° bearing from the airport extending from the 4.1-mile radius to 4.6 miles north of the airport; and within 1.5 miles each side of the Bartlesville VOR/DME 168° radial extending from the 4.1-mile radius of the airport to 4.4 miles south of the airport; and within 1 mile each side of the 179° bearing from the airport extending from the 4.1-mile radius to 4.5 miles south of the airport; removing the exclusionary language from the airspace legal description as there is no technical requirement for this area and it imposes on protected airspace needed for the current public instrument procedures; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from a 6.8-mile) radius of Bartlesville Municipal Airport; amending the extension north of the airport to within 4 miles (increased from 2.2 miles) each side of the 359° bearing from the Bartlesville Municipal: RWY 17–LOC (previously Dewie LOM) extending from the 6.6-mile (decreased from 6.8-mile) radius of the airport to 14.1 miles (increased from 11.7 miles) north of the airport; amending the extension south of the airport to 4.1 miles east and 7.6 miles west (previously 1.6 miles each side) of the Bartlesville VOR/DME 168° (previously 176°) radial extending from the 6.6-mile (decreased from 6.8-mile) radius to 15.5 (increased from 11.3) miles south of the Bartlesville VOR/DME (previously the airport); removing the extension north of the airport from the Bartlesville VOR/DME as it is no longer needed; removing the Jane Phillips Medial Center Heliport point in space and associated airspace as the associated instrument procedures

have been cancelled and the airspace is no longer required; removing the Dewie LOM from the airspace legal description as it is no longer required; and updating the geographic coordinates of the airport and the Bartlesville VOR/DME to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7.3-mile) radius of Miami Regional Airport, Miami, OK; removing the Baptist Regional Health Center Heliport point in space coordinates and associated airspace from the airspace legal description as the associated instrument procedures have been cancelled and the airspace is no longer required; and updating name of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review conducted as part of the decommissioning of the Oswego VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Class E airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASW OK E2 Bartlesville, OK [Amended]

Bartlesville Municipal Airport, OK
(Lat. 36°45′48″ N, long. 96°00′40″ W)
Bartlesville VOR/DME
(Lat. 36°50′04″ N, long. 96°01′06″ W)

Within a 4.1-mile radius of Bartlesville Municipal Airport; and within 1 mile each side of the 359° bearing from the airport extending from the 4.1-mile radius of the airport to 4.6 miles north of the airport; and within 1.5 miles each side of the Bartlesville VOR/DME 168° radial extending from the 4.1-mile radius of the airport to 4.4 miles south of the airport; and within 1 mile each side of the 179° bearing from the airport extending from the 4.1-mile radius of the airport to 4.5 miles south of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASW OK E5 Bartlesville, OK [Amended]

Bartlesville Municipal Airport, OK
(Lat. 36°45′48″ N, long. 96°00′40″ W)
Bartlesville Municipal: RWY 17–LOC
(Lat. 36°45′11″ N, long. 96°00′39″ W)
Bartlesville VOR/DME
(Lat. 36°50′04″ N, long. 96°01′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Bartlesville Municipal Airport; and within 4 miles each side of the 359° bearing from the Bartlesville Municipal: RWY 17–LOC extending from the 6.6-mile radius of the airport to 14.1 miles north of the airport; and within 4.1 miles east and 7.6 miles west of the Bartlesville VOR/DME 168° radial extending from the 6.6-mile radius of the airport to 15.5 miles south of the Bartlesville VOR/DME.

* * * * *

ASW OK E5 Miami, OK [Amended]

Miami Regional Airport, OK
(Lat. 36°54′33″ N, long. 94°53′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Miami Regional Airport.

Issued in Fort Worth, Texas, on August 17, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18013 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1003; Airspace Docket No. 22–AGL–30]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Menominee, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Menominee, MI. The FAA is proposing this action due to an airspace review conducted as part of the decommissioning of the Menominee very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name and geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before October 7, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE,

Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1003/Airspace Docket No. 22–AGL–30 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Menominee Regional Airport, Menominee, MI, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1003/Airspace Docket No. 22–AGL–30.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface at Menominee Regional Airport, Menominee, MI, by removing the extension to the north of the airport as it is no longer required; and updating the name (previously Menominee-Marinette Twin County Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review conducted as part of the decommissioning of the Menominee VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

AGL MI E5 Menominee, MI [Amended]

Menominee Regional Airport, MI
(Lat. 45°07′36″ N, long. 87°38′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Menominee Regional Airport.

Issued in Fort Worth, Texas, on August 17, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18016 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ59

Health Care Professionals Practicing Via Telehealth

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its medical regulations that govern the VA health care professionals who practice health care via telehealth. This proposed rule would implement the authorities of the VA MISSION Act of 2018 and the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021.

DATES: Comments must be received on or before October 24, 2022.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to [''RIN 2900–AQ59—Health Care Professionals Practicing Via Telehealth.''] Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Kevin Galpin, MD, Executive Director Telehealth Services, Veterans Health Administration Office of Connected Care, 810 Vermont Avenue NW, Washington, DC 20420. (404) 771–8794. (This is not a toll-free number.) *Kevin.Galpin@va.gov.*

SUPPLEMENTARY INFORMATION: On June 6, 2018, section 151 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, amended title 38 of the United States Code (U.S.C.) by adding a new section 1730C, titled Licensure of health care professionals providing treatment via telemedicine. On June 11, 2018, a final rule VA published in May 2018, 83 FR 21897, titled Authority of Health Care Providers to Practice Telehealth (RIN 2900–AQ06), became effective; this regulation, which established 38 CFR 17.417, grants VA health care providers the ability to provide telehealth services within their scope of practice, functional statement, and/or in accordance with privileges granted to them by VA, in any location, within any State, irrespective of the State or location within a State where the health care provider or the beneficiary is physically located. Congress was aware VA was promulgating this regulation and sought to codify VA's telehealth authority through legislation. See H.R. Rep. No. 115–671, Part I, at 13–14. Congress passed the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (2021 NDAA), which further amended the definition of health care professional by including post graduate health care employees and health professions trainees. See Public Law 116–283, sec. 9101, January 2, 2021. Given the enactment of these laws, we are updating our regulations to implement the new statutory authority.

Section 1730C provides a definition of covered health care professionals that differs from the definition of health care provider under § 17.417(a). We propose this regulation to make these definitions consistent. Section 1730C(b)(1)(A) defines a covered health care professional to include those VA employees appointed under 38 U.S.C. 7306, 7401, 7405, 7406, 7408 and title 5 of the U.S. Code. Section 17.417(a) defined a health care provider as an individual who is appointed to an occupation in the Veterans Health Administration that is listed in or authorized under 38 U.S.C. 7401(1) or (3). To maintain consistency between 38 U.S.C. 1730C and § 17.417, VA is proposing to amend the definition of health care provider to instead refer to health care professionals. We would also renumber the definition in § 17.417 for clarity. VA proposes to add in § 17.417(a)(2)(i) that a health care professional would include those individuals who are appointed under 38 U.S.C. 7306, 7401, 7405, 7406, 7408, and title 5 of the U.S. Code.

VA is further proposing to amend the definition of health care professional to be consistent with section 1730C(b)(1)(C) in proposed § 17.417(a)(2)(ii) to state that VA health care professionals would be required to adhere to all standards for quality relating to the provision of health care in accordance with applicable VA policies. We note that while the statute uses the phrase provision of medicine, we propose to use the phrase provision of health care because we understand these terms to be equivalent and because the term health care is used more frequently in VA's regulations than medicine.

Consistent with current § 17.417, we would state in proposed § 17.417(a)(2)(iii) that VA-contracted health care professionals remain excluded from the definition of health care professional. We maintain this exclusion because contracted health care professionals and community care professionals are not appointed under 38 U.S.C. 7306, 7401, 7405, 7406, 7408, or title 5, U.S. Code.

We would also state in proposed § 17.417(a)(2)(iv)(A) that the health care professional is qualified to provide health care based on having an active, current, full, and unrestricted license, registration, certification, or satisfy another State requirement in a State to practice the health care profession of the health care professional. This language is similar to the language in section 1730C(b)(1)(D)(i).

Proposed § 17.417(a)(2)(iv)(B) would include those health care professions listed under 38 U.S.C. 7402(b)(14) that, although they may not be required to be licensed, registered or certified in their health care profession, may be required to satisfy another State requirement in a State that might limit them to practice telehealth. This additional provision

would recognize such qualifications as prescribed by the Secretary for those health care professions listed under 38 U.S.C. 7402(b)(14). This amendment is consistent with section 1730C(b)(1)(D)(2). Additionally, the proposed updates to the regulation are permitted pursuant to three general statutory provisions that permit VA to authorize health care practices by health care professionals at VA: 38 U.S.C. 303, 38 U.S.C. 7401, and 38 U.S.C. 7403(a)(1).

Proposed § 17.417(a)(2)(iv)(C) would be consistent with section 1730C(b)(1)(B) and state that a health care professional is an employee otherwise authorized by the Secretary to provide health care services.

The statutory authorities under 38 U.S.C. 303, 7401, and 7403(a)(1) also permit the VA Secretary to authorize VA health care professionals, including health professions trainees, other health care professionals, and those listed in the proposed regulation, to engage in telehealth. In addition, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 amended section 1730C to expressly identify such persons within its statutory authority. We note that section 1730C uses the term postgraduate health care employee. However, we would instead use the term health care professional to maintain consistency in terminology with other regulations. See § 17.419. We would, therefore, state in proposed § 17.417(a)(2)(iv)(D) that a health care professional would also include those individuals who are under the clinical supervision of a health care professional that meets the requirements of paragraphs (a)(2)(iv)(A) through (C) of this section and is either a health professions trainee or a health care employee.

Health professions trainees work in an apprenticeship model with VA-employed health care professionals as part of their training programs and are not required to have a license, registration, certification, or other State requirement. Health professions trainees are appointed under 38 U.S.C. 7405 or 7406. Section 1730C(b)(3) authorizes trainees to provide health care via telehealth and as such, we would state in § 17.417(a)(2)(iv)(D)(*1*) that such trainee must be a health professions trainee appointed under 38 U.S.C 7405 or 38 U.S.C 7406 participating in clinical or research training under supervision to satisfy program or degree requirements.

Similarly, section 1730C(b)(2) includes health care employees who are appointed under title 5, U.S. Code, 38 U.S.C. 7401(1), (3), or 38 U.S.C. 7405 for any category of personnel described in 38 U.S.C. 7401(1) or (3). Health care employees must obtain full and unrestricted licensure, registration, or certification or meet the qualification standards as defined by the Secretary within the specified time frame. We would state these requirements in § 17.417(a)(2)(iv)(D)(*2*).

We propose to amend § 17.417(b)(1) for clarity. We would clarify the first part of the first sentence of § 17.417(b)(1), which would now be numbered as § 17.417(b)(1), by stating that when a State law, license, registration, certification, or other State requirement is inconsistent with this section, the health care professional is required to abide by their Federal duties and requirements. We would make this clarification because without a broad, clear statement about which standards a health care professional should follow when State requirements are inconsistent with VA requirements for a health care professional's practice via telehealth, such State requirements would create ambiguity for VA health care professionals, thereby delaying telehealth service delivery, and preventing VA from training and overseeing VA health care professionals based on a single, consistent standard. This change would also be consistent with the statute governing licensure requirements of VA health care professionals' practice via telehealth. See 38 U.S.C. 1730C(d)(1). One example is if VA requires verbal consent for telehealth but a State required written consent, the VA health care professional would only be required to obtain verbal consent. Alternatively, if State law did not require obtaining consent at all, but VA policy required verbal consent, the VA health care professional would still be required to obtain verbal consent. Another example is when a State has a specific training requirement for a health care professional for telehealth. We note that VA has specific training requirements for health care professionals who practice via telehealth that do not include each State's specific training or telehealth requirements. The VA health care professional must comply with VA's training requirement in order to practice via VA's telehealth program. In all instances, VA policy would establish requirements for quality and processes that would be met in all cases, but VA health care professionals would not be required to take additional steps or actions beyond those established in VA policy to comply with State law requirements.

We propose to add a new § 17.417(b)(2), which would restate the second part of the first sentence of current § 17.417(b)(1). However, we would clearly state that in order for the health care professional to be covered under this section, such professional must be practicing within the scope of their Federal duties. The provision of telehealth outside of the scope of the health care professional's Federal duties would not be covered by this rulemaking. We would, therefore, state in proposed § 17.417(b)(2) that VA health care professionals may practice their health care profession within the scope of their Federal duties in any State irrespective of the State or location within a State where the health care professional or the beneficiary is physically located, if the health care professional is using telehealth to provide health care to a beneficiary.

We propose to add a new § 17.417(b)(3) to restate the second sentence of current § 17.417(b)(1), but would add that the practice is limited by the Controlled Substances Act and its implementing regulations. Proposed § 17.417(b)(3) would state that health care professionals' practice is subject to the limitations imposed by the Controlled Substances Act, 21 U.S.C. 801, *et seq.* and implementing regulations at 21 CFR part 1300 on the authority to prescribe or administer controlled substances, as well as any other limitations on the provision of VA care set forth in applicable Federal law, regulation, and policy.

Section 1730C provides VA's authority to establish the scope of practice for health care professionals who practice telehealth. Section 1730C(d)(1) provides that federal law shall supersede any provisions of the law of any State to the extent that such provisions of State law are inconsistent with it. States are, therefore, prevented from interfering with the exercise of VA duties by imposing requirements that are inconsistent with federal duties and requirements of health care professionals who practice within the scope of their VA employment. While there is a general requirement that a Federal employee be licensed, registered, or certified by a State, a line must be drawn between reasonable and established rules of practice, which are understood to be incorporated by reference by Federal statutes requiring Federal employees to carry licenses, and rules that would penalize or otherwise interfere with the performance of authorized federal duties. *See* State Bar Disciplinary Rules as Applied to Federal Government Attorneys, 9 Op. O.L.C. 71, 72–73 (1985) (quotations omitted). A State's licensure laws or rules that would prevent a VA health care

professional from engaging in telehealth would fall into the latter category and therefore could be preempted. Given our statutory authority under section 1730C, which supersedes any provisions of State law to the extent that such provision of State law are inconsistent with a VA health care professional's practice via telehealth, we propose to remove the last part of the last sentence in § 17.417(b)(1).

We propose to add a new § 17.417(b)(4), which would restate § 17.417(b)(2) with changes described herein. We are clarifying current § 17.417(b)(4)(iii) and (iv). The current language is not clear as to where the health care professional or the beneficiary is located. Proposed paragraph § 17.417(b)(4) (iii) would now state the health care professional is delivering services while the professional is located in a State other than the health care professional's State of licensure, registration, or certification. Proposed § 17.417(b)(4)(iv) would now state the health care professional is delivering services while the professional is either on or outside VA property.

We propose to clarify current § 17.417(b)(2)(v) to be inclusive of all beneficiaries. We note that all beneficiaries do not identify as she or he. We would, therefore, amend § 17.417(b)(2)(v) to state the beneficiary is receiving services while the beneficiary is located either on or outside VA property.

Current § 17.417(b)(2)(vi) states that situations where a health care provider's VA practice of telehealth may be inconsistent with a State law, or State license, registration, or certification, or other requirement include when the beneficiary has or has not previously been assessed, in person, by the health care provider. We propose to eliminate the term ''has'' as it refers to having been previously assessed in person. Some States require that a patient be first assessed in person prior to being provided health care via telehealth. Therefore, this part of the provision would not be inconsistent with some State requirements. Proposed § 17.417(b)(4)(vi) would only provide for situations that would be inconsistent with State law or State license, registration, certification, or other requirements related to telehealth, which includes when the beneficiary has not been previously assessed, in person, by the health care professional. The proposed change would also be consistent with section 1730C(d)(1).

We propose to add a new § 17.417(b)(4)(vii), which would provide another example of a situation where a State license, registration, certification, or other State requirement may be inconsistent or conflict with VA policy. One example would be where a beneficiary has not provided VA with a signed written consent in order to receive health care via telehealth. This example is added because some States do not allow a health care professional to provide telehealth services to a beneficiary unless the beneficiary has signed a written consent form. VA regulations only require verbal consent for the provision of telehealth. Requiring signature consent would disadvantage beneficiaries who do not possess the technology or digital skills to complete a remote signature consent prior to their telehealth visits. This provision would allow for the provision of health care services via telehealth. VA is already bound to informed consent requirements under 38 U.S.C. 7331 as implemented by 38 CFR 17.32. Section 17.32 of 38 CFR mandates that all patient care furnished under title 38, including health care services via telehealth, shall be carried out with the full and informed consent of the patient or, in appropriate cases, a representative thereof. That consent is not required to be in writing except in the narrow circumstances set forth in 38 CFR 17.32(d)(1). Thus, because 38 U.S.C. 7331 requires, in relevant part, that the Secretary of Veterans Affairs, prescribe regulations to ensure, to the maximum extent practicable, that all VA patient care be carried out only with the full and informed consent of the patient, or in appropriate cases, a representative thereof, and VA has implemented 38 CFR 17.32 establishing the standards for obtaining informed consent from a patient for a medical treatment or a diagnostic or therapeutic procedure, we assert that 38 CFR 17.32, combined with 38 U.S.C. 7331 categorically excludes any State regulation of how VA health care professionals go about obtaining informed consent.

We would not restate current § 17.417(b)(2)(vii) because this information is already captured in proposed § 17.417(b)(1).

Finally, we propose to revise the list of authorities cited for § 17.417 to include section 1730C. We note that all prior authorities cited by this regulation would continue to apply and could protect VA health care professionals practicing telehealth in situations not covered by section 1730C. For example, section 1730C only protects VA health care professionals providing treatment to individuals under chapter 17 of title 38, U.S.C. VA provides treatment to servicemembers and other beneficiaries of the Department of Defense who are not eligible for VA health care under chapter 17 pursuant to sharing agreements entered into under section 8111 in chapter 81 of title 38, U.S.C. VA's general authority on which its original regulations were premised, 38 U.S.C. 303, 7401, and 7403(a)(1), would continue to cover VA health care professionals furnishing health care not otherwise covered by section 1730C. We propose to also include 38 U.S.C. 7306, 7405, 7406, and 7408. These new authorities cover individuals who would now be included as health care professionals under the proposed definition in § 17.417(a)(2). In addition, we would also include 38 U.S.C. 7331, which would cover the informed consent as previously stated in this rulemaking. The statutory authority for § 17.417 would now be 38 U.S.C. 1701 (note), 1709A, 1712A (note), 1722B, 1730C, 7301, 7306, 7330A, 7331, 7401–7403, 7405, 7406, 7408.

Executive Order 13132, Federalism

Executive Order 13132 provides the requirements for preemption of State law when it is implicated in rulemaking. Where a Federal statute does not expressly preempt State law, agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law. Through this rulemaking process, we can preempt any State law or action that conflicts with the exercise of Federal duties in providing health care via telehealth to VA beneficiaries.

In addition, any regulatory preemption of State law must be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to the regulations that are promulgated. In this rulemaking, State licensure, registration, and certification laws, rules, regulations, or other State requirements are preempted only to the extent such State laws are inconsistent with the VA health care professionals' practicing health care via telehealth while acting within the scope of their VA employment. VA also has statutory authority under 38 U.S.C. 1730C to preempt State law. Therefore, we believe that the rulemaking is restricted to the minimum level necessary to achieve the objectives of the Federal statute.

The Executive Order also requires an agency that is publishing a regulation

that preempts State law to follow certain procedures. These procedures include: the agency consult with, to the extent practicable, the appropriate State and local officials in an effort to avoid conflicts between State law and federally protected interests; and the agency provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

Because this proposed rule would preempt certain State laws, VA consulted with State officials in compliance with sections 4(d) and (e), as well as section 6(c) of Executive Order 13132. On August 21, 2019, VA sent a letter to the following: National Association of Boards of Pharmacy (NABP), Association of State and Provincial Psychology Boards, National Governors Association, American Academy of Physicians Assistants (AAPA), National Council of State Boards of Nursing (NCSBN), National Association of State Directors of Veterans Affairs, Association of Social Work Boards (ASWB), and the Federation of State Medical Boards to state VA's intent to amend the current regulations that allow VA health care professionals to practice telehealth.

We received 11 comments from the State officials. We received three comments fully supporting the rule. The AAPA supported the objective of the proposed amendment to ensure qualified health care professionals, including trainees, employed by VA, provide veterans with the same high level of care and access to care no matter where a beneficiary or health care provider is located at the time health care is provided. AAPA also appreciated VA proposing to modify the telehealth regulation to add clarity so that, in situations where VA rules governing the practice of telehealth are in conflict with State laws or State license, registration, or certification requirements, the health care professional practicing telehealth at VA is required to adhere to VA policy or standards and is not at risk of losing their State license. AAPA stated that it supports the efforts VA is undertaking to improve the delivery of care for our nation's veterans and stands ready to assist VA in meeting its challenge to provide veterans with timely access to high quality medical care.

NABP supported expanding health care delivery by means of telehealth, specifically telepharmacy, and recognizes that telehealth can provide patients with quality health care that they may not otherwise receive or have difficulty accessing. The Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy (Model Act) provides model regulatory language for NABP's member boards. Pursuant to the recommendation of NABP's Task Force on the Regulation of Telepharmacy Practice, the Model Act was amended to include the practice of telepharmacy. The State boards of pharmacy also recognize the important benefits of telehealth services to the public. According to information provided to NABP from the State boards of pharmacy, approximately 40 States allow the practice of telepharmacy in some manner. NABP stated that it would communicate VA's intention to expand health care to veterans through telemedicine, encourage the State boards of pharmacy to review existing pharmacy laws and rules for hinderances to implementation of telemedicine services to veterans, and encourage the boards to make amendments to State laws and rules to facilitate telehealth access to veterans. NABP stated that the practice of telehealth, specifically telemedicine, between a health care provider and a veteran receiving care through the Veterans Health Administration is not typically subject to State regulatory oversight. One scenario that NABP wished to highlight is the legitimacy of controlled substance (CS) prescriptions that are issued by means of telecommunications that do not involve an initial face-to-face encounter for an exam/assessment, but are otherwise valid prescriptions under the Controlled Substances Act. If a CS prescription is issued via telemedicine without a face-to-face encounter and a veteran seeks the services of a community pharmacy to meet his or her immediate need, the community pharmacists may not be authorized to dispense the CS according to certain State pharmacy laws. Therefore, NABP stated it would communicate to the State boards of pharmacy about VA's telehealth initiative to help bridge the gap between the need for health care and veterans' access to it.

We received a comment from the Association of State and Provincial Psychology Boards (ASPPB). Based on a review of the information shared within the recent VA correspondences to ASPPB and ASPPB's knowledge of the strong training programs that occur throughout the nation under the authority of the VA, the ASPPB stated that they have no comments to refute the proposed upcoming changes to VA regulatory language on VA's proposed plans to amend its regulations to remove barriers and accelerate access to telehealth for veterans.

The other comments received were mostly in favor of the rule, however, the commenters expressed concern surrounding the addition of trainees as health care professionals who would be allowed to practice telehealth within the scope of their VA duties. The comments are as follows:

The ASWB requested a clarification of the definition of trainee. The ASWB asked if the term trainee included social work students in field placement only or if trainees included master of social work graduates under clinical supervision working towards licensure. The ASWB added that in both of these scenarios, the trainees would be bound to adhere to VA policies and procedures in addition to school policies as students and State policies while working towards their State licensure. The ASWB also stated that it requires a licensed social worker to obtain a State license in the State where the client is located as well as the State where the health care provider is located. The ASWB understands that VA has secure, advanced, and supervised telehealth infrastructure in place that protects the health care professional and client and is able to provide support services while the health care professional is practicing in a VA medical facility. However, the ASWB believes that this may not be the case in circumstances where the health care professional is practicing telehealth outside a VA medical facility. Social work regulators believe that by requiring a social worker to obtain a license in each jurisdiction where practice occurs, the client is better protected. The ASWB emphasized that jurisdictional boards have the power to investigate any complaints made against licensed social workers employed in VA and that VA's full cooperation with the investigation and enforcement related to licenses is needed for true protection of the public.

In response to ASWB's concerns, we note that VA has the statutory authority under 38 U.S.C. 1730C(d)(1) to preempt any provisions of the law of any State to the extent that such provisions of State law are inconsistent with this section. In addition, VA has already established in 38 CFR 17.417 that this section preempts conflicting State laws relating to the practice of health care providers when such health care providers are practicing telehealth within the scope of their VA employment. As such, VA has the authority to allow social workers to practice health care via telehealth. Also, the qualifications of a VA social worker are stated in 38 U.S.C. 7402(b)(9), which include that the social worker must hold a master's degree in social work from a college or university approved by the

Secretary and be licensed or certified to independently practice social work in a State. With regards to social worker trainees, VA never intended that these trainees work without the supervision of an otherwise licensed social worker. The trainees will be supervised while practicing health care via telehealth. We appreciate the commenter's recognition of the quality of the VA telehealth program and that VA maintains a secure, advanced, and supervised telehealth infrastructure irrespective of the veterans or health care professional's location when delivering VA.

The NCSBN expressed concern regarding the expansion of telehealth privileges to nurse assistants and other assistive personnel as outlined in 38 U.S.C. 7401. Nurse assistants and other assistive personnel do not have a national governing body, leaving the regulation of these occupations to the individual States. The majority of States do not license the occupation and have widely inconsistent standards for certification. There is no national database for agencies to report disciplinary actions for many assistive personnel roles, creating a public protection issue for these for patients receiving care across State lines. NCBSN provided the following example: if VA fired a nurse assistant following an interstate telehealth interaction, there is no infrastructure by which those States can communicate nationally to ensure that appropriate disciplinary action is taken against the provider's licensure/certification across the country. Therefore, it would be possible that the provider could continue to practice in a different system and State without suffering any consequences. Additionally, NCSBN did not support allowing unlicensed or pre-licensure nurses to provide telehealth services as would be allowable for temporary full-time appointments under 38 U.S.C 7405. Boards of Nursing (BONs) do not have authority to discipline pre-licensure nurses, as they do not have an active license. Furthermore, BONs are unable to determine a nurse's competency without the completion and passage of the National Council Licensure Examination. Without a license, a nurse cannot be held accountable for a mistake by a BON, because there is no means to report them to a BON if an adverse event takes place. This also means there is no recourse for the patient if they are harmed. By allowing pre-licensure nurses to deliver telehealth services, VA would be exposing patients and nurses in the process of seeking licensure to great risk. Further, NCSBN stated that section 1730C(b)(1) defines a covered health professional as not only an employee of the Department appointed under the authority under section 7306, 7405, 7406, or 7408 of this title or title 5, but also a health care professional who has ''an active, current, full and unrestricted license, registration and certification in a State to practice the health care profession of the health care professional.'' NCSBN stated that while 38 U.S.C. 7405 includes unlicensed or pre-licensure individuals, it believed section 1730C explicitly states that in order to practice telemedicine, a provider must have an active license. NCSBN stated its firm belief that nurses should be fully licensed before practicing to ensure that they provide safe, competent care and retain the public protection mechanisms that allows VA to report disciplinary actions to the appropriate State licensing boards.

VA recognizes that 38 U.S.C. 1730C(b)(1)(D)(i) states that a covered health care professional must have an active, current, full, and unrestricted license, registration, or certification in a State to practice the health care profession of the health care professional. However, 38 U.S.C. 1730C was updated by the 2021 NDAA and section 1730C(b)(2) and (b)(3) now includes those individuals who are trainees and post graduate employees appointed under 38 U.S.C. 7405 and 7406. In addition, VA requires supervision of trainees pre-licensed nurses by a qualified health care professional who meet the requirement of stated in section 1730C(b)(1). VA also continuously monitors all health care professionals, including trainees, and has procedures in place to report any adverse action to the appropriate State licensing board.

VA received several comments regarding trainees. The commenters from the Virginia Board of Medicine, Federation of State Medical Boards, Kansas State Board of Healing Arts, and the Wisconsin Medical Examining Board stated that to ensure consistency in the quality of care between veterans and the general public, trainees should not be allowed to practice telehealth without supervision and that only such trainees that possessed full and unrestricted licenses should practice health care via telehealth. The commenters added that the care that is provided by VA must be of the highest quality, meaning from physicians who have been trained to practice independently, have proven their knowledge, clinical acumen, and skills, or, if not, are under the supervision of another physician who has. A commenter added that the proposed rule to amend the definition of health care provider to include trainees and authorize trainees to provide health care or telemedicine would mean that a trainee could practice independently via telemedicine or independently provide other health care without supervision, in violation of their license and with the risks of providing less than optimal care and potentially putting patients' lives at risk. They further stated that the proposed rule fails to recognize not only that States differ in qualifications to get a training license but also that these trainees differ in their knowledge and capabilities. In addition, a commenter argued that assigning a person with a trainee license to provide telemedicine or other health care is contrary to the VA mission and core value of excellence. Finally, they concluded that expanding the definition of health care provider to include trainees and asserting that where State law is inconsistent with VA practice the VA standards will prevail or supersede State law will promote lower standards of care for veterans.

In response to the comments about trainees and postgraduate employees practicing independently through telehealth, this rulemaking would not allow these individuals to practice without clinical supervision. In fact, this rulemaking explicitly requires that trainees and postgraduate employees only participate in telehealth under clinical supervision by an employee who is licensed, registered, or certified by a State, or under clinical supervision by an employee who otherwise meets qualifications as defined by the Secretary.

To be covered by the authorization to practice telehealth in 38 U.S.C. 1730C(b), a VA health care professional must have an active, current, full, and unrestricted license, registration, or certification in a State to practice the health care profession of the health care professional or, with respect to a health care profession listed under section 7402(b) of Title 38, have qualifications for such profession as set forth by the secretary. Trainees and postgraduate employees are expressly authorized to participate in telehealth in the 2021 NDAA updates to 38 U.S.C. 1730C, but only under the supervision of one of these health care professionals.

Additionally, the VA Secretary has statutory authority independent of 38 U.S.C. 1730C to permit the authorization of health care practices by health care professionals at VA pursuant to 38 U.S.C. 303, 501, and 7403.

Thus the VA Secretary has the authority to authorize by regulation the practice of telehealth by the VA health care professionals listed in 38 U.S.C. 7401 and by VA health care professional trainees appointed under 38 U.S.C. 7405 or 7406.

We also received a comment from the National Board for Certification in Occupational Therapy and another from the Federation of State Boards of Physical Therapy, however, these comments were received outside the 30-day comment period. These commenters may submit a comment during the rulemaking's notice and comment period. We received a response from the National Association of State Directors of Veterans Affairs, however, we consider these comments outside the scope of this rulemaking and do not make any changes based on these comments.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The provisions associated with this rulemaking are not processed by any other entities outside of VA. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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. This proposed rule will have no such effect on State, local, and tribal governments, or on the private sector.

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; 64.039, CHAMPVA; 64.040, VHA Inpatient Medicine; 64.041, VHA Outpatient Specialty Care; 64.042, VHA Inpatient Surgery; 64.043, VHA Mental Health Residential; 64.044, VHA Home Care; 64.045, VHA Outpatient Ancillary Services; 64.046, VHA Inpatient Psychiatry; 64.047, VHA Primary Care; 64.048, VHA Mental Health Clinics; 64.049, VHA Community Living Center; and 64.050, VHA Diagnostic Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 21, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by revising the authority for § 17.417 to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.417 also issued under 38 U.S.C. 1701 (note), 1709A, 1712A (note), 1722B, 1730C, 7301, 7306, 7330A, 7331, 7401–7403, 7405, 7406, 7408.

* * * * *

■ 2. Amend § 17.417 by:

■ a. Revising the section heading and paragraphs (a)(2) and (b); and

■ b. In paragraph (c), removing the term ''health care providers''' and adding in its place the term ''health care professionals'' wherever it appears.

The revisions read as follows:

§ 17.417 Health care professionals practicing via telehealth.

(a) * * *

(2) *Health care professional.* The term health care professional is an individual who:

(i) Is appointed to an occupation in the Veterans Health Administration that is listed in or authorized under 38 U.S.C. 7306, 7401, 7405, 7406, or 7408, or title 5 of the U.S. Code;

(ii) Is required to adhere to all standards for quality relating to the provision of health care in accordance with applicable VA policies;

(iii) Is not a VA-contracted health care professional; and

(iv) Is qualified to provide health care as follows:

(A) Has an active, current, full, and unrestricted license, registration, certification, or satisfies another State requirement in a State to practice the health care profession of the health care professional;

(B) Has other qualifications as prescribed by the Secretary for one of the health care professions listed under 38 U.S.C. 7402(b);

(C) Is an employee otherwise authorized by the Secretary to provide health care services; or

(D) Is under the clinical supervision of a health care professional that meets

the requirements of paragraph (a)(2)(iv)(A)–(C) of this section and is either:

(*1*) A health professions trainee appointed under 38 U.S.C 7405 or 38 U.S.C 7406 participating in clinical or research training under supervision to satisfy program or degree requirements; or

(*2*) A health care employee, appointed under title 5, 38 U.S.C. 7401(1),(3), or 38 U.S.C 7405 for any category of personnel described in 38 U.S.C. 7401(1),(3) who must obtain full and unrestricted licensure, registration, or certification or meet the qualification standards as defined by the Secretary within the specified time frame.

* * * * *

(b) *Health care professional's practice via telehealth.* (1) When a State law, license, registration, certification, or other State requirement is inconsistent with this section, the health care professional is required to abide by their federal duties and requirements. No State shall deny or revoke the license, registration, or certification of a covered health care professional who otherwise meets the qualifications of the State for holding the license, registration, or certification on the basis that the covered health care professional has engaged or intends to engage in activity covered under this section.

(2) VA health care professionals may practice their health care profession within the scope of their federal duties in any State irrespective of the State or location within a State where the health care professional or the beneficiary is physically located, if the health care professional is using telehealth to provide health care to a beneficiary.

(3) Health care professionals' practice is subject to the limitations imposed by the Controlled Substances Act, 21 U.S.C. 801, *et seq.* and implementing regulations at 21 CFR 1300 *et seq.,* on the authority to prescribe or administer controlled substances, as well as any other limitations on the provision of VA care set forth in applicable Federal law, regulation, and policy.

(4) Examples of where a health care professional's VA practice of telehealth may be inconsistent or conflict with a State law or State license, registration, or certification requirements related to telehealth include when:

(i) The beneficiary and the health care professional are physically located in different States during the episode of care;

(ii) The beneficiary is receiving services in a State other than the health care professional's State of licensure, registration, or certification;

(iii) The health care professional is delivering services while the professional is located in a State other than the health care professional's State of licensure, registration, or certification;

(iv) The health care professional is delivering services while the professional is either on or outside VA property;

(v) The beneficiary is receiving services while the beneficiary is located either on or outside VA property;

(vi) The beneficiary has not been previously assessed, in person, by the health care professional; or

(vii) The beneficiary has verbally agreed to participate in telehealth but has not provided VA with a signed written consent.

* * * * *

[FR Doc. 2022–18033 Filed 8–22–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R4–OAR–2022–0226; FRL–10161–01–R4]

Air Plan Approval; South Carolina; Revisions To Startup, Shutdown, and Malfunction Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on November 4, 2016. This revision was submitted by South Carolina in response to a finding of substantial inadequacy and SIP call published by EPA on June 12, 2015, of provisions in the South Carolina SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revision and proposing to determine that the revision corrects the deficiencies identified in the June 12, 2015, SIP call. EPA is also proposing to approve portions of multiple SIP revisions previously submitted by SC DHEC on October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, as they relate to the provisions identified in the June 12, 2015, SIP call.

DATES: Comments must be received on or before September 22, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R4–OAR–2022–0226 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Estelle Bae, Air Permits Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bae can be reached by telephone at (404) 562–9143 or via electronic mail at *bae.estelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On February 22, 2013, EPA issued a **Federal Register** notice of proposed rulemaking (NPRM) outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA) with regard to

excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed in the 2013 NPRM in light of a United States Court of Appeals for the District of Columbia Circuit decision in which the Court found that the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate. *See* 79 FR 55920 (September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' hereinafter referred to as the ''2015 SSM SIP Action.'' *See* 80 FR 33839 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

EPA issued a memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[2] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to South Carolina in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[3] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.[4] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum regarding EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the Agency takes action on SIP submissions, including South Carolina's November 4, 2016, SIP submittal, provided in response to the 2015 SIP call.[5]

With regard to the South Carolina SIP, in the 2015 SSM SIP Action, EPA determined that two of the South Carolina SIP provisions identified in the petition for rulemaking filed by the Sierra Club with the EPA Administrator on June 30, 2011 (the Petition), S.C. Code Ann. Regs. (Regulation) 61–62.5 Standard No. 1, Section I.C, ''Visible Emissions,'' and Regulation 61–62.5, Standard No. 4, Section XI.D.4, ''Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills,'' were substantially inadequate to meet CAA requirements. *See* 80 FR at 33964. In addition, in the 2015 SSM SIP Action, EPA identified one provision that provided an affirmative defense for excess emissions that occur during emergencies under Regulation 61–62.1, Section II.G.6, ''Emergency Provisions'' (now Section II.L, as explained below in Section II of this NPRM). This provision was not identified in the Petition but was included by EPA in the 2015 SSM SIP Action because EPA determined that it was substantially inadequate to meet CAA requirements. *See id.* The rationale underlying EPA's determination that these provisions are substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to South Carolina to remedy the provisions, is detailed in the 2015 SSM SIP Action and the accompanying proposals. South Carolina submitted a SIP revision to EPA on November 4, 2016,[6] in response to the SIP call issued in the 2015 SSM SIP Action. EPA is proposing to approve South Carolina's November 4, 2016, SIP revision as it relates to SSM events, which would remedy the SIP-called provisions. In addition, EPA is proposing to approve portions of South Carolina's SIP revisions submitted on October 1, 2007,[7] July 18, 2011,[8] August

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

[2] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

[3] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[4] *See* 80 FR at 33985.

[5] EPA is also proposing to act on the portions of the October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, SIP revisions as they relate to the SSM provisions identified in the June 12, 2015, SIP call.

[6] On November 4, 2016, South Carolina also submitted to EPA other requested SIP revisions: changes to Regulations 61–62.1, Section III, ''Emissions Inventory and Emissions Statements,'' 61–62.60, ''South Carolina Designated Facility Plan and New Source Performance Standards,'' and 61–62.5, Standard No. 2, ''Ambient Air Quality Standards.'' The SIP revision related to 61–62.1, Section III, ''Emissions Inventory and Emissions Statements'' was approved on May 31, 2017, see 82 FR 24851, and the SIP revision related to 61–62.5, Standard No. 2, ''Ambient Air Quality Standards,'' was approved on June 29, 2017, see 82 FR 29414. EPA is not acting on the change made to Regulation 61–62.60, ''South Carolina Designated Facility Plan and New Source Performance Standards,'' because this is not part of the federally approved SIP. This proposed action, if finalized, will fully close out the November 4, 2016, submittal.

[7] On October 1, 2007, South Carolina also submitted to EPA other SIP revisions to Regulations 61–62.1, Section II, ''Permit Requirements;'' 61–62.5, Standard No. 5.2, ''Control of Oxides of Nitrogen (NO_X);'' and 61–62.5, Standard No. 4, ''Emissions From Process Industries.'' The SIP revision related to 61–62.5 was approved on June 25, 2018. *See* 83 FR 29455. EPA will address the remaining changes to the SIP in separate actions.

[8] On July 18, 2011, South Carolina also submitted to EPA SIP revisions to Regulations 61–62.1, Section I, ''Definitions and General Requirements;'' 61–62.3, ''Air Pollution Episodes;'' 61–62.5, Standard No. 2, ''Ambient Air Quality Standards;'' 61–62.5, Standard No. 4, ''Emissions from Process Industries;'' 61–62.5, Standard No. 6, ''Alternative

8, 2014,[9] and August 12, 2015,[10] that re-organize and re-number sections to clarify and streamline permitting requirements, update internal references, correct typographical errors, and incorporate minor updates to the language for clarification and consistency in South Carolina's SIP. Although these submittals include changes to several South Carolina air quality regulations, in today's proposed action, EPA is only proposing to act on the portions of each submission related to the 2015 SSM SIP Action, which include revisions to Regulation 61–62.1, Section II.L; Regulation 61–62.5, Standard No. 1, Section I.C; and Regulation 61–62.5, Standard No. 4, Section XI.D.4. EPA has acted or will act on all other changes included in the October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, submissions in separate actions.[11]

Emission Limitation Options (''Bubble'');'' 61–62.5, Standard No. 7, ''Prevention of Significant Deterioration;'' and 61–62.5, Standard No. 7.1, ''Nonattainment New Source Review (NSR).'' This submittal also updated the entirety of Regulation 61–62 to correct typographical errors, provide clarification, and delete or update obsolete requirements. The SIP revision for 61–62.1, Section I was approved June 25, 2018, *see* 83 FR 29451; 61–62.3 was approved August 21, 2017, *see* 82 FR 39551; 61–62.5, Standard No. 2 was approved April 3, 2013, *see* 78 FR 19994; 61–62.5, Standard No. 4 was approved on June 25, 2018, *see* 83 FR 29455; 61–62.5, Standard No. 7 was approved on August 10, 2017, *see* 82 FR 37299; and 61–62.5, Standard No. 7.1 was approved on August 10, 2017, *see* 82 FR 37299. EPA will address the remaining SIP revisions in separate actions.

[9] On August 8, 2014, South Carolina also submitted to EPA SIP revisions to Regulations 61–62.1, Section I, ''Definitions and General Requirements;'' 61–62.1, Section II, ''Permit Requirements;'' 61–62.1, Section III, ''Emissions Inventory and Emissions Statements;'' 61–62.1, Section IV, ''Source Tests;'' 61–62.1, Section V, ''Credible Evidence;'' 61–62.5, Standard No. 1, ''Emissions From Fuel Burning Operations;'' and 61–62.5, Standard No. 4, ''Emissions From Process Industries.'' The SIP revision for 61–62.1, Section I was approved June 25, 2018, *see* 83 FR 29451; 61–62.1, Section III was approved May 31, 2017, *see* 82 FR 24851, and June 12, 2015, *see* 80 FR 33413; 61–62.1, Section IV was approved August 21, 2017, *see* 82 FR 39537; 61–62.1, Section V was approved August 21, 2017, *see* 82 FR 39537; 61–62.5, Standard No. 1 was approved June 25, 2018, *see* 82 FR 29455; and 61–62.5, Standard No. 4 was approved June 25, 2018, *see* 83 FR 29455. EPA will address the remaining changes to the SIP in separate actions.

[10] On August 12, 2015, South Carolina also submitted to EPA, SIP revisions to Regulations 61–62.5, Standard No. 1, ''Emissions From Fuel Burning Operations;'' 61–62.5, Standard No. 2, ''Ambient Air Quality Standards;'' 61–62.5, Standard No. 7, ''Prevention of Significant Deterioration;'' and 61–62.5, Standard No. 7.1, ''Nonattainment New Source Review.'' The SIP revision for 61–62.5, Standard No. 2 was approved June 29, 2017, *see* 82 FR 29414; 61–62.5, Standard No. 7 was approved August 10, 2017, *see* 82 FR 37299; 61–62.5, Standard No. 7.1 was approved August 10, 2017, *see* 82 FR 37299. This proposed action, if finalized, will fully close out the August 12, 2015, submittal.

[11] *See supra* notes 7–10.

II. Analysis of SIP Submissions

A. Regulation 61–62.1, Section II.L, ''Emergency Provisions''

In the 2015 SSM SIP Action, and as fully explained in the September 2014 supplemental notice of proposed rulemaking, EPA identified as inadequate and issued a SIP call for South Carolina's Regulation 61–62.1, Section II.G.6, titled ''Emergency Provisions,'' which provides an affirmative defense for excess emissions during emergencies. To address this SIP-called provision, South Carolina's November 4, 2016, SIP revision seeks to remove the affirmative defense for excess emissions that occur during emergencies, provide minor changes to the wording, and renumber and otherwise revise the provisions to reflect the removal of the affirmative defense provision (including replacing a reference to ''demonstration'' of the affirmative defense of an emergency with a reference to ''documentation'' of an emergency). EPA is proposing to approve this removal and to approve portions of the October 1, 2007, and August 8, 2014, SIP revisions as they relate to Section II.G.6, including the renumbering of Section II.G.6 to II.L.

The October 1, 2007, SIP revision seeks to renumber Regulation 61–62.1, Section II.G.6, as approved in the existing South Carolina SIP, as Regulation II.L and to remove the entry at Section II.G.6. The effect of relocating the provision to Section II.L is that the ''Emergency Provisions'' section is now a stand-alone section applicable to all air quality permits issued by the State, whereas Section II.G.6 previously applied to conditional major operating permits only. EPA is also proposing to approve minor changes from the August 8, 2014, revision which renumber the subparagraphs in the 2007 version of Section II.L as II.L.2 and II.L.3 and make minor changes related to internal citations.[12] The combined effect of these two SIP revisions, as it relates to the inadequate provisions identified in the 2015 SSM SIP Action, is to renumber II.G.6.b (the affirmative defense provision) as II.L.2 and renumber II.G.6.c. (the affirmative defense documentation provision) as II.L.3.

The November 4, 2016, SIP revision removes paragraph II.L.2 (the affirmative defense provision), renumbers the documentation provision from paragraph II.L.3 to paragraph II.L.2, and removes the affirmative defense language from the documentation provision. Thus, the ''Emergency Provisions'' section of Regulation 61–62.1, as revised, no longer provides an affirmative defense for emergencies.

Approval of these intervening changes previously submitted to EPA would not affect EPA's basis for the SIP call on this provision as provided in the 2015 SSM SIP Action. EPA is approving only the intervening changes from the current SIP-approved version of Regulation 61–62.1, Section II, as transmitted in the October 1, 2007, and August 8, 2014, SIP revisions in conjunction with the changes transmitted in the November 4, 2016, submittal, to remove the affirmative defense provisions. EPA proposes to find that the October 1, 2007, August 8, 2014, and November 4, 2016, SIP revisions, as they relate to Regulation 61–62.1, Section II.G.6 (now Regulation 61–62.1, Section II.L) are consistent with CAA requirements and adequately address the specific deficiencies in this provision that EPA identified in the 2015 SSM SIP Action with respect to the South Carolina SIP.

B. Regulation 61–62.5, Standard No. 1, Section I.C, ''Visible Emissions''

In the 2015 SSM SIP Action, EPA issued a SIP call for Regulation 61–62.5, Standard No. 1 titled ''Emissions from Fuel Burning Operations,'' Section I titled ''Visible Emissions,'' Subsection C titled ''Special Provisions,'' because it provided an exemption from opacity limits for excess emissions from fuel-burning operations that occur during startup or shutdown and was inadequate to meet the fundamental requirements of the CAA. To address this deficiency, South Carolina's November 4, 2016, SIP submission, in relevant part, seeks to remove the portion of Regulation 61–62.5, Standard No. 1, Section I.C, that provides the exemption. The portion being removed states, ''The opacity standards set forth above do not apply during startup or shutdown.'' In addition to correcting the specific deficiency in that provision that EPA identified in the 2015 SSM SIP Action, EPA proposes to approve other minor revisions, as they relate to Section I.C, from the July 18, 2011, and August 12, 2015, submissions.

The July 18, 2011, submittal seeks to amend the language in Regulation 61–

[12] In this proposed action, EPA is proposing to revise the SIP to make the format of internal citations in the SIP-called provisions consistent with that of South Carolina's current regulations. However, the internally referenced provisions themselves have not yet been renumbered in the SIP. EPA will act on the remainder of South Carolina's renumbering edits in Regulation 61–62.1 in a later SIP action (or later actions), and until that time, will include a reference in the regulatory text table noting the correct cross-references if the Agency finalizes this proposed action.

62.5, Standard No. 1, Section I.C to exclude natural gas-fired units from a requirement to maintain startup, shutdown, and maintenance records.[13] On August 12, 2015, South Carolina submitted an additional revision to this provision which seeks to modify the language to include propane-fired units in the exemption as well.[14] On August 16, 2017, EPA published a direct final rule to approve the July 18, 2011, and August 12, 2015, revisions to Section I.C. *See* 82 FR 38829. However, since Section I.C was SIP-called in the 2015 SSM SIP Action, EPA withdrew the direct final rule and thus did not approve this portion of the July 18, 2011, and August 12, 2015, submittals. EPA is now proposing to act on these changes to the SIP-called provision in conjunction with the State's November 4, 2016, SIP revision, which addresses the deficiencies identified in the 2015 SSM SIP Action.

Section 110(l) of the CAA provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the CAA. South Carolina considered CAA section 110(l) in requesting the changes described in the preceding paragraph. The net changes to Section I.C requested by South Carolina mean that the applicable opacity standards will apply at all times to the SIP units specified at Sections I.A and I.B of Regulation 61–62.5, Standard No. 1, and only those units burning natural gas or propane exclusively will be excluded from the requirement to maintain logs of startup and shutdown periods. In a letter dated December 30, 2016,[15] South Carolina explains that the State expects no increase in actual emissions as a result of exempting units burning only natural gas and propane fuels from maintaining logs of startup and shutdown periods because there are minimal opacity concerns with these fuels during startup, shutdown, or other operational modes. Because natural gas and propane contain relatively minor amounts of sulfur and the combustion of these fuels results in relatively minor emissions of particulate matter, sulfur dioxide, and sulfuric acid, all of which could result in visible emissions, opacity is expected to be minimal when these fuels are burned exclusively. *See* 58 FR 3590, 3645, 3656 (January 11, 1993). Furthermore, these requested changes to Section I.C will not result in any increase in emissions because they do not change any applicable emission limitations and will not affect the State's ability to attain or maintain state or federal standards or reasonable further progress. Thus, EPA proposes to find that the July 18, 2011, August 12, 2015, and November 4, 2016, SIP revisions pertaining to Regulation 61–62.5, Standard No. 1, Section I.C, are consistent with CAA requirements and adequately address the specific deficiencies in this provision that EPA identified in the 2015 SSM SIP Action with respect to the South Carolina SIP.

C. Regulation 61–62.5, Standard No. 4, Section XI.D.4, ''Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills''

In the 2015 SSM SIP Action, EPA determined that Regulation 61–62.5, Standard No. 4 titled ''Emissions from Process Industries,'' Section XI titled ''Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills,'' Subsection D titled ''Monitoring, Recordkeeping, and Reporting,'' Paragraph 4, was substantially inadequate to meet the fundamental requirements of the CAA, as it provided an exemption from sulfur limits for kraft pulp mills for excess emissions that occur during SSM. In the November 4, 2016, submission, South Carolina requests removal of Regulation 61–62.5, Standard No. 4, Section XI.D.4, thereby eliminating the exemption from sulfur limits for kraft pulp mills for excess emissions that occur during SSM events. EPA proposes to find that South Carolina's SIP revision removing Section XI.D.4 is consistent with CAA requirements and adequately addresses the specific deficiency in this provision that EPA identified in the 2015 SSM SIP Action with respect to the South Carolina SIP.

III. Proposed Actions

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). As described in Section II of this NPRM, EPA is proposing to approve South Carolina's November 4, 2016, SIP submission with respect to Regulation 61–62.1, Section II.L; Regulation 61–62.5, Standard No. 1, Section I.C; and Regulation 61–62.5, Standard No. 4, Section XI.D.4. EPA is also proposing to approve portions of the October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, South Carolina SIP submissions that seek revisions to these provisions, as specified in Section II of this NPRM. EPA is further proposing to find that these SIP revisions correct the deficiencies identified in the 2015 SSM SIP Action and fully satisfy South Carolina's obligations with respect to the SIP call included in the 2015 SSM SIP Action. Accordingly, the approval would remove the inconsistency between the EPA's SIP-approved rules and South Carolina's rules (*i.e.,* a ''SIP gap'') for Regulation 61–62.1, Section II.L; Regulation 61–62.5, Standard No. 1, Section I.C; and Regulation 61–62.5, Standard No. 4, Section XI.D.4. EPA is not reopening the 2015 SSM SIP Action and is taking comment only on whether this SIP revision is consistent with CAA requirements and whether it addresses the substantial inadequacies in the specific South Carolina SIP provisions identified in the 2015 SSM SIP Action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I through III of this preamble, EPA is proposing to incorporate by reference into the South Carolina SIP Regulation 61–62.1, Section II.L, ''Emergency Provisions,'' State effective on September 23, 2016; [16] Regulation 61–62.5, Standard No. 1, Section I, ''Visible Emissions,'' State effective on September 23, 2016; and Regulation 61–62.5, Standard No. 4, Section XI, ''Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills,'' State effective on September 23, 2016. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a).

[13] EPA is proposing to act on the portions of the July 18, 2011, SIP revision related to what is in the existing SIP under Regulation 61–62.5, Standard No. 1, Section I.C, ''Visible Emissions,'' only.

[14] EPA is proposing to act on the portions of the August 12, 2015, SIP revision related to what is in the existing SIP under Regulation 61–62.5, Standard No. 1, Section I.C, ''Visible Emissions,'' only.

[15] This letter is included in the docket for this proposed rulemaking.

[16] The remaining portions of Regulation 61–62.1, Section II, would retain the June 24, 2005, State effective date, as currently approved in the South Carolina SIP under 40 CFR 52.2120(c). Additionally, although Section II.G of Regulation 61–62.1 would retain the June 24, 2005, State effective date, paragraph G.6 specifically is being proposed for removal from the South Carolina SIP because it is being recodified as Section II.L of Regulation 61–62.1. These changes are explained in more detail in Section II.A of this NPRM.

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, these proposed actions merely approve removal of State law not meeting Federal requirements and do not impose additional requirements beyond those already imposed by State law. For that reason, these proposed actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law, these proposed actions for the State of South Carolina do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, these proposed actions will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–18156 Filed 8–22–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR 223]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Four Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on two petitions to add species to and one petition to remove a species from the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). We also announce a 90-day finding on one petition to revise critical habitat for a listed species. Based on our review, we find that the petitions to list the Fish Lake Valley tui chub (*Siphateles bicolor* ssp. 4) and delist the southern sea otter (*Enhydra lutris nereis*) present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we are initiating status reviews of these species to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we request scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act. We further find that the petitions to list the Pryor Mountain mustang population (*Equus caballus*) and to revise the critical habitat designation for Sonora chub (*Gila ditaenia*) do not present substantial information indicating the petitioned actions may be warranted. Therefore, we are not initiating status review of the Pryor Mountain mustang population or proceeding with a revision of critical habitat for the Sonora chub.

DATES: These findings were made on August 23, 2022. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the Fish Lake Valley tui chub or southern sea otter, or their habitats. Any information we receive during the course of our status reviews will be considered.

ADDRESSES:

Supporting documents: Summaries of the basis for the petition findings contained in this document are available on *https://www.regulations.gov* under the appropriate docket number (see tables under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the Fish Lake Valley tui chub or southern sea otter, or their habitats, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table 1 under **SUPPLEMENTARY INFORMATION**). Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment.'' If your information will fit in the provided comment box, please use this feature of *https://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple

comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard* copy: Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table 1 under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Information Submitted for a Status Review,* below).

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Fish Lake Valley tui chub	Marc Jackson, Field Supervisor, Reno Fish and Wildlife Office, *marc_jackson@fws.gov*, 775–861–6337.
Pryor Mountain mustang	Ben Conard, Acting Project Leader, Montana Ecological Services Field Office, *ben_conard@fws.gov*, 406–758–6882.
Sonora chub	Heather Whitlaw, Field Supervisor, Arizona Ecological Services Field Office, *heather_whitlaw@fws.gov*, 602–242–0210.
Southern sea otter	Steve Henry, Field Supervisor, Ventura Fish and Wildlife Office, *steve_henry@fws.gov*, 805–644–1766.

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.

Information Submitted for a Status Review

You may submit your comments and materials concerning the status of, or threats to, the Fish Lake Valley tui chub or southern sea otter, or their habitats, by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing these findings, will be available for public inspection on *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (*i.e.,* ''list'' a species), remove a species from the List (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)). A positive 90-day petition finding does not indicate that the petitioned action is warranted; the finding indicates only that the petitioned action may be warranted and that a full review should occur.

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); and

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the

species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act. If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

We note that designating critical habitat is not a petitionable action under the Act. Petitions to designate critical habitat (for species without existing critical habitat) are reviewed under the Administrative Procedure Act and are not addressed in this finding (see 50 CFR 424.14(j)). To the maximum extent prudent and determinable, any proposed critical habitat will be addressed concurrently with a proposed rule to list a species, if applicable.

For petitions to revise critical habitat, our regulations establish that substantial scientific information with regard to a 90-day petition finding refers to ''credible scientific information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the revision proposed in the petition may be warranted'' (50 CFR 424.14(i)(1)(i)). In determining whether a revision of critical habitat may be warranted, we may consider the following:

(1) Areas that the current designation does not include that should be included, or includes that should no longer be included, and any benefits of designating or not designating these specific areas as critical habitat;

(2) The physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

(3) For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas contain one or more of the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species and that may require special management considerations or protection;

(4) For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species, or that these features do not require special management considerations or protection; and

(5) For areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species.

Section 4(b)(3)(D) of the Act requires that we make a finding on whether a petition to revise a critical habitat designation presents substantial scientific information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90-days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Summaries of Petition Findings

The petition findings contained in this document are listed in the tables below, and the basis for each finding, along with supporting information, is available on *https://www.regulations.gov* under the appropriate docket number.

TABLE 1—STATUS REVIEWS

Common name	Docket No.	URL to docket on *https://www.regulations.gov*
Fish Lake Valley tui chub	FWS–R8–ES–2022–0010	*https://www.regulations.gov/docket/FWS-R8-ES-2022-0010.*
Southern sea otter	FWS–R8–ES–2022–0013	*https://www.regulations.gov/docket/FWS-R8-ES-2022-0013.*

TABLE 2—NOT-SUBSTANTIAL PETITION FINDINGS

Common name	Docket No.	URL to docket on *https://www.regulations.gov*
Pryor Mountain mustang population.	FWS–R6–ES–2022–0011	*https://www.regulations.gov/docket/FWS-R6-ES-2022-0011.*
Sonora chub	FWS–R2–ES–2022–0012	*https://www.regulations.gov/docket/FWS-R2-ES-2022-0012.*

Evaluation of a Petition To List the Fish Lake Valley Tui Chub

Species and Range

Fish Lake Valley tui chub (*Siphateles bicolor* ssp. 4); Nevada.

Petition History

On March 10, 2021, we received a petition from the Center for Biological Diversity requesting that the Fish Lake Valley tui chub be listed as an endangered species or a threatened species and critical habitat be designated for the species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information Summary

The petitioner provided credible information indicating potential threats

to the Fish Lake Valley tui chub due to Factor A (effects of agriculture, encroachment of aquatic plants, geothermal energy, lithium mining) and Factor E (climate change and stochastic events).

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. Based on our review of the petition and readily available information regarding Factors A and E, we find that the petition presents substantial scientific or commercial information indicating that listing the Fish Lake Valley tui chub (*Siphateles bicolor* ssp. 4) as an endangered or threatened species may be warranted. The Service will fully evaluate all potential threats during our 12-month status review, pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0010 under the Supporting Documents section.

Evaluation of a Petition To List the Pryor Mountain Mustang Population

Species and Range

Pryor Mountain mustang population (*Equus caballus*); Montana, Wyoming.

Petition History

On June 19, 2017, we received a petition dated June 12, 2017, from Friends of Animals requesting that the Pryor Mountain mustang population be listed as an endangered species or a threatened species under the Act. However, the Service notified the petitioner that the submission did not qualify as a petition because it did not include copies of required notification letters or electronic communications to State agencies in affected areas as required by 50 CFR 424.14(c).

The petitioner filed a complaint challenging the Service's denial of the petition, and following litigation and appeal, on July 19, 2021, the petition was remanded to the Service. This finding addresses the petition.

Evaluation of Information Summary

We evaluated information provided in the petition to determine if the petition identified an entity that may be eligible for listing as a distinct population segment (DPS) under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS policy) (61 FR 4722; February 7, 1996). The petition presents substantial information that the Pryor Mountain mustang population may be discrete due to its physical separation from other feral horse herds, but it does not present substantial information that the population may be significant to the taxon as a whole. The petition makes no assertion that it occurs in an unusual or unique ecological setting or that it represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range. The petition does not present substantial information that loss of the discrete population segment would result in a significant gap in the range of the taxon (*Equus caballus*), or that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics. Nor does the petition present any other information in support of the significance of the Pryor Mountain population. Furthermore, the weight of scientific evidence based on readily available information shows that feral horses are nonnative and may impede the conservation of ecosystems upon which endangered and threatened species depend. Therefore, we did not further evaluate whether the petition presents substantial information indicating that the petitioned action may be warranted.

Finding

Based on our review of the petition, sources cited in the petition, and other readily available information, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned entity may be a listable entity under the Act. The petition does not present substantial scientific or commercial information indicating that the petitioned entity may meet the significance criteria of our 1996 DPS policy (61 FR 4722) and, therefore, that it is a listable entity under the Act.

Because the petition does not present substantial information indicating that the Pryor Mountain mustang population may be a listable entity under the Act, we are not initiating a status review of this population in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this population or its habitat or new information that qualifies this population as listable entity under the Act at any time (see appropriate contact under **FOR FURTHER INFORMATION CONTACT**, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2022–0011 under the Supporting Documents section.

Evaluation of a Petition To Revise Critical Habitat for the Sonora Chub

Species and Range

Sonora chub (*Gila ditaenia*); Arizona, Mexico.

Petition History

On August 6, 2021, we received a petition dated July 30, 2021, from Center for Biological Diversity, requesting that critical habitat be revised for the Sonora chub, a threatened species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information Summary

We evaluated information provided in the petition to determine if a revision to the existing critical habitat designation to include the California Gulch may be warranted. The petition does not present substantial scientific information that demonstrates that California Gulch is essential to the conservation of Sonora chub—only that the species occurs there, that it may be affected by livestock grazing, and that there is an alleged state of noncompliance with an existing biological opinion. The petition's summary statement that the stream designation of all occupied and historically occupied habitat is prudent and necessary to ensure the survival and recovery of Sonora chub is therefore unsupported. We conclude that the petition does not present substantial scientific information that the revision to the existing critical habitat is warranted.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific information indicating the petitioned action may be warranted for the Sonora chub. Because the petition does not present substantial information indicating that revising critical habitat for the Sonora chub may be warranted, we are not initiating a review of the designated critical habitat for this species in response to this petition. However, we ask that the public submit to us any new information that becomes available

concerning the status of, or threats to, this species or its habitat at any time (see appropriate contact under **FOR FURTHER INFORMATION CONTACT**, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2022–0012 under the Supporting Documents section.

Evaluation of a Petition To Delist the Southern Sea Otter

Species and Range

Southern sea otter (*Enhydra lutris nereis*); marine environments from San Mateo County to Ventura County, California.

Previous Federal Actions and Petition History

On January 14, 1977, we published a final rule (42 FR 2965) to list the southern sea otter as a threatened species. In that rule, we identified the curtailment of range as an important factor in the designation of southern sea otters as threatened, citing the fact that the then-current range encompassed only about 10 percent of the southern sea otter's historical range. We also noted that the ''remaining habitat and population [were] potentially jeopardized by oil spills, and possibly by pollution and competition'' with human beings. Since that time, additional threats have emerged (Service 2015). On March 10, 2021, we received a November 2020 petition from the Pacific Legal Foundation, counsel for California Sea Urchin Commission and Commercial Fishermen of Santa Barbara, requesting that the southern sea otter be removed from the List of Endangered and Threatened Wildlife (''delisted'') because the species does not meet the Act's definition of an endangered species or a threatened species. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information Summary

The petition notes that the southern sea otter's occupied range has nearly doubled since the species' listing in 1977 and that the population has increased since systematic counts began in the early 1980s. The citations provided in the petition (Service 2015 and Hatfield et al. 2019) substantiate that the linear extent of the range has increased from about 293 km to 500 km and that the southern sea otter population has increased. These citations support the claim of a reduction in the threat of curtailment of habitat since the time of listing. The petition notes that offshore crude oil loading and unloading facilities at Moss Landing, Estero Bay, and Morro Bay have closed. The closure of these facilities, which eliminates the possibility of a spill from them, supports the claim of a reduction in the threat of an oil spill since the time of listing. The citations provided in the petition (California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (1990) and the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*)) support the claim that regulatory changes and new technologies to improve oil tanker safety have occurred, which may reduce the oil spill threat to the southern sea otter since the time of listing. The citations provided in the petition offer support for the claim that regulations have improved vessel traffic control in the range of the southern sea otter, which may reduce the oil spill threat to the southern sea otter since the time of listing. The citations provided in the petition offer support for the claim that regulations, technology, and industry practices for offshore oil rigs have improved, which may reduce the oil spill threat to the southern sea otter since the time of listing.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. We considered the factors under section 4(a)(1) of the Act and assessed the effect that the threats identified within the factors—as may be ameliorated or may be exacerbated by any existing regulatory mechanisms or conservation efforts—may have on the species now and in the foreseeable future. Based on our review of the petition, sources cited in the petition, and other readily available information regarding reduction of the threats of habitat curtailment (Factor A) and oil spills (Factor E), we find that the petition presents substantial scientific or commercial information indicating that delisting the southern sea otter may be warranted. The petitioners also presented information suggesting reduction of additional threats to the southern sea otter within Factors A (present or threatened destruction, modification, or curtailment of habitat) and C (disease or predation). We will fully evaluate these factors during our 12-month status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0013 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the Fish Lake Valley tui chub and southern sea otter present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species. In addition, we have determined that the petitions summarized above for the Pryor Mountain mustang population and Sonora chub do not present substantial scientific or commercial information indicating that the petition actions may be warranted. We are, therefore, not initiating a status review for the Pryor Mountain mustang population or proceeding with a revision of critical habitat for the Sonora chub in response to the petitions.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–18048 Filed 8–22–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 162
Tuesday, August 23, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0045]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Restrictions on Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with regulations for the importation of live poultry, poultry meat, and other poultry products from specified regions.

DATES: We will consider all comments that we receive on or before October 24, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0045 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0045, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information about the restrictions on importation of live poultry from specified regions, contact Dr. Bettina Helm, Senior Staff Veterinary Medical Officer, Live Animal Imports, Strategy & Policy, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3362. For information about the restrictions on importation of poultry meat, and other poultry products from specified regions, contact Dr. Pamela Simpson-Diedrick, Senior Staff Veterinarian, Animal Products Import and Export, Strategy & Policy, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3341. For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Restrictions on Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions.

OMB Control Number: 0579–0228.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out the mission, APHIS regulates the importation of animals and animal products into the United States.

Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the United States' ability to compete in the world market of animal and animal product trade. APHIS' Veterinary Services program administers regulations intended to prevent the introduction of animal diseases into the United States. The regulations in 9 CFR parts 93 and 94 place certain restrictions on the importation of live poultry, poultry meat, and other poultry products from certain regions to prevent an incursion of highly pathogenic avian influenza (HPAI), Newcastle disease (ND), or other exotic poultry diseases into the United States.

To ensure live poultry, poultry meat, and other poultry products from these areas do not pose a risk of bringing ND, HPAI, or other exotic poultry diseases into the United States, APHIS requires information collection activities that include an application for import or in-transit permit; import or in-transit permit customs declaration; reports that the poultry have been offered for importation; health certificates; certificates of origin; recordkeeping; cooperative service agreements; and certificates for shipment back to the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 1 hour per response.

Respondents: Foreign animal health authorities; importers of live poultry, poultry meat, and other poultry products; pet bird owners; and zoological facilities.

Estimated annual number of respondents: 1,178.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 4,721.

Estimated total annual burden on respondents: 4,722 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of August 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–18122 Filed 8–22–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Rural Business-Cooperative Service

[Docket #: RBS–22–BUSINESS–0006]

Notice of Funding Opportunity for the Higher Blends Infrastructure Incentive Program (HBIIP) for Fiscal Year 2022

AGENCY: Commodity Credit Corporation and the Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) and the Rural Business-Cooperative Service (RBCS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), announces the application window and availability of approximately $100 million in competitive grants to eligible entities for activities designed to expand the sales and use of renewable fuels under the Higher Blends Infrastructure Incentive Program (HBIIP). Cost-share grants of up to 50 percent of total eligible project costs but not more than $5 million will be made available to assist transportation fueling and fuel distribution facilities with converting to higher blend friendly status for ethanol (*i.e.,* greater than 10 percent ethanol) and biodiesel (greater than 5 percent biodiesel) by sharing the costs related to the installation, and/or retrofitting, and/or otherwise upgrading of dispenser/pumps, related equipment, and infrastructure.

DATES: Applications for HBIIP will be accepted from August 23, 2022 through November 21, 2022. Applications received after 4:30 p.m. eastern time on November 21, 2022 will not be considered.

ADDRESSES: *Application Submission:* Instructions and additional resources, to include an Application Guide, are available at *http://www.rd.usda.gov/HBIIP,* under the ''How To Apply'' tab.

Electronic submissions: All applicants must file their application electronically through the HBIIP Application portal. Guidance and resources for the application portal can be found at the website referenced above.

This funding opportunity will also be posted to *https://www.grants.gov.*

FOR ADDITIONAL INFORMATION CONTACT: Jeff Carpenter, telephone (402) 318–8195, email: *HigherBlendsGrants-access@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: The Commodity Credit Corporation (CCC) and the Rural Business-Cooperative Service (RBCS).

Funding Opportunity Title: Higher Blends Infrastructure Incentive Program (HBIIP).

Announcement Type: Notice of Funding Opportunity.

Assistance Listing Number: 10.754.

Funding Opportunity Number: RBCS–22–01–HBIIP.

Due Date for Applications: Applications for HBIIP will be accepted from August 23, 2022 through November 21, 2022. Applications received after 4:30 p.m. eastern time on November 21, 2022 will not be considered.

Administrative: The following considerations apply to this Notice:

A. Administration Priorities. The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities.
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects.
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

B. Targeted Assistance Goal. A targeted assistance goal is also established for applicants (owners) owning the fewest number of transportation fueling stations/locations (and owning at least one). Approximately 40 percent of funds will be made available for activities/investments related to upgrading or installing equipment to make a transportation fueling facility fully compatible to dispense/sell higher blends of fuel ethanol and/or biodiesel. The Agency expects this Targeted Assistance to be exhausted by applicants owning 10 fueling stations/locations or fewer.

Approximately 80 percent of fuel sales in the U.S. is sold by convenience store owners. Moreover, about 58 percent of the stores selling fuel in the U.S. are ''single store owners.'' A significant majority of higher blends fuel is currently sold/dispensed by large retail convenience store chains located in the Midwest and along the East Coast of the U.S., due in part because these are the types of businesses and locations with the highest densities of higher blends fueling infrastructure. The Agency established this Targeted Assistance Goal as a means to distribute a portion of program funds among a greater number of business owners and perhaps indirectly, across a broader geographic region, that may not otherwise participate. There is an underlying expectation that owners/participants located in underserved areas today will be positioned as higher blend fuel market leaders tomorrow.

C. Consideration for Geographic Diversity. A consideration for geographical diversity and markets underserved by higher blends is also afforded to applicants/participants based on the location of the proposed transportation fueling stations/facilities. This consideration is intended to work in concert with the Targeted Assistance Goal to distribute program funds more broadly across a greater number of states that may not otherwise participate.

D. First Time Applicants. A consideration for first time applicants may be given to those without a prior HBIIP acceptance of a Letter of Conditions.

Items in Supplementary Information

I. Program Overview

A. Authority

This notice is issued pursuant to 62 Stat 1070, and the Commodity Credit Corporation Charter Act of 1948 (Charter Act); 15 U.S.C. 714.

B. Program Description

The purpose of the HBIIP is to significantly increase the sales and use of higher blends of ethanol and biodiesel. HBIIP is intended to encourage a more comprehensive approach to marketing higher blends by sharing the costs related to building and/or retrofitting biofuel-related infrastructure.

Under the HBIIP, funds will be awarded to assist transportation fueling and fuel distribution facilities in converting their current facilities through upgrade or installation of new equipment required to ensure all equipment is fully compatible with higher blends of ethanol (*i.e.,* greater than 10 percent ethanol) and biodiesel (greater than 5 percent biodiesel). The program will share the costs related to the upgrading of fuel dispensers (gas and diesel pumps) and attached equipment, underground storage tank (UST) system components (which includes but is not limited to tanks, pumps, ancillary equipment, lines, gaskets, and sealants), and other infrastructure required at a location to ensure the environmentally safe availability of fuel containing ethanol blends greater than 10 percent or fuel containing biodiesel blends greater than 5 percent.

Storing and dispensing E15, E85, or other high blends of ethanol for transportation fueling facilities, such as automotive, freight, rail, and marine, with equipment that is not compatible with higher blends of ethanol fuel can result in leaks and releases that contaminate land and groundwater. Older and even some recent existing UST systems (which include but are not limited to tanks, pumps, ancillary equipment, lines, gaskets, and sealants) are not fully compatible with E15 or higher and require modification before storing these fuels. Biodiesel blends above B20 have similar requirements; some infrastructure changes may even be necessary when storing blends greater than B5. This program will expand the number of facilities fully compatible with higher blends of ethanol and biodiesel.

Grants for up to 50 percent of total eligible project costs, but not more than $5 million, are made available to: (1) transportation fueling facilities, including, but not limited to, local fueling stations/locations; convenience stores (CS); hypermarket fueling stations (HFS); and fleet facilities, including rail and marine; and (2) fuel distribution facilities, including fuel terminal operations; midstream operations; and/or distribution facilities.

CCC is an agency and instrumentality of the United States within the Department of Agriculture and operates under the supervision of the Secretary of Agriculture. Among the activities that Section 5 of the Charter Act authorizes CCC to undertake are actions to:

- Make available materials and facilities required in connection with the production and marketing of agricultural commodities (other than tobacco), and
- Increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

Under this authority, CCC is making available approximately $100 million in the form of cost-share grants to eligible entities to assist with the implementation of activities to expand the infrastructure for renewable fuels derived from agricultural products produced in the United States. HBIIP will be administered on behalf of CCC under the general supervision of RBCS.

II. Federal Award Information

Type of Awards: Grants.

Available Funds: Approximately $100 million is made available to eligible participants. Of the total amount of available funds, approximately $75 million will be made available to transportation fueling facilities (including fueling stations; convenience stores; hypermarket fueling stations; fleet facilities, including transportation, freight, rail and marine; and similar entities with capital investments) for eligible implementation activities related to higher blends of fuel ethanol greater than 10 percent ethanol, such as E15 or higher, and/or activities related to higher blends of biodiesel greater than 5 percent, such as B10 or higher; and approximately $25 million will be made available to transportation fueling facilities and fuel distribution facilities (including terminal operations, depots, and midstream operations), for eligible implementation activities related to higher blends of fuel ethanol greater than 10 percent ethanol, such as E15 or higher and biodiesel greater than 5 percent biodiesel, such as B10 or higher.

Award Amounts: Awards to successful applicants will be in the form of cost-share grants for up to 50 percent of total eligible project costs, but not to exceed $5 million, whichever is less. There is no minimum amount for these grants.

Anticipated Award Date: The Agency anticipates making awards 90 days after the application deadline.

Performance Period: The grant period is not to exceed 36-months, unless otherwise specified in the Grant Agreement or agreed to by the Agency.

Approximate Number of Awards: The number of awards will depend on the number of eligible participants and the total amount of requested funds. Based on the Agency's prior experience with this program, it expects to make approximately 200 awards. In the unlikely event that every successful applicant is awarded the maximum amount available of $5 million, 20 awards will be made.

III. Eligibility Information

A. Eligible Applicants

Owners of transportation fueling and fuel distribution facilities located in the United States and its territories may apply for this program. Eligible entities would include: fueling stations, convenience stores, hypermarket retailer fueling stations, fleet facilities (including automotive, freight, rail and marine), and similar entities with equivalent capital investments, as well as fuel/biodiesel terminal operations, midstream operations, and heating oil distribution facilities or equivalent entities.

Applicants must include all proposed activity under a single application. Applicants must own or have the legal right to control all site locations included in their application. Application requirements and other important information is available on the HBIIP web page *https://www.rd.usda.gov/hbiip.*

B. Eligible Project

The goal of HBIIP is to increase the market availability of higher blends biofuels. To be eligible for this program, a project's sole purpose must be for the installation, and/or retrofitting, and/or otherwise upgrading of fuel dispensers/pumps, related/attached equipment, UST system components, and other infrastructure required at a location to ensure the environmentally safe availability of fuel containing ethanol blends greater than 10 percent or fuel containing biodiesel blends greater than 5 percent.

An eligible project must conform to all applicable Federal, State, Tribal and local regulatory requirements pertaining to:

1. Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR parts 280 and 281;
2. Regulation of Fuels and Fuel Additives, 40 CFR part 80;
3. Occupational Safety and Health Standards Subpart H—Hazardous Materials Section 106—Flammable Liquids, 29 CFR 1910.106;
4. Safety and Health Regulations for Construction subpart F—Fire Protection and Prevention section 152—Flammable Liquids, 29 CFR 1926.152; and
5. Automotive Fuel Ratings, Certification, and Posting, 16 CFR part 306.

HBIIP funds may be used for equipment required at a location to ensure the environmentally safe availability of fuel containing ethanol blends greater than 10 percent or fuel containing biodiesel blends greater than 5 percent.

Since 1988, the Environmental Protection Agency's (EPA) UST regulations require fuel to be stored in systems that are compatible with the type of fuel being stored. The environmentally safe growth in availability of fuels containing higher blends of ethanol or biodiesel depends on these fuels being stored and dispensed from UST systems that are compatible with E15. Storing and dispensing E15 at gas stations with equipment that is not compatible with higher blends of ethanol fuel can result in leaks and releases that contaminate land and groundwater. Section 280.32 of 40 CFR 280 states that UST owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

Additionally, owners or operators who store regulated substances that contain more than 20 percent biodiesel or more than 10 percent ethanol, such as 15 percent ethanol or E15, must notify their implementing agency 30 days before storing the fuel. Owners and operators must also keep records demonstrating that their UST system is compatible with the substance stored.

Demonstrating compatibility of an UST system means identifying what equipment is installed as part of your UST system. You must show that a component is approved by either the manufacturer of the component or by a nationally recognized independent testing laboratory, such as Underwriters Laboratory, for use with the fuel to be stored. See details about these requirements in regulations issued by EPA at 40 CFR 280.32.

Please note that compatibility extends beyond the fuel tank. Owners and operators must demonstrate compatibility for the components below to store substances containing more than 10 percent ethanol or more than 20 percent biodiesel.

1. Tank;
2. Piping carrying product from the tank;
3. Piping containment sumps entered by the piping;
4. Pumping equipment, including the submersible pump or suction pump, depending on the type of system;
5. Release detection equipment, including automatic tank gauging probes, sump sensors, and line leak detectors;
6. Spill equipment, such as spill buckets, for the tank; and
7. Overfill equipment, including ball float valves or flapper valves.

The federal UST regulation from EPA does not require owners and operators to demonstrate the compatibility of dispensers or associated aboveground equipment. However, compatibility requirements for these components may exist in other local regulations, such as, but not limited to, the fire code. Owners and operators should check for these requirements with their implementing agency. HBIIP grant funds may be used to upgrade or replace fuel dispensers/pumps, UST system components, or other required infrastructure, necessary to make their facility fully compatible with higher blends of ethanol or biodiesel. Fuel dispensers/pumps, UST system components, and other required infrastructure and components must meet the minimum requirements of EPA's UST regulations and other Federal, State, and local regulations or codes; and, must be approved by either the manufacturer of the component or by a nationally recognized independent testing laboratory, such as Underwriters Laboratory, for use at a minimum for blends containing 25 percent ethanol or 100 percent biodiesel.

C. Cost Sharing or Matching

There is a matching fund (cost-sharing) requirement of at least $1 for every $1 in grant funds provided by CCC. Matching funds plus grant funds must equal total eligible project cost. Matching funds may be in the form of cash or eligible in-kind contributions. Matching funds/contributions and grant funds may only be used for eligible project purposes, including any contributions exceeding the minimum amount required. Applicants will certify and demonstrate that any required matching funds are available during the grant period and provide appropriate documentation with the application, as referenced in section IV.B. of this Notice.

Funds made available under HBIIP may only be used for eligible equipment, infrastructure, and related expenses to support the sales and use of higher biofuel blends, fuel containing ethanol greater than 10 percent by volume and/or fuel containing biodiesel blends greater than 5 percent by volume.

Applicants may enter into arrangements with private entities such as, but not limited to, commercial vendors of fuels, agricultural commodity promotional organizations, Tribes, and other entities interested in the renewable fuels in order to secure such non-Federal funds or in-kind contributions.

There are several existing or prior and ongoing State-led programs and private sector efforts to help provide funding for higher blend dispensers, related equipment, and infrastructure. These programs may be included as part of any matching contribution requirement. However, the application must show how the HBIIP grant will add to the infrastructure that fosters higher blend biofuel sales and use. HBIIP funds are intended to provide additional incentives.

D. Eligible Funds

1. *Matching Funds.* The applicant is responsible for securing the remainder of the total eligible project costs not covered by grant funds. Matching funds can be comprised of eligible in-kind contributions from third parties and/or cash, however, in-kind contributions provided by the applicant cannot be used to meet the matching fund requirement. Written commitments for matching funds (*e.g.,* Letters of Commitment on lender letterhead, electronic communication from a lender, or bank statements) must be submitted with the Certification of Matching Funds when the application is submitted. The Certification of Matching Funds must be signed by the applicant. Funds provided by the applicant in excess of matching funds are not matching funds. Unless authorized by statute, other Federal grant funds cannot be used to meet a matching funds requirement.

Up to 10 percent of an applicant's Matching Funds requirement (up to 5 percent of total project costs) may be used to pay consumer education and/or marketing and/or signage related expenses. HBIIP grant funds awarded to transportation fueling stations are intended to assist with converting those facilities to ensure full compatibility with higher blend fuel through upgrade

or installation of fuel dispensers, related equipment, and infrastructure. And while the contributions of consumer education and/or marketing and/or signage toward a fuel station's fuel sales are well recognized, a very tall sign to display fuel prices does not in any way assist a facility with higher blends compatibility. Therefore, the Agency determined that while HBIIP grant funds may not be used for consumer education and/or marketing and/or signage, matching funds may.

2. *Eligible Project Costs.* Eligible Project Costs are only those costs incurred after the date that a complete application is submitted and that are directly related to the use and purposes of the HBIIP. The applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility. Eligible project costs may include:

(a) Retrofitting of existing, or purchase and installation of new, fuel dispensers (gas and/or diesel pumps) and attached equipment, UST system components, and other infrastructure required at a location to ensure the environmentally safe availability of fuel containing ethanol blends greater than 10 percent or fuel containing biodiesel blends greater than 5 percent;

(b) Construction, retrofitting, replacement, and improvements;

(c) Fees for construction permits and licenses;

(d) Professional service fees for qualified consultants, contractors, installers, and other third-party services; and

(e) HBIIP grant funds may not be used to pay for expenses related to consumer education and/or marketing and/or signage. However, up to 10 percent of an applicant's matching funds requirement (up to 5 percent of total project costs) may be used to pay for consumer education and/or marketing and/or signage related expenses.

E. Ineligible Project Costs

Ineligible project costs for HBIIP projects include, but are not limited to:

1. Renewable diesel projects.

2. Used equipment and vehicles.

3. Construction or equipment costs that would be incurred regardless of the installation of higher blend fuel infrastructure shall not be included as eligible project costs. For example, a fuel storage tank for a fueling facility constructed during the grant period that would have been otherwise installed should not be included in an application. USDA believes all new tanks and piping available in the market only come in models compatible with higher blends of ethanol and biodiesel, so grant funds would not expand the market for higher blends by funding such tank or equipment installation. However, other required equipment such as fuel dispensers/pumps and other UST system components that are still available in traditional and higher blend compatible models, the latter at a higher cost, may be considered in this funding program.

4. Business operations that derive more than 10 percent of annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State or Tribal authorized lottery proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

5. Business operations deriving income from activities of a sexual nature or illegal activities.

6. Purchase of real property or land.

7. Lease payments.

8. Any project that creates a Conflict of Interest or an appearance of a Conflict of Interest. For purposes of this program conflict of interest includes, but is not limited to:

(a) Distribution or payment of grant, guaranteed loan funds, and matching funds or award of project construction contracts to an individual owner, partner, or stockholder, or to a beneficiary or immediate family of the applicant when the recipient will retain any portion of ownership in the applicant's or borrower's project. Grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest.

(b) Assistance to employees, relatives, and associates. The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(c) Member/delegate clause. No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise there from; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

9. Funding of political or lobbying activities.

10. To pay off any Federal direct or guaranteed loan or any other form of Federal debt. Any incurred expense, equipment purchase, or paid service prior to the date a complete application is submitted.

11. Any expense associated with applying for this program, including environmental reviews and requirements related to it.

12. Any expense associated with reporting results and/or outcomes during the disbursement, performance, and servicing portions of this program.

The U.S. Department of Agriculture Departmental Regulations and Laws that contain other compliance requirements are referenced in paragraphs VI. and VIII. of this Notice. Applicants who are found to be/have been in violation of applicable Federal Law/statutes will be deemed ineligible.

IV. Application and Submission Information

Applicants seeking to participate in this program must submit applications in accordance with this Notice.

A. Electronic Application and Submission

Applications must be submitted electronically using the HBIIP secure-server portal. Instructions and resources for completing the online application are available on the HBIIP web page under the ''How To Apply'' tab, *https://www.rd.usda.gov/hbiip.*

B. Content and Form of Application Submission

Applicants must submit complete applications by the date identified in the **DATES** section of this Notice. Applications must contain all parts necessary for the RBCS to determine applicant and project eligibility, conduct the technical evaluation, calculate a priority score, rank, and compete the application, as applicable, in order to be considered. All applications determined to be insufficient for these purposes shall be deemed incomplete and will neither be competed nor receive funding.

1. For Higher Blend Implementation Activities related to transportation fueling stations/facilities, the HBIIP Online Application is comprised of the following elements:

(a) SF 424, Application for Federal Assistance;

(b) HBIIP Project Worksheet with Priority Scoring Criteria: Transportation Fueling Stations/Facilities;

(c) SF 424C, Budget Information—Construction Programs;

(d) HBIIP Project Technical Report;

(e) Signed Certification of Matching Funds;

(f) Confirmation of Environmental Information to Agency or Environmental Information; and

(g) SF 424D, Assurances—Construction Programs signed by applicant entity.

2. For Higher Blend Implementation Activities related to fuel distribution facilities, an HBIIP Online Application is comprised of the following elements:

(a) SF 424, Application for Federal Assistance;

(b) HBIIP Project Worksheet with Priority Scoring Criteria: Fuel Distribution Facilities;

(c) SF 424C, Budget Information—Construction Programs;

(d) HBIIP Project Technical Report;

(e) Signed Certification of Matching Funds;

(f) Confirmation of Environmental Information to Agency or Environmental Information; and

(g) SF 424D Assurances—Construction Programs signed by the applicant entity.

3. Instructions and resources for completing the online application are available on the HBIIP web page under the ''How To Apply'' tab, *https://www.rd.usda.gov/hbiip.* Applicants and their authorized/rightful users will be required to obtain an E-Auth Identification and obtain access to the secure portal. The application process requires the ability to both view and generate PDFs (Portable Document Files). The use of a Web browser such as Chrome or its equivalent is highly encouraged.

C. Unique Entity Identifier and System for Award Management

1. Each applicant applying for loan or grant funds must (A) be registered in the System for Award Management (SAM) before submitting its application and (B) provide a valid Unique Entity Identifier (UEI) in its application, unless determined exempt under 2 CFR 25.110.

2. Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

3. Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

4. The Agency will not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

D. Submission Dates and Times

The deadline date for applications to be received to be considered for funding is specified in the **DATES** section at the beginning of this notice.

After electronically submitting an application through the HBIIP website, the applicant will receive an automated acknowledgement, specifying submission date and time, from the HBIIP online application system. In order to be considered for funds under this Notice, applications must be deemed complete and must be received by the secure portal located on the HBIIP web page at *https://www.rd.usda.gov/hbiip* by the deadline.

E. Intergovernmental Review

Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. Instructions for completing this required element and a list of States that maintain a SPOC are available in the HBIIP online application.

F. Funding Restrictions

The following funding restrictions apply to applications submitted under this Notice.

1. Only one HBIIP application may be submitted per HBIIP applicant. An application may request HBIIP assistance for more than one location that is owned and/or legally controlled by the applicant entity. An HBIIP applicant/application may receive one and only one award in this competition.

2. If it is determined that an applicant is affiliated with another entity that has also applied, then the maximum grant award applies to all affiliated entities as if they applied as one applicant. An affiliate is an entity controlling or having the power to control another entity, or a third party or parties that control or have the power to control both entities.

3. Previous acceptance of an HBIIP Letter of Conditions cannot be withdrawn and resubmitted under this Notice, unless there is a change in scope of work approved by RBCS (HBIIP) staff.

4. Underground Storage Tanks and Systems.

(a) *New construction.* Fueling Stations/Locations/facilities constructed during the grant period are restricted from receiving HBIIP grant funds for USTs. RBCS has determined that tanks would be required of any new fueling stations/locations/facility regardless of any commitment to market higher blends. However, other required equipment such as fuel dispensers/pumps and other UST system components that are still available in traditional and higher blend compatible models, the latter at a higher cost, may be considered in this funding program.

(b) *Existing fueling stations* that require upgraded, and/or retrofitted and/or additional USTs may request assistance of up to 50 percent of total eligible project costs or up to $2,500,000, whichever is the lesser. Eligible equipment includes, but is not limited to: the tank, piping, piping containment sumps, underground pumping equipment, including the submersible pump or suction pump, release detection equipment, spill equipment (spill buckets), overfill equipment, fuel dispensers/pumps, or other equipment related to the storage system.

5. HBIIP grant funds may not be used to pay for expenses related to consumer education, marketing, and/or signage. However, up to 10 percent of an applicant's Matching Funds (up to 5 percent of total project costs) may be used to pay for education/marketing/signage related expenses.

6. No HBIIP grant funds may be used to pay for any incurred expense prior to the submission of a complete application.

G. Multiple Facilities

While only one HBIIP application may be submitted per applicant under this Notice, an application may request assistance for multiple facilities/locations that are owned and/or legally controlled by the applicant entity. Section ''E.3. Funding Restrictions,'' advises on instances where more than one application is submitted by one or more affiliates of an entity.

H. Compliance With Other Federal Statues and Other Submission Requirements

1. *Environmental information.* For the RBCS to consider an application complete, the application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1970 and as referenced in section IV.B of this Notice. Any required environmental review must be completed prior to obligation of funds. Applicants are advised to contact RBCS to determine environmental requirements as soon as practicable to ensure adequate review time.

Applicants should also submit to RBCS the compatibility verification of equipment to be funded. EPA regulations found in 40 CFR 280.32 require demonstrating compatibility of systems storing fuel containing greater than 10 percent ethanol or greater than 20 percent biodiesel, so RBCS collecting this information in advance is not an additional burden for applicants. It will ensure that grant funds are used for purposes that expand the environmentally safe availability of fuel containing higher blends of ethanol and biodiesel. More information can be found in this June 2019 compliance advisory from the EPA Office of Underground Storage Tanks: *https://www.epa.gov/sites/production/files/2019-06/documents/compliance-advisory-ust-regs-06-2019.pdf.*

2. *Original signatures.* The RBCS reserves the right to request/require that the applicant provide original signatures on forms submitted electronically.

3. *Transparency Act Reporting.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. If an applicant does not have an exception under 2 CFR 170.110(b), the applicant must then ensure that it has the necessary processes and systems in place to comply with the reporting requirements to receive funding.

4. *Race, ethnicity, and gender.* The RBCS is requesting that each applicant provide race, ethnicity, and gender information about the applicant. The information will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. *Applicants are encouraged to furnish this information with their applications but are not required to do so.* An applicant's eligibility or the likelihood of receiving an award will not be impacted by furnishing or not furnishing this information.

5. *Other Federal Statutes.* The applicant must certify to compliance with other Federal statutes and regulations by completing the Financial Assistance General Certifications and Representations in SAM, including, but not limited to the following:

(a) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of title VI of the Civil Rights Act of 1964. Civil Rights compliance includes, but is not limited to the following:

(i) Collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure that ultimate recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with Office of Management and Budget (OMB) **Federal Register** Notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (published October 30, 1997 at 62 FR 58782). Sex data will be collected in accordance with title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by RBCS.

(ii) The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 12250, and 7 CFR part 1901, subpart E.

(b) 2 CFR part 417—Governmentwide Debarment and Suspension (Non-procurement), or any successor regulations.

(c) 2 CFR parts 200 and 400 (Uniform Assistance Requirements, Cost Principles and Audit Requirements for Federal Awards), or any successor regulations.

(d) Subpart B of 2 CFR part 421, which adopts the Governmentwide implementation (2 CFR part 182) of the Drug-Free Workplace Act.

(e) Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance go to *https://www.lep.gov/.*

(f) Federal Obligation Certification on Delinquent Debt.

V. Application Review Information

A. Criteria

A priority score will be added to complete applications deemed eligible to compete. Given the purpose of the HBIIP, higher priority will be given to projects deemed to significantly increase the sales and use of higher blends of ethanol and biodiesel on a gallons per dollar of requested funds basis. Priority scoring and ranking of applications will be a function of the following criteria:

1. *For Higher Blend Implementation Activities related to transportation fueling facilities.*

(a) Annual sales volume for the past 3 years (2019–21) or projected sales for fueling stations constructed during the grant period, for all fuels including E10 and/or B5;

(b) The incremental increase in higher blend fuel volume attributed to:

(i) The proposed change in percentage of refueling positions offering E15 and/or B20 or higher blends (the greater percentage of higher blend fuel refueling positions, the greater the higher blend fuel volume attribution);

(ii) The proposed new ratio number of fueling positions offering E15 and/or B20 relative to the number of fueling positions offering E10 and/or B5 (the greater the ratio of higher blend fuel refueling positions relative to E10 and/or B5, the greater the higher blend fuel volume attribution);

(iii) The proposed ratio number of fueling positions offering E85 relative to the number of fueling positions offering E10 (the greater the ratio of E85 refueling positions relative to E10, the greater the higher blend fuel volume attribution);

(iv) The proposed change in the number of fueling stations with at least one E15 fueling position (the greater the number of fueling stations, the greater the higher blend fuel volume attribution);

(v) Whether the applicant is an owner of 10 fueling stations or fewer (if yes, a Targeted Assistance Goal, higher blend fuel volume attribution);

(vi) The proposed number of fueling stations located along an interstate highway corridor;

(vii) The proposed number of fueling stations located as the sole station (within a 1-mile radius) in an area;

(viii) The proposed number of fueling stations located in areas under consideration for Geographic Diversity:

1. The New England States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island; and/or

2. The Western States of Alaska, Arkansas, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming; and/or

3. The U.S. Territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands

(c) A ''Matching Funds'' investment/commitment to higher blends signage and/or marketing is proposed (non-zero investment yields greater higher blend fuel volume attribution);

(d) The total amount of requested funds.

The HBIIP online application, ''Project Worksheet with Priority Scoring Criteria for Transportation Fueling Stations/Facilities,'' is interactive and designed to indicate an applicant's priority score based on—HBIIP activities (*e.g.,* fuel dispensers, related equipment, and infrastructure

installations), Administrator's geographic diversity priorities, targeted assistance goals (if applicable), and the amount of requested funds. Applicants may directly influence their priority score by the activities they select in the worksheet and by the amount of grant funds they request.

Transportation fueling stations/facilities applications should take special care to provide evidentiary documentation in support of their proposed activities in the HBIIP Project Technical Report. In the event of suspect, overstated, or otherwise unsubstantiated claims, the Agency reserves the right to adjust an application's priority score accordingly.

2. *For Higher Blend Implementation Activities related to fuel distribution facilities.*

(a) Annual throughput volume for past 3 years (2019–2021), for all fuels;

(b) The incremental increase in throughput of higher blend fuel, as substantiated by:

(i) Validated demand—demand projections/forecasts;

(ii) Market drivers—the underlying economic and technological forces that compel your customers to purchase your products and services;

(iii) Documented incentives—known national, regional, state, and local policy and market incentives available to the business;

(iv) Project sustainability—environmental, social, and economic reasons the business will thrive beyond HBIIP;

(v) Investments on consumer education and marketing; and

(vi) Partnerships—significant long-term supplier and/or customer arrangements and/or agreements;

(c) The total amount of requested funds.

Fuel distribution facility applications must provide evidentiary documentation in support of their throughput projections in the HBIIP Project Technical Report. In the event of suspect, overstated, or otherwise unsubstantiated claims, the Agency reserves the right to adjust an application's priority score accordingly.

B. Review and Selection Process

All complete applications will be competed/ranked in accordance with section V.A., as specified above. Applicants may work to complete the online application until the deadline specified in the **DATES** section of this Notice.

Due to the competitive nature of this program, applications receiving the same priority score will be competed/ranked based on submittal date. The submittal date is the date the RBCS receives a complete application. A complete application contains all information requested by RBCS and is sufficient to allow the determination of eligibility, score, rank, and compete the application for funding, subject to funds available. Incomplete applications will not be competed and will not receive funding.

C. Administrator Points

The RBCS retains the discretion to award priority to applications that support HBIIP policy goals and that specifically promote economic development to improve life in rural areas that are most in need:

1. A *Consideration for First Time Applicants.* Whether an applicant had funding obligated through this program previously.

2. *Administration Priorities.* As per the Overview section of this Notice.

D. Other Requirements

In order to be considered for funds, complete applications must be received by the deadline specified in the **DATES** section of this Notice.

1. *Insufficient funds.* If available funds are insufficient to fund the total amount of an application:

(a) The applicant will be notified and given the option to lower the grant request and accept the remaining funds. If the applicant agrees to lower the grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(b) If two or more applications have the same priority score and the same submittal date, both applicants will be notified and given the option to lower the grant requests and accept the remaining funds. If an applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

2. *Award considerations.* All award considerations will be on a discretionary basis. In determining the amount of an award, the RBCS will consider the amount requested, subject to the amount being the least of:

(a) the maximum cost-share amount of 50 percent of total eligible project costs, or a lesser amount when deemed appropriate;

(b) the maximum award amount of $5 million; or

(c) available funds.

3. *Notification of funding determination.* Applicants will be informed in writing by the RBCS as to the funding determination of the application.

VI. Federal Award Administration Information

A. Federal Award Notices

HBIIP grants will be administered in accordance with Departmental Regulations, and as otherwise specified in this Notice.

Applicants selected for funding will receive a signed notice of Federal award containing instructions on requirements necessary to proceed with execution and performance of the award.

Applicants not selected for funding will be notified in writing and informed of any review and appeal rights. Awards to successfully appealed applications will be limited to available funding.

B. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 180, 200, 400, 415, 417, 418, 421; 2 CFR parts 25 and 170; and 48 CFR 31.2.

In addition, all recipients of Federal financial assistance are required to report information about first tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)). More information on these requirements can be found at *http://www.rd.usda.gov/HBIIP.* The following additional requirements apply to grantees selected for this program:

1. Grant Agreement—RD 4280–2 Rural Business-Cooperative Service Financial Assistance Agreement;

2. Letter of Conditions;

3. Form RD 1940–1, ''Request for Obligation of Funds;''

4. Form RD 1942–46, ''Letter of Intent to Meet Conditions;'' and

5. Use Form SF 271, ''Request for Advance or Reimbursement.''

C. Reporting

After grant approval and through grant completion, grantees will be required to periodically provide the following, as indicated:

1. A SF–425, ''Federal Financial Report,'' and a project performance report will be required on a semiannual basis (due 30 working days after end of the semiannual period). For the purposes of this grant, semiannual

periods end on March 31st and September 30th. The project performance reports shall include the elements prescribed in the Grant Agreement which, for fueling stations, will include point of sale reporting for up to 5 years post project completion and, for fuel distribution facilities, will include reporting of throughput volumes of all fuels including higher blend fuels.

2. A final project and financial status report, as required per 2 CFR 200.344, ''Closeout'', within 90 days after the expiration or termination of the grant.

3. Provide project outcome/performance reports and final deliverables. Reported data will be used for program and policy evaluation. The proprietary nature and confidentiality of information collected from program participants is specified in 7 U.S.C. 2276.

VII. Federal Awarding Agency Contacts

For further information contact: Jeff Carpenter: telephone (402) 318–8195, email: *HigherBlendsGrants-apply@usda.gov.* Persons with disabilities that require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

VIII. Other Information

A. Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA); 5 U.S.C. 801 *et seq.,* this action meets the threshold for a major rule, as defined by 5 U.S.C. 804(2), because it will result in an annual effect on the economy of $100,000,000 or more. Accordingly, there is a 60-day delay in the effective date of this action. Processing will not begin until the opening of the application intake system. Therefore, the 60-day delay required by the CRA is not expected to have a material impact upon the administration and/or implementation of the HBIIP.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with the HBIIP, as covered in this NOFO, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0072. This funding announcement does not create any new information collection requirements.

C. Nondiscrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Marcus Graham,

Acting Executive Vice President, Commodity Credit Corporation.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022–18123 Filed 8–22–22; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold various meetings via Zoom platform on the dates and times listed below. The purpose of these meetings is for the Committee to review their project proposal about disability rights in Washington.

DATES: These meetings will take place on:

- Tuesday, October 4, 2022, from 2 p.m.–3 p.m. Pacific Time.
- Wednesday, October 26, 2022, from 2 p.m.–3 p.m. Pacific Time.

October 4th Registration Link: https://www.zoomgov.com/meeting/register/vJIsceivpz4pEyuNreczJTTt3wHAnNOf7TY.

October 26th Registration Link: https://www.zoomgov.com/meeting/register/vJIscuiorTIoEvqAYVFuvqsz2we-L13xLVU.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments;

the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or you may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: August 17, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18086 Filed 8–22–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a meeting via Zoom platform on Tuesday, September 6, 2022, for the purpose of discussing past and upcoming panels.

DATES: This meeting will take place on:

- Tuesday, September 6, 2022, from 1:00 p.m.–2:00 p.m. Central Time

Registration Link

https://www.zoomgov.com/meeting/register/vJItfumopzgpG0K8xHnlkEh3ND26cv5j0Us.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: August 17, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18089 Filed 8–22–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a meeting via Zoom platform on Tuesday, September 13, 2022, from 10 a.m. to 11 a.m. for the purpose of reviewing their project proposal about disability rights in Washington.

DATES: The meeting will take place on:

- Tuesday, September 13, 2022, from 10 a.m.–11 a.m. Pacific Time.

Registration Link: https://www.zoomgov.com/meeting/register/vJItduGtqz8pEmdnw84qNrmSlpPP1rHIO2Y.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or you may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: August 17, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18085 Filed 8–22–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a series of meetings via Zoom platform on the following dates and times listed below. These meetings are for the purpose of discussing past and upcoming panels.

DATES: These meetings will take place on:

- Tuesday, October 4, 2022, from 1:00 p.m.–2:00 p.m. Central Time.
- Wednesday, October 26, 2022, from 1:00 p.m.–2:00 p.m. Central Time.

Registration Link:

Tuesday, October 4th: https://www.zoomgov.com/meeting/register/vJItceytrTgpGN98b1Xe5v7Q0AgE-qEubLI.

Wednesday, October 26th: https://www.zoomgov.com/meeting/register/vJItf-igqDwsEgQLqIgBDvmJH8hm20-2mWY.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov*.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: August 17, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18088 Filed 8–22–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New Mexico Advisory Committee (Committee) will hold a meeting via Webex videoconference on Wednesday, October 12, 2022, from 12:00 p.m. to 1:00 p.m. Mountain Time for the purpose of discussing testimony on education adequacy for Native American students.

DATES: The meeting will be held on:

- Wednesday, October 12, 2022, from 12:00 p.m. to 1:00 p.m. MT.

Public Registration Link: https://tinyurl.com/nsfd7hrx.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 300 N Los Angeles St., Suite 2010, Los Angeles, CA 90012 or emailed to Brooke Peery at *bpeery@usccr.gov*.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: August 17, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18090 Filed 8–22–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New Mexico Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New Mexico Advisory Committee (Committee) will hold a meeting via Webex videoconference on September 7, 2022, from 1 p.m.–2 p.m. Mountain Time, for the purpose of planning their upcoming panel on education adequacy for Native American students.

DATES: The meeting will take place on:

- Wednesday, September 7, 2022, from 1 p.m.–2 p.m. MT.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION:

Public Registration Link:

- Wednesday, September 7th: *https://tinyurl.com/kz3d6p8f.*

Members of the public may listen to the discussion. This meeting is available to the public through the public registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 2010, Los Angeles, CA 90012 or emailed to Brooke Peery at *bpeery@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: August 17, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18082 Filed 8–22–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of Virtual Business Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 9:00 a.m. ChST on Tuesday, September 20, 2022, (7:00 p.m. ET on Monday, September 19, 2022) to discuss their project regarding housing discrimination in the territory.

DATES: The meeting will take place on Tuesday, September 20, 2022, from 9:00 a.m.–10:30 a.m. ChST (Monday, September 19, 2022, from 7:00 p.m.–8:30 p.m. ET).

Link to Join (Audio/Visual): https://tinyurl.com/bd3w3n9r.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Access Code: 160 400 6634.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *kfajota@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Guam Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Announcements and Updates
III. Approval of Meeting Minutes
IV. Discussion: Housing Discrimination
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: August 17, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18084 Filed 8–22–22; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2022]

Proposed Foreign-Trade Zone—Western North Carolina Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Land of Sky Regional Council to establish a foreign-trade zone in the western North Carolina area, 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 project. The application was submitted pursuant to the provisions of 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 August 17, 2022. The applicant is authorized to make the proposal under Chapter 55C of the North Carolina State Enabling Legislation. The proposed zone would be the first zone in North Carolina for the Greenville-Spartanburg, South Carolina Customs and Border Protection (CBP) port of entry.

The applicant's proposed service area under the ASF would be all of Henderson County, North Carolina as well as portions of Buncombe, Haywood, Jackson and Transylvania Counties, North Carolina, as described in the application. If approved, the applicant 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 adjacent to the Greenville-Spartanburg CBP port of entry.

Initially, the proposed zone would include one ''usage-driven'' site located in Buncombe County: Proposed Site 1 (1.97 acres)—Moog Music Inc., 160 Broadway Street, Asheville.

The application indicates a need for zone services in western North Carolina. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific production approvals are not being sought at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Christopher Kemp 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 October 24, 2022. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 7, 2022.

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 Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: August 18, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–18138 Filed 8–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that the sole producer and/or exporter subject to this review made sales of subject merchandise in the United States at less than normal value during the period of review (POR), May 1, 2020, through April 30, 2021.

DATES: Applicable August 23, 2022.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

This administrative review covers one producer and/or exporter of the subject merchandise, Teh Fong Ming International Co., Ltd. (TFM). On April 27, 2022, Commerce published the preliminary results of the 2020–2021 administrative review of the antidumping duty order on certain stilbenic optical brightening agents (OBAs) from Taiwan.[1] We invited interested parties to comment on the *Preliminary Results*.[2] On May 27, 2022, we received a case brief from TFM.[3]

Commerce conducted this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[4]

The products covered by the *Order* are OBAs. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[5]

Analysis of Comments Received

All issues raised by TFM in its case brief, are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and TFM's comments, we made a change to the preliminary margin calculation for the company. For a discussion of this change, *see* the ''Changes Since the *Preliminary Results*'' section of the Issues and Decision Memorandum.

Final Results of Review

We determine that the following weighted-average dumping margin exists for the period May 1, 2020, through April 30, 2021:

Producer exporter	Weighted-average dumping margin (percent)
Teh Fong Min International Co., Ltd	11.92

[1] *See Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 24939 (April 27, 2022) (*Preliminary Results*).

[2] *Id.*

[3] *See* TFM's Letter, ''Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan: Case Brief,'' dated May 27, 2022.

[4] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27419 (May 10, 2012) (*Order*).

[5] *See* Memorandum, ''Certain Stilbenic Optical Brightening Agents from Taiwan: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Disclosure

We intend to disclose the calculations performed for TFM in these final results to parties in this proceeding within five days after the date of any public announcement or, if there is no public announcement, within five days after the date of publication of these final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For TFM, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1).[6] Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without reference to antidumping duties.

For entries of subject merchandise during the POR produced by TFM for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate (*i.e.,* 6.19 percent) [7] if there is no rate for the intermediate company(ies) involved in the transaction.[8]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of this notice for all shipments of OBAs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for TFM will be 11.92 percent, the weighted-average dumping margin established in these final results; (2) for previously investigated companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published in the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established in the most recent completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.19 percent, the all-others rate established in the LTFV investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 17, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–18139 Filed 8–22–22; 8:45 am]

BILLING CODE 3510–DS–P

[6] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[7] *See Order,* 77 FR at 27420.

[8] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See Order,* 77 FR at 27420.

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

NTIA 2022 Spectrum Policy Symposium

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, will host a symposium on September 19, 2022, focusing on continued innovation in the use of radio-frequency spectrum, the evolution of new techniques and technologies to manage its use domestically and internationally, and principles for the development and execution of a national spectrum strategy.

DATES: The symposium will be held on September 19, 2022, from 8 a.m. to 4 p.m., eastern daylight time (EDT).

ADDRESSES: The symposium will take place at the National Press Club, 529 14th Street NW, 13th Floor, Washington, DC 20045 (Note: The National Press Club may require attendees to show identification and proof of vaccination against COVID–19). It also will be webcast live through the NTIA website at *https://www.ntia.gov/other-publication/2022/2022-ntia-spectrum-policy-symposium-webcast.*

FOR FURTHER INFORMATION CONTACT: John Alden, Telecommunications Specialist, Office of Spectrum Management, NTIA, at (202) 482–8046 or *spectrumsymposium@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email: *press@ntia.gov.*

SUPPLEMENTARY INFORMATION: NTIA serves as the President's principal advisor on telecommunications policy and manages the use of the radio-frequency spectrum by federal agencies. See, 47 U.S.C. 902(b)(2). NTIA is hosting a symposium to focus on developing, implementing, and maintaining a sustainable national spectrum strategy along with a focus on evolving spectrum management techniques. These focal points will enable the United States to strengthen its global leadership role in the introduction of new wireless telecommunications technologies, services, and innovations, while also supporting the expansion of existing technologies and the nation's homeland security and public safety, national defense, scientific and technological advancement, and other critical government missions.

Leaders from the United States Government, including the Department of Commerce and the Federal Communications Commission, have been invited to provide keynote remarks. Panelists are expected to include participants from across the federal government, along with private sector and non-profit organizations. Prior to the symposium event, NTIA will post detailed program information on its website: *www.ntia.gov.*

The symposium is open to the public and members of the press to attend in person or to view through a webcast available on the NTIA website. NOTE: The National Press Club may ask attendees to show identification and proof of vaccination against COVID–19. While not required, NTIA asks that attendees, including those watching the online webcast, provide registration information prior to the event to include name, email address, and organization (optional). Registration information and the agenda, including any updates, will be made available on NTIA's website.

The event webcast will be close-captioned. Individuals requiring special accommodations, such as sign language interpretation or other ancillary aids, should notify Mr. Alden at the contact information listed above at least ten (10) business days before the event.

Josephine Arnold,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2022–18158 Filed 8–22–22; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0002]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 22, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMC Child and Youth Program; NAVMC Forms 1750/4, 1750/5, 1750/7, 1750/10, 1750/11, 11720; OMB Control Number 0703–0068.

Type of Request: Revision.

Number of Respondents: 112,000.

Responses per Respondent: 2.20982.

Annual Responses: 247,500.

Average Burden per Response: 28.101 minutes.

Annual Burden Hours: 115,917.

Needs and Uses: The mission of the United States Marine Corps Child and Youth Program (USMC CYP) is to provide high-quality, affordable childcare programs and services to support the overall operational readiness and retention of eligible Marine Corps military families. The USMC CYP information collections are necessary to enroll and register eligible CYP participants, identify if any participant accommodations are required, and obtain authorization for CYP personnel to administer approved medications or non-medicated topical products that the participants require.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 18, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–18150 Filed 8–22–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0011]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 22, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-*

alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personalized Web-Based Sexual Assault Prevention for Service Members; OMB Control Number 0703–0080.

Type of Request: Revision.

Sexual Assault Prevention in Service Members Normative Survey

Number of Respondents: 500.
Responses per Respondent: 1.
Annual Responses: 500.
Average Burden per Response: 30 minutes.
Annual Burden Hours: 250

Interview, Focus Groups, and Before-After Surveys

Number of Respondents: 87.
Responses per Respondent: 3.
Annual Responses: 261.
Average Burden per Response: 35 minutes.
Annual Burden Hours: 152.25.

Total

Number of Respondents: 587.
Annual Responses: 761.
Annual Burden Hours: 402.25.

Needs and Uses: The aim of this study is to assist in the adaptation of an existing web-based sexual assault prevention program for college men and women, for use among the Navy population. To achieve this aim, data will be collected in several ways and respondents will participate in only one type of data collection. First, responses to a normative survey will provide information about the behavior and attitudes of Sailors regarding alcohol use and sexual assault. Next, focus groups and interviews will be conducted to obtain feedback about the content of the intervention and ways to adapt it for Sailors. Interviewees and focus group respondents will be selected based on their drinking habits, which will be determined by a brief pre-interview/focus group survey. All data are anonymous, meaning that there is no way for us to match any personally identifiable information of any participant to their survey responses. After interview/focus group completion, a post-interview/focus group survey will be given to obtain non-personally-identifiable demographic and alcohol use information to be used as descriptive information, as well as data from standardized measures that assess respondents' opinions of the existing intervention. All surveys will be completed via a HIPAA compliant software. Data from these surveys will be incorporated into the intervention content and will help generate an adapted prototype of the sexual assault prevention program (+Change) for Sailors.

The results of these surveys will impact the Department of the Navy by documenting the feasibility, acceptability, satisfaction, and utility of a multi-pronged, individually tailored, and easily distributed prevention program that addresses the large problem of sexual assault, and the associated effects of alcohol for Sailors. In the long-term, this research benefits the readiness of the force by producing an easily disseminated high-quality sexual assault prevention program that can be implemented in multiple military settings and sustain evaluation in a larger clinical trial. This research can also have a secondary impact on reducing hazardous alcohol use among service members and can prevent the occurrence of alcohol use problems and associated negative health sequelae in service members. These long-term objectives are consistent with both DoD and the national public health priorities.

Affected Public: Individuals or households.

Frequency: Once per respondent.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 18, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–18151 Filed 8–22–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs-Native American Language Program; Correction

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On June 3, 2022, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2022 for the Indian Education Discretionary Grants Programs-Native American Language Program (NAL@ED), Assistance Listing Number (ALN) 84.415B. We are correcting the deadline for intergovernmental review. All other information in the NIA remains the same.

DATES: This correction is applicable August 23, 2022.

FOR FURTHER INFORMATION CONTACT: Angela Hernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W234, LBJ, Washington, DC 20202. Telephone: (202) 205–1909. Email: *NAL@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 June 3, 2022, we published an NIA in the **Federal Register** (87 FR 33763). In the NIA, we indicated that the deadline for intergovernmental review is October 3, 2022. However, because the Department must make awards by September 30, 2022, we are partially waiving the intergovernmental review period. Specifically, we are reducing it from 60 days after the deadline for transmittal of applications to 30 days after the deadline for transmittal of applications. We are making this correction in order to make awards by the Department's September 30, 2022, deadline to obligate these funds. As a result, we are correcting the deadline for intergovernmental review to September 1, 2022.

All other information in the NIA remains the same.

Correction

In FR Doc. 2022–12016 appearing on page 33763 in the **Federal Register** published on June 3, 2022, we make the following corrections:

1. On page 33763, under **DATES** in the second column, we are revising the Deadline for intergovernmental review so that the date reads as follows:

September 1, 2022.

2. On page 33767, under section IV.3 *Intergovernmental Review* in the first column, we are adding a sentence at the end of the section so that the entire section reads as follows:

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. Please note that, under 34 CFR 79.8(a), we have shortened the standard 60-day intergovernmental review period in order to make awards by the end of FY 2022.

Program Authority: Title VI, part A, subpart 3 of the Elementary and Secondary Education Act of 1965, as amended, section 6133, 20 U.S.C. 7453.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application 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 this 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.

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 2022–18235 Filed 8–22–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Augustus F. Hawkins Centers of Excellence Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2022 for the Augustus F. Hawkins Centers of Excellence (Hawkins) Program, Assistance Listing Number (ALN) 84.116K. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: August 23, 2022.

Deadline for Transmittal of Applications: October 7, 2022.

Deadline for Intergovernmental Review: December 6, 2022.

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 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021–27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in SAM.gov a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Vicki Robinson, U.S. Department of Education, 400 Maryland Avenue SW, room 2B136, Washington, DC 20202. Telephone: (202) 453–7907. Email: *Vicki.Robinson@ed.gov.* You may also contact Ashley Hillary, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C143, Washington, DC 20202. Telephone: (202) 453–7880. Email: *Ashley.Hillary@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 Hawkins Program, authorized under Part B of Title II of the Higher Education Act of 1965, as amended (HEA) is designed to support centers of excellence at institutions of higher education (IHEs). The selected centers of excellence must be established at Historically Black Colleges and Universities (HBCUs); Tribal Colleges or Universities (TCUs); or Minority Serving Institutions (MSIs), such as Hispanic-Serving Institutions (HSIs), with a State-accredited teacher preparation program, to help increase and retain the number of well-prepared teachers from diverse backgrounds, resulting in a more diverse teacher workforce prepared to teach in our Nation's low performing elementary and secondary schools and close achievement gaps.[1] This program focuses on the various aspects of the teacher preparation pipeline, including the recruitment, preparation, support, placement, and retention of teachers for and in high-need local education agencies (LEAs) to support underserved students. Through this program, the Secretary seeks to fund applicants that propose to incorporate evidence-based components and practices into their teacher preparation program.

Background: The FY 2022 Consolidated Appropriations Act provides $8 million in first-time funding for the Hawkins Program to diversify the teacher workforce, including supporting teaching assistant initiatives at HBCUs, TCUs, and MSIs that have partnerships with high-need LEAs.

The Hawkins Program is particularly well-positioned to advance equity in our education system by increasing the access of teacher candidates, including teacher candidates of color, to comprehensive programs that will support them in developing the knowledge and skills they need to positively impact student achievement and outcomes. There is significant inequity in students' access to well-qualified, experienced, and effective teachers,[2] particularly for students from low-income backgrounds, students of color, children or students with disabilities, and English learners (ELs).

Although HBCUs, TCUs, and MSIs confer just over 12 percent of all bachelor's degrees in education, these institutions account for over 40 percent

[1] Anderson, Meredith, B.L., Brian K. Bridges, Brittany A. Harris and Sekou Biddle. (2020). Imparting Wisdom: HBCU Lessons for K–12 Education. Washington, DC: Frederick D. Patterson Research Institute, UNCF.

[2] Isenberg, E., Max, J., Gleason, P., Johnson, M., Deutsch, J., and Hansen, M. (2016). Do Low-Income Students Have Equal Access to Effective Teachers? Evidence from 26 Districts (NCEE 2017–4007). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

of all education degrees awarded to teachers of color,[3] and thus are a critical part of the solution to recruit, prepare, train, support, and place teachers who will provide culturally and linguistically relevant teaching in high-need and hard-to-staff schools. This is critical to advancing the Department's mission to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access for all students.

Unfortunately, the current teacher workforce does not reflect the demographics of the Nation's public school students, the majority of whom are students of color.[4] In 2017–18, the most recent year for which data were available, 79 percent of public school educators were white, while 21 percent were teachers of color.[5] Increasing opportunities for comprehensive teacher preparation programs at HBCUs, TCUs, and MSIs will help diversify the teacher workforce.

Research shows that teachers of color benefit all students and can have a significant positive impact on students of color.[6] When students of color are instructed by teachers of color, higher levels of student achievement,[7] student encouragement, students forming aspirations (*e.g.,* through role modeling), teacher recommendations (for example, to gifted and talented programs), and rigorous course-taking [8] have all been noted. A more diverse teacher workforce also increases the likelihood that students of color will have access to culturally and linguistically relevant teaching and learning and positive relationships.[9] Research also demonstrates that teachers of color can be positive role models for all students in breaking down negative stereotypes and preparing students to live and work in a multiracial society.[10] Thus, supporting teachers of color can be a critical strategy for advancing educational equity for students of color and addressing one of the root causes of institutional barriers to equity in the academic environment.[11]

In light of the teacher shortages that existed prior to the pandemic and that have worsened since, the Department encourages applicants to consider how their program design can provide clinical experience for teaching candidates in high-need schools facing teacher shortages. A number of school districts are partnering with teacher preparation programs, in particular those with teacher residencies, to provide clinical experiences that are mutually beneficial for teacher candidates and teachers of record, and their students. For example, teacher residents, as part of their clinical experience, can serve in schools as substitutes, paraprofessionals, or tutors as their academic schedules allow and as they complete requirements for teacher certification. Applicants can see this Department of Education fact sheet for examples of educator preparation programs supporting high need schools in this way: *https://www.ed.gov/coronavirus/factsheets/teacher-shortage.*

A particular teacher shortage area in the Nation's public schools lies in the shortage of bilingual and multilingual teachers prepared to teach a growing population of ELs. ELs are the fastest growing student demographic, with over 10 percent of students identified as ELs currently.[12] Additionally, about one-quarter of all students speak a language other than English at home, whereas only 1 in 8 teachers do.[13]

The bilingual and multilingual teacher shortage has the potential to have a negative impact on all students, but especially ELs. These shortages may be among the reasons why ELs are among students with some of the lowest achievement levels and graduation rates.[14] During the pandemic, ELs were also likely to lose instructional time, thus experiencing setbacks in their language acquisition goals.[15] Research suggests that, for ELs, being taught by bilingual and multilingual teachers who are better prepared to meet their needs helps improve academic outcomes.[16] Despite this, about a quarter of States do not require certification or endorsements for teachers who teach ELs.[17]

Beyond the necessity to provide qualified bilingual and multilingual teachers to advance EL achievement, research also suggests that diverse classroom settings, such as in bilingual and multilingual education, may be positively associated with students' ability to empathize and relate to others, have long-term career benefits, and result in a higher degree of literacy and a stronger foundation for learning additional languages in the future.[18] Learning another language from a young age is an asset that prepares all students for an increasingly globalized economy. Fostering a culture of language-learning for all students also communicates to linguistically marginalized students that their heritage languages and home identities are valuable and welcomed in school.

Accordingly, this program encourages HBCUs, TCUs, and MSIs to develop centers of excellence that will implement effective recruitment, preparation, and support for teachers, in particular those interested in serving in high-need LEAs and hard-to-staff schools in underserved communities. HBCUs, TCUs, and MSIs are positioned to help remedy long-standing disparities that underserved students and communities face in receiving equal education opportunities.

Priorities: This notice contains one absolute priority and two competitive preference priorities (up to five points each). We are establishing these priorities for the FY 2022 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

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[3] Gasman, M., Castro Samayoa, A., & Ginsberg, A. (2016). *A Rich Source for Teachers of Color and Learning: Minority Serving Institutions.* Philadelphia, PA: Penn Center for Minority Serving Institutions.

[4] *https://nces.ed.gov/programs/coe/indicator/cge.*

[5] *nces.ed.gov/programs/digest/d19/tables/dt19_209.10.asp?current=yes.*

[6] Dee, T. (2004). Teachers, race and student achievement in a randomized experiment. The Review of Economics and Statistics, 86(1), 195–210; and Gershenson, S., Hart, C. M. D., Lindsay, C. A., & Papageorge, N. W. (2017). The long-run impacts of same race teachers. Bonn, Germany: IZA Institute of Labor Economics. Discussion Paper Series.

[7] Egalite, Anna, Brian Kisida, and Marcus A. Winters. ''Representation in the Classroom: The Effect of Own-race Teachers on Student Achievement,'' Economics of Education Review, 45 (April 2015), 44–52.

[8] Grissom, Jason, Sarah Kabourek, and Jenna Kramer. ''Exposure to Same-race or Same-ethnicity Teachers and Advanced Math Course-taking in High School: Evidence from a Diverse Urban District,'' Teachers College Record, 122 (2020), 1–42.

[9] Blazar, David. (2021). Teachers of Color, Culturally Responsive Teaching, and Student Outcomes: Experimental Evidence from the Random Assignment of Teachers to Classes. (EdWorkingPaper: 21–501). Retrieved from Annenberg Institute at Brown University: *https://doi.org/10.26300/jym0-wz02.*

[10] *www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf.*

[11] *www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf.*

[12] *https://nces.ed.gov/programs/digest/d20/tables/dt20_204.20.asp.*

[13] *https://datacenter.kidscount.org/data/tables/81-children-who-speak-a-language-other-than-english-at-home?loc=1&loct=1#detailed/1/any/false/1729,37,871,870,573,869,36,868,867,133/any/396,397.*

[14] *https://nces.ed.gov/programs/digest/d17/tables/dt17_219.46.asp?refer=dropout.*

[15] *www.gao.gov/products/gao-21–43.*

[16] Benjamin Master, Susanna Loeb, Camille Whitney, and James Wyckoff. ''Different Skills? Identifying Differentially Effective Teachers of English Language Learners,'' The Elementary School Journal, 117 (2016), 261–284.

[17] *https://reports.ecs.org/comparisons/50-state-comparison-english-learner-policies-11.*

[18] *https://soeonline.american.edu/blog/benefits-of-bilingual-education.*

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Projects that are evidence-based, comprehensive teacher preparation programs that provide extensive clinical experience. To meet this priority, the applicant must describe its record in graduating highly skilled, well-prepared and diverse teachers. The applicant must also address how it will—

(a) Examine the sources of inequity and inadequacy in resources and opportunity and implement pedagogical practices in teacher preparation programs that are inclusive with regard to race, ethnicity, culture, language, and disability status and that prepare teachers to create inclusive, supportive, equitable, unbiased, and identity-safe learning environments for their students;

(b) Prepare teacher candidates to integrate rigorous academic content, including through the effective use of technology, instructional techniques, and strategies consistent with universal design for learning principles in pedagogical practices and classroom features to improve student achievement;

(c) Prepare teacher candidates to design and deliver instruction in ways that are engaging and provide their students with opportunities to think critically and solve complex problems, apply learning in authentic and real-world settings, communicate and collaborate effectively, and develop academic mindsets, including through project-based, work-based, or other experiential learning opportunities;

(d) Prepare teacher candidates to build meaningful and trusting relationships with their students' families to support in-home, community-based, and in-school learning; and

(e) Provide sustained and high-quality preservice clinical experiences, including teaching assistant initiatives that facilitate the pathway to the teaching credential for those with paraprofessional experience; and provide mentoring of teacher candidates by exemplary teachers, which substantially increases interaction between the institution's faculty and new teachers and school site and district administrators in high-need LEAs or hard-to-staff schools to support and retain teachers. In providing such experiences, the Department encourages applicants to consider opportunities to provide preservice clinical experience earlier in the teacher preparation program, as is practicable, and in ways that benefit students and teachers.

Competitive Preference Priorities: For FY 2022, the Department strongly encourages the use of Competitive Preference Priority 1 as part of a comprehensive effort to respond to and address the teacher shortage present in the nation's high need-need public schools. For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. The Department establishes these priorities on the basis of section 242(b)(1) and (3) of the HEA and under the authority in section 437(d)(1) of GEPA. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application, depending on how well the application meets these priorities. An applicant may address one or both of the competitive preference priorities. The point value for each competitive preference priority is in parenthesis.

These priorities are:

Competitive Preference Priority 1—Projects that are Designed to Increase and Retain the Number of Well-Prepared Teachers from Diverse Backgrounds (up to 5 points).

Projects that are designed to increase the number of well-prepared teachers and the diversity of the teacher workforce with a focus on increasing and retaining a diverse teacher workforce, and improving the preparation, recruitment, retention and placement of such teachers.

Applicants must describe how their project will integrate multiple services or initiatives across academic and student affairs, such as academic advising, counseling, stipends, child-care, structured/guided pathways, career services, or student financial aid, such as scholarships, with the goal of increasing program completion and credential attainment.

Applicants addressing this priority must include a plan for supporting teacher candidates underrepresented in the profession, including teacher candidates of color, from the beginning of the preparation program through graduation, including program entry rates, graduation rates, passage rates for certification and licensure exams, and successful employment placement between teacher candidate subgroups and an institution's overall teacher candidate population.

Competitive Preference Priority 2—Increasing the Number of Bilingual and/or Multilingual Teachers with Full Certification (up to 5 points).

Projects that are designed to prepare a new generation of effective and experienced bilingual and/or multilingual teachers for high-need schools by increasing the number of teachers across elementary and secondary schools who are fully certified to provide academic language instruction in a language other than English, including for ELs. These projects must prepare teacher candidates to lead students toward linguistic fluency and academic achievement in more than one language.

Applicants must describe how their project will integrate multiple services or initiatives across academic and student affairs, such as academic advising, counseling, stipends, child-care, structured/guided pathways, career services, or student financial aid, such as scholarships, and provide the necessary knowledge and skills so that teacher candidates can serve students from many different language backgrounds.

Applicants addressing this priority must include a plan for recruiting, supporting, and retaining bilingual and/or multilingual teacher candidates including those who may have a teaching credential but have not been teaching in bilingual and/or multilingual education settings; aspiring teachers; and for teaching assistants who are interested in becoming bilingual and/or multilingual teachers.

Definitions: The following definitions are from 34 CFR part 77.1 and 20 U.S.C. 1033.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp.* Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/*

ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Scientifically based reading research

(1) Means research that applies rigorous, systemic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties; and

(2) Includes research that—

(i) Employs systemic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and

(iv) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. (20 U.S.C. 1033)

Application Requirements: The following application requirements for FY 2022 are from section 242(b) of the HEA (20 U.S.C. 1033a(b)).

Grants provided by the Secretary must be used to ensure that current and future teachers meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the Individuals with Disabilities Education Act (IDEA), by carrying out one or more of the following activities:

(1) Implementing reforms within teacher preparation programs to ensure that such programs are preparing teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA, are able to understand scientifically valid research, and are able to use advanced technology effectively in the classroom, including use of instructional techniques to improve student academic achievement, by—

(i) Retraining or recruiting faculty; and

(ii) Designing (or redesigning) teacher preparation programs that—

(A) Prepare teachers to serve in low-performing schools and close student achievement gaps, and that are based on rigorous academic content, scientifically valid research (including scientifically based reading research and mathematics research, as it becomes available), and challenging State academic content standards and student academic achievement standards; and

(B) Promote strong teaching skills.

(2) Providing sustained and high-quality preservice clinical experience, including the mentoring of prospective teachers by exemplary teachers, substantially increasing interaction between faculty at IHEs and new and experienced teachers, principals, and other administrators at elementary schools or secondary schools, and providing support, including preparation time, for such interaction.

(3) Developing and implementing initiatives to promote retention of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA, and highly qualified principals, including minority teachers and principals, including programs that provide—

(i) Teacher or principal mentoring from exemplary teachers or principals, respectively; or

(ii) Induction and support for teachers and principals during their first 3 years of employment as teachers or principals, respectively.

(4) Awarding scholarships based on financial need to help students pay the costs of tuition, room, board, and other expenses of completing a teacher preparation program, not to exceed the cost of attendance.

(5) Disseminating information on effective practices for teacher preparation and successful teacher certification and licensure assessment preparation strategies.

(6) Activities authorized under section 202 of the HEA (20 U.S.C. 1022a).

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under 20 U.S.C. 1033a of the HEA, and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities and funding requirements under section 437(d)(1) of GEPA.

Program Authority: 20 U.S.C. 1033–1033a; 20 U.S.C. 1138–1138d; the Explanatory Statement accompanying Division H of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).

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.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $7,920,000.

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: $1,500,000 to $1,600,000.

Estimated Average Size of Awards: $1,584,000

Maximum Award: Up to $1,600,000 for 4 years.

Minimum Award: The minimum amount of each grant shall be $500,000.

Note: The maximum award is based on a 4-year budget period. Applicants

will need to prepare a multiyear budget request for up to 4 years.

Estimated Number of Awards: Up to 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 4 years.

III. Eligibility Information

1. *Eligible Applicants:* Eligible institutions (as articulated under section 241(1) of the HEA) under the Hawkins program include—

(i) An IHE that has a qualified teacher preparation program that is—

(A) A part B institution (as defined in section 322 of the HEA);

(B) A Hispanic-serving institution (as defined in section 502 of the HEA);

(C) A Tribal College or University (as defined in section 316 of the HEA);

(D) An Alaska Native-serving institution (as defined in section 317(b) of the HEA);

(E) A Native Hawaiian-serving institution (as defined in section 317(b) of the HEA);

(F) A Predominantly Black Institution (as defined in section 318 of the HEA);

(G) An Asian American and Native American Pacific Islander-serving institution (as defined in section 320(b) of the HEA); or

(H) A Native American-serving, nontribal institution (as defined in section 319 of the HEA);

(ii) A consortium of institutions described in paragraph (i); or

(iii) An institution described in paragraph (i), or a consortium described in paragraph (ii), in partnership with any other IHE, but only if the center of excellence established is located at an institution described in paragraph (i).

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements, which are being established under the waiver authority of section 437(d)(1) of GEPA. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under this grant.

c. *Indirect Cost Rate Information:* This program uses the waiver authority of section 437(d)(1) of GEPA to limit a grantee's indirect cost reimbursement to eight percent (8 percent) of a modified total direct cost base. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* In accordance with section 242(e) of the HEA, an eligible institution that receives a grant under this program may use not more than 2 percent of the funds provided to administer the grant. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

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 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.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 reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 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 application narrative, except titles, headings, footnotes, quotations, references, and captions.
- 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.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. 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 and up to 10 additional points under the competitive preference priorities, for a total score of up to 110 points. All applications will be evaluated based on the selection criteria as follows:

(a) *Quality of the Project Design.* (Maximum 30 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:

(1) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students. (Up to 10 points)

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (Up to 5 points)

(3) 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)

(4) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (Up to 5 points)

(5) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (Up to 5 points)

(b) *Significance.* (Maximum 20 points)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system change or improvement. (Up to 10 points)

(2) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies. (Up to 10 points)

(c) *Quality of the Project Services.* (Maximum 25 points)

The Secretary considers the quality of the services to be provided by the proposed project.

(1) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 10 points)

(2) In addition, the Secretary considers the following factors:

(i) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (Up to 10 points)

(ii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (Up to 5 points)

(d) *Quality of the Management Plan.* (Maximum 5 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 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.

(e) *Quality of the Project Evaluation.* (Maximum 20 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (Up to 10 points)

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (Up to 10 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

The Secretary will select applications for funding in rank order, according to the average score received from the peer review and from the competitive preference priorities addressed by the applicant. If the Secretary has insufficient funding to award multiple applications with the same score, in making a selection, the first tiebreaker will be to select the applicant with the highest average score under Competitive Priority One. If a tie still exists after applying the first tiebreaker, the Secretary will select the applicant with the highest average score under Quality of the Project Design. If a third tiebreaker is required, the Secretary will select the applicant with the highest average score under Quality of the Project Services. Finally, if a fourth tiebreaker is required, the Secretary will select the applicant based on the number of fully certified teachers that the applicant's project is designed to produce.

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.*

5. *Performance Measures:* Under 34 CFR 75.110, the Department will use the following performance measures to evaluate the success of the Hawkins program grants:

(a) The number and percentage of teacher candidates who complete the teacher preparation program, disaggregated by race.

(b) The number and percentage of teacher candidates, disaggregated by race, served by the funded program who become fully certified and are placed as teachers of record in high-need LEAs or hard-to-staff schools.

(c) The number and percentage of bilingual and/or multilingual teacher candidates who complete the teacher preparation program.

(d) The number and percentage of bilingual and/or multilingual teacher candidates, served by the funded program who become fully certified and are placed as teachers of record in high-need LEAs or hard-to-staff schools.

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, 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.

Michelle Asha Cooper,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2022–18273 Filed 8–22–22; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL19–58–014.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Motion for Action on Reserve Compliance, Setting Effective Date, 5-Day Answer to be effective 10/1/2022.

Filed Date: 8/16/22.

Accession Number: 20220816–5022.

Comment Date: 5 p.m. ET 8/24/22.

Docket Numbers: EL19–58–015.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Reinstating May 1, 2022 Effective Langauge in Reserve Compliance to be effective 5/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5276.

Comment Date: 5 p.m. ET 8/24/22.

Take notice that the Commission received the following electric rate filings: *Docket Numbers:* ER21–1046–002.

Applicants: Sugar Creek Wind One LLC.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Sugar Creek Wind One LLC to be effective N/A.

Filed Date: 8/16/22.

Accession Number: 20220816–5184.

Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER21–2521–002.

Applicants: Broadlands Wind Farm LLC.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Broadlands Wind Farm LLC to be effective N/A.

Filed Date: 8/16/22.

Accession Number: 20220816–5150.

Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–682–003.

Applicants: Duke Energy Progress, LLC.

Description: Compliance filing: Compliance Filing and Corrected Version of Rate Schedule No. 200 to be effective 3/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5217.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2259–001.

Applicants: Nebraska Public Power District, Southwest Power Pool, Inc.

Description: Tariff Amendment: Nebraska Public Power District submits tariff filing per 35.17(b): Nebraska Public Power District Amended Formula Rate Filing to be effective 9/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5002.

Comment Date: 5 p.m. ET 8/30/22.

Docket Numbers: ER22–2673–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation Re: SA No. 4264 (1st Rev) NITSA among PJM and AMP to be effective 8/16/2022.

Filed Date: 8/16/22.

Accession Number: 20220816–5143.

Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2674–000.

Applicants: NorthWestern Corporation.

Description: Tariff Amendment: Notice of Cancellation: SA No.810 Powder River Energy Corp. to be effective 8/18/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5000.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2675–000.

Applicants: Sonoran West Solar Holdings, LLC.

Description: § 205(d) Rate Filing: Shared Facilities Agreement to be effective 8/18/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5031.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2676–000.

Applicants: Southern California Edison Company.

Description: Notice of Cancellation of Rate Schedule of Southern California Edison Company.

Filed Date: 8/12/22.

Accession Number: 20220812–5240.

Comment Date: 5 p.m. ET 9/2/22.

Docket Numbers: ER22–2677–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5591; Queue No. AE2–054 to be effective 1/22/2020.

Filed Date: 8/17/22.

Accession Number: 20220817–5036.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2678–000.

Applicants: Liberty Utilities (Granite State Electric) Corp.

Description: § 205(d) Rate Filing: Borderline Sales Annual Rate Sheet Update Revised per PUC Order August 2022 to be effective 8/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5055.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2679–000.

Applicants: Calhoun Solar Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 10/17/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5065.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2680–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: Greenlee Substation Interconnection Agreement to be effective 10/17/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5117.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2681–000.

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: Double Run Solar Amended and Restated LGIA Filing to be effective 8/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5134.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2682–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: DG&T Amended Agmt Re SS of Ancillary Serv Sched 5 and/or 6 to be effective 8/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5188.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2683–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–08–17 Transferred Frequency Response—City of Seattle to be effective 12/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5202.

Comment Date: 5 p.m. ET 9/7/22.

Docket Numbers: ER22–2684–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–08–17 Transferred Frequency Response—Tucson to be effective 12/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5230.

Comment Date: 5 p.m. ET 9/7/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 17, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18147 Filed 8–22–22; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2150–153]

Puget Sound Energy, Inc.; Notice of Water Quality Protection Plan Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following amendment application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Water Quality Protection Plan.

b. *Project No:* P–2150–153.

c. *Date Filed:* September 15, 2021.

d. *Applicants:* Puget Sound Energy, Inc. (licensee).

e. *Name of Projects:* Baker River Hydroelectric Project.

f. *Locations:* The project is located on the Baker River in Skagit and Whatcom counties, Washington. The project occupies federal lands administered by the U.S. Forest Service within the Mt. Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jory Oppenheimer, Consulting Engineer, Puget Sound Energy, P.O. Box 97034, Bellevue, WA 98009–9734; telephone: (425) 462–3556 and email *jory.oppenheimer@pse.com.*

i. *FERC Contact:* Marybeth Gay, (202) 502–6125, *Marybeth.Gay@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 16, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659

(TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2150–153. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes to conduct the Upper Baker Dam Spillway Stabilization and Tailrace Rock Debris Removal Project (spillway project) over a 12-week period, from April 1 through August 31, 2023. The proposed project is needed because: (1) the existing spillway slope has been identified as a potential failure mode for the Upper Baker Dam; and (2) rockfall debris in the tailrace channel downstream of the dam contributes to flooding of the powerhouse at the dam during flow spill events, which has reduced power generation. As required by Article 401(a) of the project license, and condition 5.10 of the Washington Department of Ecology's (Washington DOE) May 11, 2007 Water Quality Certificate (WQC), attached to the license as Appendix C, the licensee developed the Water Quality Protection Plan (Plan) for the spillway project, and has filed the Plan for the Commission's approval. The Plan addresses the requirements set forth in condition 5.10 of the WQC, and includes: (1) an In-Water Work Protection Plan that specifies the best management practices (BMPs) for activities that require work within surface waters; (2) a Construction Stormwater Pollution Prevention Plan that addresses land-disturbing activities along with BMPs and other control measures to prevent pollutants from entering the project's surface water and groundwater; and (3) procedures for monitoring water quality, and actions to implement if a water quality violation were to occur. By email dated August 10, 2021, Washington DOE acknowledged receipt of and approved the Plan.

The licensee previously filed a draft Biological Assessment (BA) with the Commission on August 12, 2021 for the proposed spillway project. On July 14, 2022, the licensee filed a revised draft BA, and requested to withdraw the previously filed draft BA. On August 17, 2022, Commission staff adopted the licensee's July 14, 2022 draft BA without modification as the Commission's final BA and requested formal consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: August 17, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18130 Filed 8–22–22; 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 in Existing Proceedings

Docket Numbers: RP21–760–004.

Applicants: Kinetica Energy Express, LLC.

Description: Compliance filing: Compliance Filing to Implement Revised Tariff Records to be effective 9/1/2022.

Filed Date: 8/16/22.

Accession Number: 20220816–5116.

Comment Date: 5 p.m. ET 8/29/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: RP22–1131–000.

Applicants: Rockies Express Pipeline LLC.

Description: Compliance filing: 2022–08–16 REX Termination of Ultra Service Agreements to be effective N/A.

Filed Date: 8/16/22.

Accession Number: 20220816–5135.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: RP22–1132–000.

Applicants: Calhoun Power Company, LLC.

Description: Joint Petition for Temporary Limited Waiver of Capacity Release Regulations, et al. of Calhoun Power Company, LLC, et al. under RP22–1132.

Filed Date: 8/16/22.

Accession Number: 20220816–5180.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: RP22–1133–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Fuel Retention Rates—Winter 2022 to be effective 10/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5008.

Comment Date: 5 p.m. ET 8/29/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 17, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18146 Filed 8–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD22–11–000; AD21–9–000]

Office of Public Participation Fundamentals for Participating in FERC Matters; Supplemental Notice of Workshop: WorkshOPP on Filing Comments

On July 11, 2022, the Federal Energy Regulatory Commission Office of Public Participation (OPP) issued a notice of an August 30, 2022 from 2:00 p.m. to 3:00 p.m. Eastern time, virtual workshop to discuss, how members of the public including consumers and consumer advocates can file comments on the record using FERC Online applications.

The workshop will include a video demonstration of steps involved in filing a comment in a rulemaking proceeding, followed by a presentation of useful tips for using the Commission's online applications and a question-and-answer portion of the workshop. The workshop will provide information on the commenting process to facilitate increased public participation in Commission processes and decision-making.

The workshop will be open for the public to attend, and there is no fee for attendance. Further details on the agenda, including registration information, can be found on the OPP website. Information on this technical workshop will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

WORKSHOPP ON FILING COMMENTS AGENDA

2:05–2:15 p.m	Introduction.
2:15–2:25 p.m	FERC Fundamentals and FERC Online Applications.
2:25–2:35 p.m	Video: How to file comments in a Rulemaking using eFiling.
2:35–2:50 p.m	Tips for FERC Online Applications.
2:50–3:00 p.m	Questions and Answers.

The workshop will be accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the workshop, please contact the Commission's Office of Public Participation at 202–502–6595 or send an email to *OPP@ferc.gov.* To submit a question that you would like answered during the workshop, please email *OPPWorkshop@ferc.gov.*

Dated: August 17, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18129 Filed 8–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Request for Statements of Interest Regarding the WAPA Transmission System in the Area of Boulder City, Nevada

AGENCY: Western Area Power Administration, DOE.

ACTION: Request for statements.

SUMMARY: Western Area Power Administration (WAPA), a Federal power marketing administration of the Department of Energy (DOE), is evaluating options that could reduce congestion on its transmission system and facilitate the interconnection and/or transmittal of energy, including renewable generation, in southern Nevada. WAPA is requesting statements of interest (SOI) from entities that are interested in participating with WAPA to upgrade or construct new transmission facilities for WAPA's transmission system, or taking transmission service on or interconnecting with upgraded or newly constructed facilities, in the area of Boulder City, Nevada. WAPA's transmission system in the area of Boulder City, Nevada includes Mead Substation, a significant regional trading hub for energy.

DATES: To be assured consideration, all SOI should be received by WAPA on or before November 21, 2022.

ADDRESSES: Send responses to: Jack Murray, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, or *dswpwrmrk@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Jack Murray, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, (602) 605–2453 or *dswpwrmrk@wapa.gov.*

SUPPLEMENTARY INFORMATION: WAPA markets and transmits Federal power resources from various multi-purpose hydroelectric projects to customers in accordance with Federal law. WAPA owns and operates an integrated 17,000 circuit-mile, high-voltage transmission system across 15 western states covering a 1.3 million square mile service area. WAPA's transmission system is used to deliver Federal hydropower to WAPA's customers. In addition, the system is used to deliver power from

interconnected power producers, including clean, renewable energy resources.

WAPA's Desert Southwest Region, based in Phoenix, Arizona, operates and maintains more than 3,100 miles of transmission lines and facilities in Arizona, California, and Nevada. WAPA's transmission system in Nevada includes Mead Substation, a facility of the southern portion of the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) and an important trading hub for wholesale power which offers access to multiple markets throughout the western United States. The Intertie was authorized by Section 8 of the Pacific Northwest Power Marketing Act of August 31, 1964.[1] The basic purpose of the Intertie was to provide, through transmission system interconnections among certain Federal and non-Federal power systems, maximum use of power resources to meet growing demands. WAPA also operates and maintains transmission system assets in the area of Boulder City, Nevada pursuant to its Parker-Davis Project legislative authorities.[2] Finally, WAPA has statutory authority under its Transmission Infrastructure Program (TIP) to borrow up to $3.25 billion from the Department of the Treasury for the purpose of (1) constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within WAPA's service territory, and (2) delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed.[3]

Transmission capacity in the area of Boulder City, Nevada, is congested due to high demand and WAPA seeks to reduce that congestion by increasing transmission capacity. In this notice, WAPA solicits SOIs to allow WAPA to determine the level of interest for actions that could reduce congestion and facilitate the interconnection and/or transmittal of energy, including renewable generation, in its transmission system in southern Nevada. Specifically, WAPA is soliciting SOIs from entities that are interested in (1) participating with WAPA in upgrading or constructing new facilities for WAPA's transmission system, including Mead Substation, in the area of Boulder City, Nevada, and/or (2) taking transmission service from or interconnecting to such upgraded or newly constructed transmission facilities.

SOIs submitted with respect to this notice should include the following information, as applicable:

1. Name and general description of the entity submitting the SOI.

2. Name, mailing address, telephone number, and email address of the entity's primary contact for the SOI.

3. A description of (a) the entity's interest in upgrading or constructing new transmission facilities in the area of Boulder City, Nevada and/or taking service on or interconnecting to such facilities; (b) information about the energy resource(s) associated with the entity's interest, including, but not necessarily limited to, type of resource, the general location, expected resource capacity, and estimated commercial operation date; and (c) an overview of any proposed upgraded or new transmission facilities, including location, routing, and minimum transfer capability.

4. Statement of potential financing sources, including, if applicable, interest in financing through WAPA's TIP.

5. Description of the proposed role that the submitting entity may serve in the development, construction, ownership, operation, and maintenance of the facilities.

6. Any other information that the submitting entity thinks would be useful for consideration as part of its SOI.

An expression of interest made by submitting a SOI is not binding or promissory. WAPA will treat data submitted by entities in this process, including financing arrangements with other parties, in accordance with the Freedom of Information Act (FOIA). If submitting entities seek confidential treatment of all or part of a submitted document under the FOIA exemption for confidential business information, they should appropriately mark such documents and WAPA will consider such markings in the event a FOIA request is received.

Additional information on WAPA's Desert Southwest Region and transmission system can be found at: *https://www.wapa.gov/regions/DSW/Pages/dsw.aspx* and *https://www.wapa.gov/transmission/Pages/oasis.aspx.*

Procedure Requirements

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on August 15, 2022, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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 August 17, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–18080 Filed 8–22–22; 8:45 am]

BILLING CODE 6450–01–P

[1] Public Law 88–552, now codified at 16 U.S.C. 837g.

[2] The Parker-Davis Project was formed by consolidating two projects, Parker Dam and Davis Dam, under terms of the Consolidate Parker Dam Power Project and Davis Dam Project Act on May 28, 1954. Public Law 83–373.

[3] WAPA's Transmission Infrastructure Program (TIP) implements Section 301 of the Hoover Power Plant Act of 1984 (42 U.S.C. 16421a). For each TIP project in which WAPA participates, the WAPA Administrator must certify, prior to committing any funds for the project, that the project is in the public interest, the project will not adversely impact system reliability or operations or other statutory obligations, and it is reasonable to expect the proceeds from the project shall be adequate to repay the loan. TIP's principles, policies, and practices were announced May 14, 2009 (74 FR 22732), and subsequently revised April 7, 2014 (79 FR 19065) and August 23, 2021 (86 FR 47099).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10111–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Mississippi Department of Environmental Quality (MDEQ)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Mississippi Department of Environmental Quality (MDEQ) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of August 23, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On June 23, 2022, the Mississippi Department of Environmental Quality (MDEQ) submitted an application titled National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Tool (NeT) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed MDEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve MDEQ's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

Part 123: EPA-Administered Permit Programs: the National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125

Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403

MDEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: August 17, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–18081 Filed 8–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10112–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Wyoming Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Wyoming Department of Environmental Quality (WYDEQ) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of August 23, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 19, 2021, the Wyoming Department of Environmental Quality (WYDEQ) submitted an application titled shared services integrated into CDX system for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed WYDEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve WYDEQ's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register:**

- Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under CFR 50–52
- Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under CFR 60 & 65
- Part 62: Approval and Promulgation of State Plans for Designated Facilities and Pollutants (NSPS/Clean Air Act Title III -Hospital/Medical) Reporting under CFR 62
- Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under CFR 61, 63 & 65

- Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under CFR 64 & 70
- Part 123: EPA-Administered Permit Programs: the National Pollutant Discharge Elimination System (NPDES) Reporting under CFR 122 & 125
- Part 145: State Underground Injection Control Programs (UIC) Reporting under CRF 144 & 146
- Part 239: Requirements for State Permit Program Determination of Adequacy (RCRA Subtitle C) Reporting under CFR 240–259
- Part 271: Requirements for Authorization of State Hazardous Waste Programs (RCRA Subtitle C) Reporting under CFR 260–270, 272–279
- Part 281: Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) Reporting under CFR 280

WYDEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: August 17, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–18077 Filed 8–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10110–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Louisiana Department of Environmental Quality (LDEQ)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Louisiana Department of Environmental Quality (LDEQ) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of August 23, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On June 22, 2022, the Louisiana Department of Environmental Quality (LDEQ) submitted an application titled National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Tool (NeT) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed LDEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve LDEQ's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register:**

Part 123: EPA-Administered Permit Programs: the National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125

Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403

LDEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: August 17, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–18079 Filed 8–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10109–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Texas Commission on Environmental Quality (TCEQ)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Texas Commission on Environmental Quality (TCEQ) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of August 23, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems

that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On June 2, 2022, the Texas Commission on Environmental Quality (TCEQ) submitted an application titled National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Tool (NeT) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed TCEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve TCEQ's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register:**

Part 123: EPA-Administered Permit Programs: the National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125

Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403

Part 501: State Sludge Management Program Regulations Reporting under 40 CFR 503

TCEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: August 17, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–18078 Filed 8–22–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 101458]

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. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 24, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Performance Evaluation of Numbering Administration Vendor(s).

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, Not-for-profit entities, and State, Local and Tribal Governments.

Number of Respondents and Responses: 6,161 respondents and 6,161 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 1,540 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: Personally identifiable information (PII) in the form of business contact information will be collected and maintained in accordance with the FCC–2, Business Contacts and Certifications, System of Records Notice (SORN), posted at *https://www.fcc.gov/managing-director/privacy-transparency/privacy-act-information.* There is no intention by the Numbering Administration Oversight Working Group (NAOWG), North American Numbering Council (NANC), or the Commission to make this business contact information publicly available.

Nature and Extent of Confidentiality: Participants must share their business contact information to respond to the survey. This information will be protected as described in the FCC–2, Business Contacts and Certifications SORN, posted at *https://www.fcc.gov/managing-director/privacy-transparency/privacy-act-information.* Participation in each survey is voluntary and any participant can decline to participate at any time.

Needs and Uses: The Commission is requesting Office of Management and Budget (OMB) approval for this new information collection. This collection of information is an annual performance satisfaction survey of its vendor(s) acting as administrators for various telephone number management functions. These functions may be performed by one or multiple vendors under one or multiple contracts. The vendor(s) act pursuant to their contract(s) with the Federal Communications Commission (FCC) and the FCC's numbering rules. *See* 47 CFR 52.1 *et seq.*

The survey will be designed and administered by the Numbering Administration Oversight Working Group (NAOWG) of the North American Numbering Council (NANC). The NANC is a Federal Advisory Committee established under the Federal Advisory Committee Act. The NANC advises the

FCC and makes recommendations, reached through consensus, that foster efficient and impartial number administration. The NANC is composed of representatives of telecommunications carriers, regulators, cable providers, Voice Over internet Protocol (VoIP) providers, industry associations, vendors, and consumer advocates. Working groups, including the NAOWG, made up of industry experts, have been established by the NANC to assist in its efforts. The NANC charter can be found at *https://docs.fcc.gov/public/attachments/DOC-375774A1.pdf.*

The relevant contract(s) require that the Commission and/or its designee shall develop and conduct a performance survey for each administrator. The results of this consumer satisfaction survey will provide the FCC with indicators on how well the vendor(s) are acting as the North American Numbering Program Administrator (NANPA), Pooling Administrator (PA), Routing Number Administrator (RNA) and Reassigned Numbering Database Administrator (RNDA) is meeting its contractual obligations and accomplishing its mission as the NANPA/PA/RNA/RNDA.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–18149 Filed 8–22–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of HHS (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 87, 42478–42483, dated July 15, 2022) is amended to reflect the reorganization of the Center for Preparedness and Response, Deputy Director for Public Health Service and Implementation Science, CDC. This reorganization approved by the Director, CDC, on July 18, 2022, will advance the nation's preparedness and response for public health emergencies and threats, provide enhanced oversight of scientific research laboratories, and eliminate workflow inefficiencies.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the titles and mission and function statements for the *Center for Preparedness and Response (CBC)* and insert the following:

Center for Preparedness and Response (CBC). The mission of the Center for Preparedness and Response (CPR) is to advance the nation's preparedness and response for public health emergencies and threats. To carry out its mission, CPR: (1) fosters collaborations, partnerships, integration, and resource leveraging to increase the Centers for Disease Control and Prevention's (CDC) health impact and achieve population health goals; (2) provides strategic direction to support CDC's public health preparedness and response efforts; (3) manages CDC-wide preparedness and emergency response programs; (4) maintains CDC's platforms for emergency response operations—including the Emergency Operations Center (EOC), the Public Health Emergency Preparedness Cooperative Agreement Program and the Select Agent and Toxins regulatory program; (5) communicates the mission, functions and activities of public health preparedness and emergency response to internal and external stakeholders; (6) provides program support, technical assistance, guidance and fiscal oversight to state, local, tribal and territorial public health department grantees; (7) provides CDC's core incident management structure to coordinate and execute preparedness and response activities; (8) regulates the possession, use and transfer of select agents and toxins and the importation of etiological agents, hosts, and vectors of human disease to protect public health in the United States; (9) provides the centralized management and coordination of national scenario capabilities planning and exercising of these plans for CDC; and (10) leads in developing and executing a national Polio Virus (PV) containment program, and minimizes the risk of PV release through effective implementation and oversight of the global poliovirus containment plan in the U.S.

Office of the Director (CBC1). (1) Provides overall leadership, oversight, and guidance for all CPR programs; (2) oversees the development of policy, long-range plans, and programs of the Center, (3) ensures the enforcement of overarching policies and guidelines developed by federal agencies, HHS, and CDC Staff Offices; (4) manages CPR preparedness and response activities; (5) coordinates program activities with other CDC components, other federal, state and local government agencies, and the private sector groups; (6) provides leadership for the coordination of technical assistance to other countries and international organizations in establishing and implementing preparedness programs; (7) provides leadership, direction, coordination and evaluation of science and health-related activities for priority programs and emergency response agenda; (8) implements public health statutory responsibilities; (9) provides executive coordination for research programs and science policies for the Center; (10) maintains liaison with other federal, state, and local agencies, institutions, and organizations; (11) coordinates CPR public health science efforts to protect the public's health; (12) develops capacity within the states to integrate new and existing preparedness and emergency response principles into operational and programmatic expertise within CPR programs; (13) utilizes best practices to collect, analyze, and interpret data and disseminate scientific information to enable internal and external partners to make actionable decisions; (14) integrates science, data analytics and visualization into science products; (15) coordinates CPR involvement in CDC public health ethics activities; (16) represents CPR on various CDC/ATSDR scientific committees, work groups, and taskforces; (17) provides leadership and guidance in the development and implementation of goals, objectives, priorities, policies, program planning, management and operations of all general activities within the Center; (18) oversees, manages, directs, coordinates, and evaluates all Center management and operations activities; (19) coordinates with all Center offices and divisions in determining and interpreting operating policy and in ensuring their respective management input for specific program activity plans are included; (20) provides leadership for implementing statutory and compliance responsibilities across the Center; (21) provides overall issue management, health policy and partnership development direction to the Center; (22) provides and directs overall internal and external communication strategies for the Center; (23) provides leadership for and assessment of all administrative management activities to assure coordination for all management and program matters, such as coordinating risk management and emergency response activities; (24) provides overall programmatic direction for planning and management oversight of allocated

resources, human resource management and general administrative support; (25) directs and coordinates activities in support of the Department's Equal Employment Opportunity program, diversity enhancement and employee professional development opportunities; and (26) reviews the effectiveness and efficiency of all administration and operations of CPR programs.

Information Resources Office (CBC13). (1) Reports all IT project costs, schedules, performances, and risks; (2) provides expert consultation in application development, information science, and technology to efficiently use resources; (3) performs technical evaluation and integrated baseline reviews of all information systems' products and services prior to procurement to ensure software purchases align with CPR strategy; (4) coordinates all enterprise-wide IT security policies and procedures with the Office of the Chief Information Officer; (5) ensures operations are in accordance with CDC Capital Planning and Investment Control guidelines; (6) ensures adherence to CDC enterprise architecture policies, guidelines, and standards; (7) ensures coordination of data harmonization and systems interoperability within CPR and facilitates linkage to related CDC-wide strategies; (8) coordinates with divisions and offices to determine IT needs and to develop strategic and action plans; and (9) provides leadership in the Center's IRGC and coordinated with CDC's ITDG.

Office of Communications (CBC14). (1) serves as the principal advisor to CPR OD on health communication and marketing practice, research, evaluation, and science; (2) provides oversight to ensure the quality of health communication and marketing campaigns and products created by CPR and its divisions; (3) serves as CPR communications clearance office for health communication campaigns and products; (4) provides strategic counsel and coordination for CPR strategic communication, health literacy, and social marketing programs in collaboration with OD and division-level staff; (5) coordinates and provides Center input on communication activities; (6) coordinates CDC and CPR brand management, policy guidance, and governance of CPR content on digital channels and websites per HHS and CDC policy for the use of communication platforms; (7) collects/analyzes user data/metrics from communication channels and technologies to assess system performance, usability, accessibility, and usefulness; (8) develops and implements all proactive media outreach and reactive media responses for the Center; (9) serves as liaison to key offices for obtaining CDC and HHS media clearance on products/activities; and (10) provides ongoing communication leadership and support to CPR's Office of the Director and divisions in furthering the Center's mission.

Office of Policy, Planning, and Evaluation (CBC16). (1) serves as liaison with CDC/OD and other Centers, Institute, and Offices (CIOs) policy offices, other government agencies, and external partners on policy, program, legislative, and budgetary issues related to CPR and divisions; (2) provides consultation, support and service to CPR divisions and CPR OD Offices for policy, planning, and evaluation; (3) leads annual CPR budget formulation and development of appropriations materials; (4) provides expertise and guidance for strategic planning and performance measurement; (5) oversees and coordinates CPR accountability activities, including Government Accountability Office and Inspector General studies, Freedom of Information Act audits and reviews; (6) develops and manages policy and program materials for stakeholders and partnership activities, including with governmental, non-governmental and private sector organizations; (7) maintains liaison with Congress on matters including appropriations, legislative bill tracking, and legislative requests, testimony for hearings, congressional inquiries, etc.; (8) oversees the preparation and routing of controlled correspondence, review clears, and other issues management related materials; and (9) assists divisions in the development and clearance of **Federal Register** Notices, rulemaking, and other documents for public comment.

Office of Science and Public Health Practice (CBC17). (1) provides oversight and direction for the Board of Scientific Counselors by ensuring FACA compliance and assuring the Board provides advice and guidance on preparedness and response activities conducted by CDC and CPR; (2) ensures CPR compliance with the statutes, regulations, and policies governing the conduct of science by the federal government, including but not limited to: protecting the rights and welfare of humans in research, ensuring compliance with Paperwork Reduction Act, and providing guidance to protect individuals' privacy and confidentiality; (3) develops and maintains the CPR clearance policy and performs scientific review and clearance of CPR products to ensure the quality of publications; (4) engages CPR division ADSs, staff, other CDC CIOs to develop and maintain cross-cutting scientific partnerships, ensure mutual awareness of activities, and promote scientific capacity and quality within CPR; (5) engages with CPR staff, other CDC CIOs, the academic community, federal agencies, and non-government research and practitioner organizations to develop and maintain partnerships, ensure mutual awareness of activities and advocate for evidence-informed practice related to populations with access and functional needs and activities as part of the Populations with Access and Functional Needs activity; (6) proposes, develops, and conducts research projects that address the needs of populations with access and functional needs during response and ensures these needs are addressed within CPR funded research solicitations; (7) maintains a network of population-specific subject matter experts across CDC, fostering a Community of Practice that addresses health equity issues for preparedness and response; (8) provides staffing coordination and scientific expertise through the Emergency Operations Center At-Risk Task Force during emergency responses and exercises; (9) provides scientific laboratory preparedness leadership to promote science and innovation to improve all-hazard preparedness conducted across CDC CIOs and with federal, state, local and territorial public health and other partners, and activities; (10) provides scientific management and oversight of the Strategic Capacity Building and Innovation Program (SCIP) laboratory preparedness and response portfolio, provides technical guidance, and supports building CDC capability and capacity to respond to public health emergencies in conjunction with CDC CIOs; (11) fosters opportunities to support CDC's mission through partnerships across government, non-profit organizations, and businesses; (12) fosters innovation and strategic foresight to mitigate risks, address current and future gaps, and inform partnerships and investments; (13) develops annual CDC priorities, sub-allocates funding, and conducts performance monitoring for CDC preparedness and response, and activities through SCIP; (14) advances and coordinates CDC preparedness and response to public health emergencies by building and sustaining epidemiology, surveillance, laboratory science, and medical countermeasures capability and capacity in partnership with CDC CIOs; (15) manages and allocates appropriated funds to

activities across the agency that improve CDC preparedness and response; and (16) monitors progress and evaluates outcomes of SCIP investments in coordination with CDC CIOs; (17) leads the strategic investment of CPR funding for external partners to conduct applied research, disseminate, and translate science into evidence-based practices to improve federal, state, local and territorial preparedness and response to all hazards, and activities; (18) leads, collaborates on, and supports the creation of knowledge to advance public health emergency preparedness, response, and recovery policy and practice; (19) provides technical assistance and scientific clearance for products submitted to CPR related to applied research; (20) provides support and technical assistance to CPR programs in the administration and management of research grants, cooperative agreements, and contracts; and (21) provides development, implementation, support and technical assistance regarding policies and procedures for research funding proposals and announcements, technical review, award selections, and award administration/management to sponsoring divisions, applicants, and awardees.

Management Resources Office (CBC18). (1) provides leadership and guidance for CPR's management of business operations; (2) oversees, manages, directs, coordinates, and evaluates all Center management and operations activities; (3) coordinates and provides oversight to the Center's overall extramural strategy for contracts, grants, cooperative agreements, and reimbursable agreements; (4) develops and implements administrative policies, procedures, and operations; (5) provides and directs overall internal and external communication strategies for the Center; (6) conducts management and organizational analyses to review the effectiveness and efficiency of all administration and operations of Center programs and translates these into quality controls for improvement; (7) provides leadership for and assessment of all administrative management activities to assure coordination for all management and program matters, such as coordinating risk management and continuity of operations (COOP) activities; (8) provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and general administrative support; (9) provides and coordinates center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, and other administrative services; (10) develops and directs employee engagement programs; (11) analyzes workforce, succession, strategic planning systems, and resources on an ongoing basis; and (12) directs and coordinates activities in support of the diversity enhancement and employee professional development opportunities.

U.S. National Authority for Containment of Poliovirus (CBC19). (1) Minimizes the risk of poliovirus (PV) release through effective implementation and oversight of the global poliovirus containment plan in the U.S.; (2) provides leadership in developing and executing a national PV containment program; (3) plans, establishes, and launches the national survey and maintains the national inventory of PV materials; (4) prepares and contributes to the annual national reports on PV containment and eradication; (5) ensures U.S. facilities transfer, inactivate or destroy PV materials appropriately, as needed; (6) ensures containment measures are implemented for facilities retaining PV, according to the World Health Organization (WHO) Global Action Plan III (GAPIII); (7) develops and publishes PV containment guidance and policies to U.S. containment requirements; (8) works with internal and external partners to establish science-based recommendations for PV containment; (9) audits and certifies facilities as a PV-essential facility (PEF) according to the WHO Containment Certification Scheme; (10) seeks WHO endorsement for U.S. PEF certification applications; (11) provides annual training and assists U.S. facilities working with PV materials to develop containment programs; (12) supports the dissemination of PV-containment information to federal, state, and local agencies, private organizations, and other national and international agencies; (13) develops and distributes informational products for educational and promotional activities related to PV containment; (14) provides technical assistance and consultations to other countries in establishing and implementing PV containment and national inventory programs; (15) plans, directs, and supports research focused on PV containment-related issues; (16) investigates exposures and root cause analysis of a containment breach; and (17) collaborates with other CDC entities, HHS agencies, academic institutions, private organizations, Ministries of Health, WHO Headquarters and Regional WHO offices, as appropriate.

Division of State and Local Readiness (CBCB). (1) provides program support, technical assistance, guidance, technical integration, and capacity building of preparedness planning across public health, healthcare, and emergency management sectors; and (2) provides fiscal oversight to state, local, tribal, and territorial public health department Cooperative Agreement recipients for the development, monitoring, and evaluation of public health capabilities, plans, infrastructure, and systems to prepare for and respond to terrorism, outbreaks of disease, natural disasters, and other public health emergencies.

Office of the Director (CBCB1). (1) Provides national leadership and guidance that supports and advances the work of state, local, tribal, and territorial public health emergency preparedness programs; (2) coordinates the development of guidelines and standards for programmatic materials within the division to provide technical assistance and program planning at the state, local, tribal, and territorial level; (3) represents and communicates the interests and needs of the state, local, tribal, and territorial jurisdictions on state and local preparedness and response issues; (4) develops and ensures effective partnerships with national stakeholders and preparedness and response partners; (5) provides oversight and management of division contracts, recipient awards and fiscal accountability; and (6) manages the IT strategy and infrastructure to support recipient programmatic and fiscal activities.

Program Implementation Branch (CBCBB). (1) Provides consultation, technical assistance, and training to state, territorial, tribal, and local health departments in management and operation of activities to support public health emergency preparedness programs and recovery, including the infrastructure and systems necessary to manage and use deployed medical countermeasure assets; (2) facilitates partnerships between public health preparedness programs at federal, state, and local levels to ensure their consistency, sharing of promising practices, and integration; (3) collaborates with and supports other divisions in CPR and other national centers across CDC to ensure high quality technical assistance is available to the grantees on preparedness capabilities; (4) monitors programmatic activities of cooperative agreements of state, local, tribal, and territorial organizations to assure program objectives and key performance

indicators are achieved, including reviews of Cities Readiness Initiative response plans; (5) provides assistance to state and local governments and public health agencies to prepare for effective responses to large scale public health events; (6) evaluates and identifies gaps in jurisdictional operational readiness and facilitates plans and develops tools to address identified gaps; (7) maintains an information sharing platform to post resources and facilitate the sharing of best practices across CDC and jurisdictions; (8) improves the delivery of technical assistance to the public health entities; (9) serves as an agent of information to improve recipient access to healthcare preparedness tools and expertise and (10) collaborates with the Department during exercises or upon a federal deployment of assets.

Evaluation and Analysis Branch (CBCBC). (1) Assesses the effectiveness of the Public Health Emergency Preparedness Cooperative Agreement via performance measurement and evaluation; (2) develops and coordinates a strategy to measure and report on jurisdictional operational readiness; (3) provides analytic support and evaluation expertise to DSLR and CPR; and (4) fosters innovation and efficiency in evaluation and research through collaboration with healthcare and health security partners.

Field Assignee Services Branch (CBCBD). (1) Works with recipients to advance state and local preparedness efforts through placement of CDC field staff within state and local public health agencies; (2) provides scientific participation in development and implementation of field-based science initiatives and strategies; (3) provides situational awareness to CDC leadership when activated for public health responses; (4) provides consultation and technical assistance to state, territorial, tribal and local health departments in developing, implementing, and evaluating CPR activities and performance in support of CDC recommendations and those of their host site; (5) provides direct support for public health preparedness and epidemiologic capacity at the state, territorial, tribal, and local levels; (6) contributes as leaders in preparedness and epidemiology for a myriad of public health issues; (7) participates in the development of national preparedness and response policies and guidelines for public health emergencies and encourages and facilitates the transfer of guidelines into clinical and public health practice; (8) analyzes data to assess progress toward achieving program objectives and provides input for program management and evaluation reports for publications; (9) serves as liaison or focal point to assist state, territorial, tribal, and local partners in linking with proper resources, contacts, and obtaining technical assistance; (10) provides technical supervision and support for the CDC field staff and trainees as appropriate; (11) provides input into the development of branch and division policy, priorities, and operational procedures; (12) serves as an agent of information or technology transfer to ensure that effective methodology in one program is known and made available to other state and local programs; (13) analyzes technical and epidemiologic information to present at national and international scientific meetings and publishes programmatic, surveillance, epidemiologic information in collaboration with host agencies; and (14) develops and implements a comprehensive training and field placement program for entry-level public health preparedness and response professionals.

Division of Select Agents and Toxins (CBCC). (1) Develops, implements, and enforces select agent regulations and import permit regulations; (2) conducts registration of entities with the United States (academic, military, commercial, private, Federal and non-Federal government) that use, possess and transfer select agents and toxins; (3) establishes and maintains a national database of all entities that possess select agents and toxins and imported biological agents; (4) inspects entities to ensure compliance with select agent regulations and import permit regulations that bio-safety and bio-security regulations and national standards are met; (5) approves all select agent or toxin transfers; (6) receives and investigates reports of theft, loss, or release of a select agent or toxin; (7) partners with other government agencies, public health organizations, and registered entities to ensure compliance with the select agent regulations and import permit regulations; (8) issues permits for the importation of infectious biological agents and hosts or vectors of human disease; and (9) provides guidelines and training to regulated community on achieving compliance to the regulations.

Office of the Director (CBCC1). (1) Manages operations; (2) provides scientific leadership and consultation; (3) supports the functional teams in the Office of the Director; (4) plans for and implements sound communications efforts in order to effectively and strategically inform and influence key internal and external stakeholders regarding the program; (5) provides strategic planning, facilitating oversight studies of Division of Select Agents and Toxins (DSAT), regulatory and policy matters related to select agent and import permit programs, and executes compliance actions to the HHS-Office of Inspector General; (6) provides leadership and guidance to the division in the area of biosafety, including advising on issues involving highly complex entities; and (8) manages personnel actions, travel, purchases as well as budget planning and execution, contracts, and interagency agreement support for the division.

Federal Select Agent Program Operations Branch (CBCCB). (1) Processes entity applications for registration, awarding entities certification, processing entity amendments to their registration, performing inspections at regulated entities; (2) prepares reports of inspections and conducts follow-up on noted deficiencies; (3) receives reports of the theft, loss, or release of select agents or toxins; (4) processes requests for transfers of select agents and toxins; (5) manages security risk assessment process with the FBI to provide authorization for individuals to access select agents and toxins; (6) processes reports of select agents or toxins identified through diagnosis, verification or proficiency testing; (7) assists FBI with criminal investigations; (8) coordinates division emergency response activities; (9) provides expert advice to entities on compliance with the select agent regulations; (10) serves as a liaison with the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Select Agent Regulatory Program on operational issues; and (11) performs inspections of foreign select agent laboratories in accordance with National Institutes of Health/National Institute of Allergy and Infectious Diseases agreements.

Import Permit Program Operations Branch (CBCCC). (1) Manages and processes permit applications for the importation of infectious biological materials that could cause disease in humans in order to prevent their introduction and spread into the U.S.; and (2) ensures the importation of these agents is monitored and that facilities receiving permits have appropriate biosafety measures in place to work safely with the imported materials.

Innovation and Information Technology Branch (CBCCE). (1) Manages division IT development, sustainment of operations, compliance, security and enhancement of system functions through innovation; (2)

manages, sustains and improves the electronic Federal Select Agent Program information system, which is a joint-agency (HHS/CDC and USDA/APHIS), high security, web-based IT system with a two-way communication portal for maintaining registration to work with select agents and toxins, submission of amendments to registration, reporting theft, loss or release of select agents and toxins, requests for transfer of select agents and toxins, reporting identification of a select agent or toxin, inspection reports, retention of all programmatic data and generation of program reports; and (3) manages, sustains and improves the electronic Import Permit Program information system, which is a moderate security, cloud-based, electronic information system for receiving all import permit applications from U.S. importers.

Division of Emergency Operations (CBCD). (1) administers the CDC Emergency Management Program to facilitate preparedness for and response to the full scope and scale of public health threats CDC counters, domestically and internationally; (2) coordinates with all CDC CIOs in planning, training for, exercising, managing, and evaluating pre-response and response activities; (3) serves as the primary CDC point of contact under the Homeland Security Presidential Directive (HSPD–5), National Response Framework, Emergency Support Function (ESF) #8 (Public Health and Medical Services) and provides technical expertise and support to other ESFs; (4) maintains and operates the CDC national-level Emergency Operations Center (EOC), which serves as the focal point for CDC collaboration and information sharing on a 24/7/365 basis; (5) coordinates logistical, staffing, and emergency risk communication support for cross-CIO responses; (6) apprises CDC leadership and outside agencies of CDC response activities and emerging public health threats; and (7) directs relevant sections and units within an Incident Management System (IMS) structure during CDC emergency responses.

Office of the Director (CBCD1). (1) Manages the day-to-day operations of the division; (2) provides leadership and technical assistance for emergency management before and during public health responses; (3) coordinates and administers the daily management of resources for the division including budget, personnel, and acquisitions; (4) designs, develops, and maintains response information systems and solutions for the division and CDC; (5) leads and coordinates the development, clearance, maintenance, implementation, and communication of public health emergency management policies and related issues; (6) leads strategic planning and performance management for DEO's administrative and programmatic activities; (7) develops and supports a scientific research agenda in public health emergency management within the division and across CDC; and (8) promotes health equity through CDC emergency preparedness and response activities.

Emergency and Risk Communications Branch (CBCDB). (1) Prepares for and coordinates CDC's communication response to public IMS health threats and emergencies, serving as the agency's primary communication liaison with federal (including through ESF #15, External Affairs), state, tribal, local, and territorial, and international partners; (2) identifies, develops, coordinates, and monitors strategies for translation and delivery of CDC's emergency risk communication messages and information to specific audiences for maximum health impact; (3) coordinates and integrates emergency and risk communication activities within CDC to respond to public health emergencies; (4) co-leads the Joint Information Center within an IMS during CDC emergency responses; (5) develops emergency risk communication recommended practices and curriculum, and supports emergency risk communication capacity building through technical assistance and training; (6) ensures that CDC's emergency risk communication messages are available, timely, accessible, understandable, culturally appropriate, and actionable; (7) develops and manages channels and partner engagement mechanisms to distribute emergency risk communication messages before, during, and after public health emergencies; (8) creates and manages systems, procedures, processes, and platforms (including CDC's Emergency Preparedness and Response internet site) for CDC's emergency communication activities; (9) manages and implements protocols to clear public health emergency information; (10) conducts research, monitoring, and evaluation to assess awareness, knowledge, attitudes, reactions, and behaviors related to urgent health threats and refine preparedness and emergency risk communication strategies and tactics; and (11) supports the development, maintenance, and implementation of policies related to public health emergency risk communication activities.

Resource Support Branch (CBCDC). (1) Develops, maintains, communicates, and executes policies, plans, and procedures to coordinate logistical and personnel resource support for emergency responses; (2) directs the Resource Support Section within an IMS structure during CDC emergency responses; (3) manages and distributes emergency response equipment and supplies, including personal protective equipment (PPE), and administers the division's accountable property inventory; (4) procures or coordinates resources (*e.g.,* supplemental space, transportation, equipment, and supplies) to support preparedness and response activities; (5) administers information systems and communication platforms to coordinate the management of emergency response staffing, field deployments, equipment, and supplies; (6) leads and administers CDC emergency responder workforce processes, procedures, and tools, and leverages related data, to support the planning, preparation, and execution of emergency response operations, including the identification, alignment, and assignment/deployment of CDC staff to response roles; (7) develops and executes processes and tools for the request, approval, notification, coordination and tracking of all response field deployments among CDC CIOs; and (8) provides and coordinates emergency travel services for emergency response operations and urgent, non-routine travel for CDC programs.

Operations Branch (CBCDD). (1) Serves as the central point of contact between CDC and other federal, state, tribal, local, territorial, and international agencies for public health threats and emergencies on a 24/7/365 basis; (2) develops and maintains proficiency on emergency management plans, protocols, and procedures to coordinate requests for information, assistance, and resources across CDC for public health threats and emergencies; (3) directs the Operations Section within an IMS structure during CDC emergency responses; (4) manages and advises on the initial IMS activation process and notification to CDC programs and centers, on behalf of the DEO director; (5) maintains situational awareness of disaster and emergency response activities among other agencies via their respective EOCs to provide a common operating picture for CDC leadership; (6) coordinates with CDC CIOs to develop and maintain critical information requirements and notify key leaders of time-sensitive/critical information; (7) conducts safety and accountability monitoring of CDC staff, facilities, and regulated entities before, during, and after incidents that may threaten safety

or security, in collaboration with appropriate CDC CIOs; (8) manages the EOC facility, including its components (*e.g.,* audiovisual and communications equipment and tools) and processes, to maintain its operational capability, including when COOP plans are implemented; (9) leads CDC's Emergency Coordinator (EC) program, maintaining communication with representatives from all CIOs on public health preparedness and emergency response activities; and (10) supports the development, maintenance, and implementation of policies related to public health emergency management operations activities.

Plans, Exercise, and Evaluation Branch (CBCDE). (1) Develops, coordinates, and maintains CDC emergency operations plans, the CDC All-Hazards Plan, event-specific incident annexes, and National Special Security Event plans, and related procedures; (2) directs the Planning Section within an IMS structure during CDC emergency responses; (3) develops, publishes, and maintains contingency plans, incident action plans, transition plans, situation reports, and evaluation products, including through the IMS Planning Section; (4) liaises with internal and external organizations to develop, maintain, exercise, and implement federal and national plans; (5) leads the scheduling, design, development, and conduct of, and participation in, CDC's public health preparedness and response exercises, including through delivery of threat-driven training and exercise programs; (6) coordinates CDC's participation in the National Exercise Program and the agency's support to other external, all-hazards exercises; (7) evaluates CDC emergency responses and exercises to assess the agency's response capabilities; (8) develops and disseminates After-Action Reports/Improvement Plans and other preparedness and response evaluation products; (9) manages CDC's Corrective Action Program and tracks improvement plans; (10) chairs CDC's Steering Committees for Plans, Exercises, and Evaluations; and (11) supports the development, maintenance, and implementation of policies related to public health emergency management planning, exercise, and evaluation activities.

Response Analytics and Decision Support Branch (CBCDG). (1) Leads the management and maintenance of public health emergency preparedness and response information gathering, analysis, and sharing through knowledge management and scalable processes that support response decision making; (2) establishes public health emergency preparedness vocabulary and information exchange standards to meet the reporting and information sharing requirements of cross-jurisdictional partners; (3) compiles, correlates, analyzes, creates, and distributes reports and visualizations to support IMS and CDC leadership decision-making; (4) provides coordination, planning, and development support for data collection, management, and production of analytics and geospatial data, including GIS/mapping; (5) provides informatics, data management, and reporting support to external federal, state, tribal, local, territorial, and international partners; (6) conducts and supports data management, information exchange, and risk communication among federal, state, and local partners; and (7) supports the development, maintenance, and implementation of policies related to public health emergency situational awareness, data analytics and visualization, and knowledge management activities.

Emergency Management Training and Capacity Development Branch (CBCDH). (1) Promotes public health emergency management doctrine, standards, guidelines, and tools through training and technical assistance within CDC and among its domestic and international partners; (2) conducts needs assessments, establishes role-specific core competencies, and identifies training requirements, including for response plans and related IMS activations; (3) develops and delivers training curricula for emergency responders and IMS response leadership within CDC; (4) manages public health emergency management fellowship programs and related trainings to build emergency management leadership capacity domestically and internationally; (5) provides direct technical assistance to partners in public health risk assessments, the establishment of public health emergency management programs and public health emergency operations centers, and the execution of public health emergency management activities during responses; (6) leads and maintains an international community of practice for public health emergency managers; (7) evaluates emergency response training and capacity building programs and recommends changes to established doctrine; and (8) supports the development, maintenance, and implementation of policies related to public health emergency management training and capacity building activities.

Retitle the *Advance Team Activity (CAT12)* to the *Advance Team (CAT12).*

Retitle the *Office of the Associate Director for Global Health Diplomacy and Strategy (CAE)* to the *Office of the Associate Director for Global Health Coordination (CAE).*

Robin D. Bailey Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–18094 Filed 8–22–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10816]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 24, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the

instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10816 Medicare Part C and Medicare Part D Enrollment Form Interviews

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Part C and Medicare Part D Enrollment Form Interviews; *Use:* As CMS moves towards stratified reporting of quality measures and addressing healthcare inequity, highlighted by the COVID–19 pandemic, the ability to analyze disparities across Medicare programs and policies depends on the ability to access and collect reliable race and ethnicity data consistently from Medicare Part C and Part D plans. The recent Executive Orders (E.O.) 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and E.O. 14031 on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, have focused attention on the need for CMS to improve the collection and quality of its enrollees' race and ethnicity data, especially at the disaggregated level. Collecting complete race/ethnicity data is important to CMS because CMS has interest in identifying patterns of differences across many key process and care outcomes by sociodemographic characteristics, including race and ethnicity.

CMS' primary objective for the interviews is to identify the drivers of nonresponse to the race and ethnicity questions. Specifically, we aim to solicit detail on whether and what concerns drove individuals' nonresponse to these items, including (but not limited to) (a) concerns about confidentiality of their data, (b) concerns about how their race and ethnicity data would be used, including concerns about whether disclosing such information could in any way affect eligibility for Medicare benefits (which it would not), or (c) concerns about response options (*e.g.,* missing response options for race or ethnicity groups in which they may identify). We also intend to explore whether it is possible to amend the race and ethnicity elements on Part C/D enrollment form to address any of those concerns, and if so, how. Additionally, we plan to ask whether there are other—beyond the Part C/D enrollment form—vehicles for collecting race and ethnicity information that would be more acceptable to non-responders, and if so, what those are.; *Form Number:* CMS–10816 (OMB control number: 0938–New); *Frequency:* Annually; *Affected Public:* Individuals and Households; *Number of Respondents:* 120; *Total Annual Responses:* 120; *Total Annual Hours:* 114. (For policy questions regarding this collection contact Deme Umo at 410–786–8854).

Dated: August 17, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–18092 Filed 8–22–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Administration for Children and Families Uniform Project Description

AGENCY: Office of Administration, Office of Grants Policy, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting revisions to the approved ACF Uniform Project Description (UPD) (Office of Management and Budget (OMB) #0970–0139, expiration March 31, 2025).

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The proposed information collection would revise the approved ACF UPD. The UPD provides a uniform format for applicants to submit project information in response to ACF discretionary Notices of Funding Opportunity. The UPD requires applicants to describe how program objectives will be achieved and provide a rationale for the project's budgeted costs. All ACF discretionary grant programs are required to use the UPD.

ACF uses this information, along with other OMB-approved information collections (Standard Forms), to evaluate and rank applications. Use of the UPD protects the integrity of the ACF award selection process.

The UDP has been revised as follows: (1) included a text field for the Geographic Location standardized text, which will allow ACF program offices

to enter project-specific language; (2) under Organizational Capacity, inserted an option to allow submission of an Audit Summary report in lieu of a full audit report; (3) inserted a checkbox and standardized language to request current and pending funding support; (4) added a prior written approval requirement to Plan for Oversight of Federal Award Funds and Activities; (5) included Memoranda of Agreement (MOA) under Third Party Agreements; and (6) updated The Project Budget and Budget Justification standardized language related to salary limitation, budget preparation, fringe benefits, definition of supplies, contractual costs, accounting for real property, the Other Costs category, and Indirect Costs.

Respondents: Applicants responding to ACF Discretionary Notices of Funding Opportunity.

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
ACF Uniform Project Description	3,218	1	60	193,080	64,360

Estimated Total Annual Burden Hours: 64,360.

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: 45 CFR 75.203–75.204, and 45 CFR part 75, appendix I.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–18136 Filed 8–22–22; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; The Role of Licensing in Early Care and Education (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for Public Comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), is proposing to collect information for The Role of Licensing in Early Care and Education (TRLECE) project. This data collection aims to examine the child care and early education (CCEE) licensing system through surveys of child care licensing administrators, front-line child care licensing staff, and child care providers.

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 *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The TRLECE project is proposing a new information collection to deepen the field's understanding of the CCEE licensing system. Information will be collected from child care licensing administrators, front-line child care licensing staff, and child care providers. This information collection will include three national surveys:

1. A one-time nationwide survey of the child care licensing administrator in each state, territory, and the District of Columbia (N=56) regarding the licensing system, as well as administrators' characteristics, experiences, and perceptions of the licensing system. Child care licensing administrators oversee critical systems that regulate child care settings for young children.

2. A one-time nationwide survey of front-line child care licensing staff from each of the 50 states and the District of Columbia about their characteristics, experiences, responsibilities, and perceptions of the CCEE licensing system. By front-line child care licensing staff we mean individuals who routinely conduct licensing inspections of child care programs. They may have other responsibilities as well, as long as one of their jobs is to routinely conduct inspections.

3. A one-time nationwide survey of licensed child care providers from each of the 50 states and the District of Columbia about their perceptions of and experiences with the CCEE licensing system. For the purposes of this study, licensed providers are defined as program owners/directors who oversee the day-to-day operations in a licensed center, as well as owners/operators of licensed family child care (FCC) programs (including group and family child care homes).

Respondents: We will invite all child care licensing administrators in each state/territory and the District of Columbia, and all front-line child care licensing staff in each state and the District of Columbia to participate in a comprehensive one-time web-based or telephone survey. For the survey of providers, the goal for the final sample will be a nationally representative sample of 2,000 licensed providers from all 50 states and the District of Columbia, (1,000 randomly selected licensed child care centers and 1,000 randomly selected family child care homes).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
Child care licensing administrator survey	56	1	0.33	19
Front-line child care licensing staff survey	1650	1	0.5	825
Child care provider survey	2000	1	0.5	1000

Estimated Total Annual Burden Hours: 1844.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9858.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–18154 Filed 8–22–22; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Operation Allies Welcome Survey of Resettled Afghans (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, 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), is proposing to collect data for a new Operation Allies Welcome (OAW) Survey of Resettled Afghans.

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: Under the Afghanistan Supplemental Appropriations Act, 2022, and Additional Afghanistan Supplemental Appropriations Act, 2022, Congress authorized ORR to provide resettlement assistance and other benefits available to refugees to specific Afghan populations, in response to their emergency evacuation and resettlement. The OAW Survey of Resettled Afghans would help ORR to identify service needs and gaps in resettlement services. Data collection is to inform better targeted assistance and training or technical assistance and to inform refinement and improvements to ORR's programs and services to adequately meet the needs of ORR-eligible OAW Afghan populations.

Respondents: ORR-eligible OAW Afghan populations.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
OAW Survey of Resettled Afghans	3,400	1	0.17	*578

*Survey is one-time and will be completed within the 1st year.

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:

Div. C, Title III, Public Law 117–43, 135 Stat. 374

Div. B, Title III, Public Law 117–70, 1102 Stat. 4

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–18155 Filed 8–22–22; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announcing the Intent To Award a Sole-Source Supplement for the Christopher and Dana Reeve Foundation

ACTION: Notice of Intent to award a sole source supplement to the Christopher and Dana Reeve Foundation.

SUMMARY: The Administration for Community Living (ACL) is announcing the award of a sole-source supplement for the National Paralysis Resource Center (PRC) as a result of the 2022 Congressional budget appropriations. The National Paralysis Resource Center is operated by the Christopher and Dana Reeve Foundation and offers important programmatic opportunities for persons with disabilities and older adults. The NPRC provides comprehensive information for people living with spinal cord injury, paralysis, and mobility-related disabilities and their families. Resources include information and referral by phone and email in multiple languages; a peer and family support mentoring program; a military and veterans' program; multicultural outreach services; multiple quality of life grants; and a national website. The administrative supplement for FY 2022 will be in the amount of $747,037, bringing the total award for FY 2022 to $9,447,037.

SUPPLEMENTARY INFORMATION:

Program Name: National Paralysis Resource Center.

Recipient: Christopher and Dana Reeve Foundation.

Period of Performance: The supplement award will be issued for the second year of a five-year project period, July 1, 2022, through June 30, 2023.

Award Amount: $747,037.

Award Type: Cooperative Agreement.

Statutory Authority: This program is authorized under section 317 of the Public Health Service Act (42 U.S.C. 247(b–4)); Consolidated and Further Continuing Appropriations Act, 2016, Public Law 114–113 (Dec. 18, 2015).

CFDA Number: 93.325 Discretionary Projects.

The purpose of the supplemental funding is to support the expansion the National Paralysis Resource Center to improve the health and quality of life of individuals living with paralysis and their families by raising awareness of and facilitating access to a broad range of services relevant to individuals with paralysis. With the additional funding, the NPRC will work to expand the National Resource and Information Center; increase the health and quality of life of Americans with disabilities living with paralysis; increase support and resources to people with paralysis, their families and caregivers; expand collaboration with federal agencies and other national organizations that have a vested interested in the paralysis community; and strengthen performance measures.

Dated: August 18, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–18118 Filed 8–22–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0447]

Charging for Investigational Drugs Under an Investigational New Drug Application: Questions and Answers; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled ''Charging for Investigational Drugs Under an IND: Questions and Answers.'' Since issuance of the final guidance in 2016, FDA has received questions from stakeholders through the docket and in the form of communications with review divisions. These questions relate to the implementation of FDA's regulation on charging for investigational drugs under an investigational new drug application (IND) for the purpose of either clinical trials or expanded access for treatment use. FDA is providing this revised draft guidance in a question-and-answer format, addressing the most recently asked questions. When finalized, this revised draft guidance will replace the final guidance of the same title issued in June 2016.

DATES: Submit either electronic or written comments on the draft guidance by October 24, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2013–D–0447 for ''Charging for Investigational Drugs Under an IND: Questions and Answers.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

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

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993–0002, 240–402–8926; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Charging for Investigational Drugs Under an IND: Questions and Answers.'' When finalized, the revised draft guidance will replace the guidance for industry of the same title issued in June 2016. FDA's regulation on charging for investigational drugs under an IND for the purpose of either clinical trials or expanded access for treatment use (21 CFR 312.8) allows sponsors to charge for investigational drugs under certain circumstances. FDA issued a guidance in 2016 in a question-and-answer format to respond to the most frequently asked questions concerning various provisions of the regulation.

This revised draft guidance includes responses to stakeholder questions received since publication of the final guidance in 2016. In addition to editorial changes for clarity, significant changes from the 2016 version of the guidance include additional recommendations related to (1) submission of a copy of the receipt or invoice from the manufacturer as documentation when the expanded access sponsor intends to charge only the amount the manufacturer charged for the investigational drug and (2) distribution of the manufacturing, administrative, or monitoring costs from the first year over the expected duration of the expanded IND or protocol.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Charging for Investigational Drugs Under an IND: Questions and Answers.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Electronic Access

Persons with access to the internet may obtain the revised draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: August 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18083 Filed 8–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1777]

Pharmaceutical Science and Clinical Pharmacology Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on November 2, 2022, from 9 a.m. to 3:30 p.m. Eastern Time and November 3, 2022, from 9 a.m. to 3:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–1777.

The docket will close on November 1, 2022. Either electronic or written comments on this public meeting must be submitted by November 1, 2022. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 1, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before October 19, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–N–1777 for ''Pharmaceutical Science and Clinical Pharmacology Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Rhea Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–708–1707, Fax: 301–847–8533, email: *ACPS-CP@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The meeting will focus on two topics related to the Office of Pharmaceutical Quality's mission of promoting the availability of quality medicines for the American public. On November 2, 2022, the committee will discuss the Center for Drug Evaluation and Research (CDER) Quality Management Maturity (QMM) program. QMM is the state attained when drug manufacturers have consistent, reliable, and robust business processes to achieve quality objectives and promote continual improvement. CDER has proposed the development of a rating system that will help incentivize drug manufacturers to adopt more mature quality management practices at their facilities. The committee will consider the impact that a QMM program would have on the pharmaceutical industry, drug shortages, and supply chain resiliency. FDA will seek input to determine if experts from academia and industry support the development of a CDER QMM program to incentivize investments in mature quality management practices.

On November 3, 2022, as part of CDER's continued effort to provide key updates on modernization of quality assessment, the committee will discuss the next stages of Knowledge-Aided Assessment and Structured Application (KASA). The concept of KASA was envisioned in 2016 and discussed at the Pharmaceutical Science and Clinical Pharmacology Advisory Committee Meeting on September 20, 2018, as an

information technology system that modernizes FDA's assessment. Through the development, testing, and implementation of various KASA prototypes, the KASA system has been refined over the course of multiple years. FDA will seek input on the vision and plan to expand KASA over the next 5 years to include drug substances, all generic dosage forms, new drug and biologics applications, and post-approval changes. Moreover, FDA will seek input regarding the need for advancing digitalization in KASA, including data standardization and mobilization of data from cloud-based servers.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before October 19, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Eastern Time on November 2, 2022. Oral presentations from the public will also be scheduled between approximately 1:10 p.m. to 2:10 p.m. Eastern Time on November 3, 2022. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 11, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 12, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Rhea Bhatt (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18087 Filed 8–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1778]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Endocrinologic and Metabolic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on October 31, 2022, from 9 a.m. to 5 p.m. eastern time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–1778. The docket will close on October 28, 2022. Either electronic or written comments on this public meeting must be submitted by October 28, 2022. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. eastern time at the end of October 28, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before October 17, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–N–1778 for ''Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2855, Fax: 301–847–8533, email: *EMDAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss new drug application (NDA) 215559, for palovarotene capsules, submitted by Ipsen Biopharmaceuticals, Inc. The proposed indication is the prevention of heterotopic ossification in adults and children (females aged 8 years and above and males 10 years and above) with fibrodysplasia ossificans progressiva.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before October 17, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. eastern time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 6, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 7, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18143 Filed 8–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth two Special Fraud Alerts previously published by OIG on its website. We are publishing these Special Fraud Alerts in the **Federal Register** to ensure widespread dissemination of the Special Fraud Alerts to the general public and to satisfy the **Federal Register** publication requirement.

FOR FURTHER INFORMATION CONTACT: Katie Fink, Karen Glassman, or Benjamin Wallfisch, (202) 619–0335.

I. Background

Pursuant to 42 U.S.C. 1320a–7d(c), OIG periodically issues Special Fraud Alerts to give continuing guidance to health care industry stakeholders regarding practices OIG considers to be suspect or of particular concern. Special Fraud Alerts encourage industry compliance by giving stakeholders guidance that can be applied to their own practices. In developing Special Fraud Alerts, OIG relies on several sources and consults directly with experts in the subject field including those within OIG, other HHS agencies, other Federal and State agencies, and in the health care industry.

To ensure widespread dissemination of this information to the general public and to satisfy the **Federal Register** publication requirement found in 42 U.S.C. 1320a–7d(c)(1)(B), OIG is republishing two Special Fraud Alerts—in their entirety—below. These Special Fraud Alerts are: (1) Special Fraud Alert: Speaker Programs, which was originally published on OIG's website on November 16, 2020; and (2) Special Fraud Alert: OIG Alerts Practitioners To Exercise Caution When Entering Into Arrangements With Purported Telemedicine Companies, which was originally published on OIG's website on July 20, 2022.

II. Special Fraud Alert: Speaker Programs

I. Introduction

This Special Fraud Alert highlights the fraud and abuse risks associated with the offer, payment, solicitation, or receipt of remuneration relating to speaker programs by pharmaceutical and medical device companies. For purposes of this Special Fraud Alert, speaker programs are generally defined as company-sponsored events at which a physician or other health care professional (collectively, ''HCP'') makes a speech or presentation to other HCPs about a drug or device product or a disease state on behalf of the company. The company generally pays the speaker HCP an honorarium, and often pays remuneration (for example, free meals) to the attendees. In the last three years, drug and device companies have reported paying nearly $2 billion to HCPs for speaker-related services.[1]

The Office of Inspector General (OIG) and Department of Justice (DOJ) have investigated and resolved numerous fraud cases involving allegations that remuneration offered and paid in connection with speaker programs violated the anti-kickback statute. The Federal government has pursued civil and criminal cases against companies and individual HCPs involving speaker programs. These cases alleged, for example, that drug and device companies:

- selected high-prescribing HCPs to be speakers and rewarded them with lucrative speaker deals (*e.g.,* some HCPs received hundreds of thousands of dollars for speaking); [2]
- conditioned speaker remuneration on sales targets (*e.g.,* required speaker HCPs to write a minimum number of prescriptions in order to receive the speaker honoraria);
- held speaker programs at entertainment venues or during recreational events or otherwise in a manner not conducive to an educational presentation (*e.g.,* wineries, sports stadiums, fishing trips, golf clubs, and adult entertainment facilities);
- held programs at high-end restaurants where expensive meals and alcohol were served (*e.g.,* in one case, the average food and alcohol cost per attendee was over $500); and
- invited an audience of HCP attendees who had previously attended the same program or HCPs' friends, significant others, or family members who did not have a legitimate business reason to attend the program.

Our enforcement experience demonstrates that some companies expend significant resources on speaker programs and that some HCPs receive substantial remuneration from companies. This Special Fraud Alert highlights some of the inherent fraud and abuse risks associated with the offer, payment, solicitation, or receipt of remuneration related to company-sponsored speaker programs.

II. The Anti-Kickback Statute

Congress enacted the anti-kickback statute, in part, to protect patients from referrals or recommendations by HCPs who may be influenced by inappropriate financial incentives. The anti-kickback statute makes it a criminal offense to knowingly and willfully solicit, receive, offer, or pay any remuneration to induce or reward, among other things, referrals for, or orders of, items or services reimbursable by a Federal health care program.[3] When remuneration is paid purposefully to induce or reward referrals of items or services payable by a Federal health care program, the anti-kickback statute is violated. For purposes of the anti-kickback statute, the offer, payment, solicitation, or receipt of ''remuneration'' includes the transfer of anything of value, directly or indirectly, overtly or covertly, in cash or in kind. By its terms, the statute ascribes criminal liability to all parties to an impermissible ''kickback'' transaction (*i.e.,* those who solicit or receive prohibited remuneration as well as those who offer or pay the prohibited remuneration). Violation of the statute is a felony punishable by a maximum fine of $100,000, imprisonment up to 10 years, or both. Criminal conviction will also lead to mandatory exclusion from Federal health care programs, including Medicare and Medicaid.[4] OIG may also initiate administrative proceedings to exclude persons from the Federal health care programs and impose civil money penalties for conduct prohibited by the anti-kickback statute.[5]

III. Fraud and Abuse Risks of Speaker Programs

Numerous investigations have involved allegations that drug and device companies organize and pay for speaker programs with the intent to

[1] Drug and device companies are required to report certain payments made to HCPs to the Centers for Medicare & Medicaid Services (CMS). CMS makes this information publicly available on its Open Payments website. According to Open Payments, drug and device companies paid HCPs nearly $2 billion under the category ''compensation for services other than consulting, including serving as faculty or as a speaker at a venue other than a continuing education program'' for years 2017, 2018, and 2019 combined. *Open Payments Complete 2017, 2018, and 2019 Program Year Datasets,* CMS, *https://www.cms.gov/OpenPayments/Explore-the-Data/Data-Overview* (*accessed* Sept. 9, 2020).

[2] Though not addressed in this Special Fraud Alert, remuneration paid by drug and device companies relating to the training of HCP speakers also may raise fraud and abuse risks.

[3] See section 1128B(b)(1)–(2) of the Social Security Act; 42 U.S.C. 1320a–7b(b)(1)–(2). The anti-kickback statute applies broadly to remuneration to induce or reward referrals of patients as well as the payment of remuneration intended to induce or reward the purchasing, leasing, or ordering of, or arranging for or recommending the purchasing, leasing, or ordering of, any item or service reimbursable by any Federal health care program. In this Special Fraud Alert, we use the term ''referral'' to include the full range of these types of activities (including ordering or prescribing items) that falls within the scope of the anti-kickback statute.

[4] See 42 U.S.C. 1320a–7(a).

[5] See 42 U.S.C. 1320a–7(b)(7); 1320a–7a(a)(7).

induce HCPs to prescribe or order (or recommend the prescription or ordering of) the companies' products. Speaker programs typically involve an HCP who is not an employee of the company speaking in person to other HCPs about a company product or disease state using a presentation developed and approved by the company. According to a pharmaceutical industry trade group, HCPs ''participate in company-sponsored speaker programs in order to help educate and inform other health care professionals about the benefits, risks, and appropriate uses of company medicines.'' [6]

OIG is skeptical about the educational value of such programs. Our investigations have revealed that, often, HCPs receive generous compensation to speak at programs offered under circumstances that are not conducive to learning or to speak to audience members who have no legitimate reason to attend. Such cases strongly suggest that one purpose of the remuneration to the HCP speaker and attendees is to induce or reward referrals. Furthermore, studies have shown that HCPs who receive remuneration from a company are more likely to prescribe or order that company's products.[7] This remuneration to HCPs may skew their clinical decision making in favor of their own and the company's financial interests, rather than the patient's best interests.

There are many other ways for HCPs to obtain information about drug and device products and disease states that do not involve remuneration to HCPs. HCPs can access the same or similar information provided in a speaker program using various online resources, the product's package insert, third-party educational conferences, medical journals, and more. The availability of this information through means that do not involve remuneration to HCPs further suggests that at least one purpose of remuneration associated with speaker programs is often to induce or reward referrals.

Parties involved in speaker programs may be subject to increased scrutiny. These include any drug or device company that organizes or pays remuneration associated with the program, any HCP who is paid to speak, and any HCP attendees who receive remuneration from the company (*e.g.,* free food and drink). OIG has long expressed concerns over the practice of drug and device companies providing anything of value to HCPs in a position to make or influence referrals to such companies' products. In the 2003 OIG Compliance Program Guidance for Pharmaceutical Manufacturers,[8] OIG identified manufacturer compensation relationships with physicians connected directly or indirectly to marketing and sales activities, including speaking activities, as an area of potential risk under the anti-kickback statute. OIG noted that when a drug or device company engages in ''entertainment, recreation, travel, meals or other benefits in association with information or marketing presentations,'' such arrangements may potentially implicate the anti-kickback statute.[9]

OIG also warned physicians that a consultant or speaking arrangement with a drug or device company could be an improper inducement ''to prescribe or use [company] products on the basis of . . . loyalty to the company or to get more money from the company, rather than because it is the best treatment for the patient.'' [10] OIG recommended that physicians consider the propriety of any proposed relationship with a company and advised that if the basis for a physician's compensation ''is your ability to prescribe a drug or use a medical device or refer your patients for particular services or supplies, the proposed consulting arrangement likely is one you should avoid as it could violate fraud and abuse laws.'' [11] Again, we note that HCPs could face liability under the anti-kickback statute for knowingly and willfully soliciting or receiving remuneration in connection with speaker programs in return for prescribing or ordering products reimbursable by a Federal health care program.

OIG recognizes that the lawfulness of any remunerative arrangement, including speaker program arrangements, under the anti-kickback statute depends on the facts and circumstances and intent of the parties. Such intent may be evidenced by the speaker program's characteristics and the actual conduct of the parties involved. Below we describe some characteristics, which, taken separately or together, potentially indicate a speaker program arrangement that could violate the anti-kickback statute. As previously stated, drug and device companies that host or pay for such speaker programs and HCPs who speak at or attend such programs could be liable under the anti-kickback statute for any prohibited remuneration. This list of suspect characteristics is illustrative, not exhaustive, and the presence or absence of any one of these factors is not determinative of whether a particular arrangement would be suspect under the anti-kickback statute.

- The company sponsors speaker programs where little or no substantive information is actually presented;
- Alcohol is available or a meal exceeding modest value is provided to the attendees of the program (the concern is heightened when the alcohol is free);
- The program is held at a location that is not conducive to the exchange of educational information (*e.g.,* restaurants or entertainment or sports venues);
- The company sponsors a large number of programs on the same or substantially the same topic or product, especially in situations involving no recent substantive change in relevant information;
- There has been a significant period of time with no new medical or scientific information nor a new FDA-approved or cleared indication for the product;
- HCPs attend programs on the same or substantially the same topics more than once (as either a repeat attendee or as an attendee after being a speaker on the same or substantially the same topic);
- Attendees include individuals who don't have a legitimate business reason

[6] *Code on Interactions with Health Care Professionals,* PhRMA, 7 (June 2020), available at *https://phrma.org/Codes-and-guidelines/Code-on-Interactions-with-Health-Care-Professionals.* A device industry trade group also addresses this topic and interactions with HCPs generally in its code of ethics. See *AdvaMed Code of Ethics,* AdvaMed (July 2020), available at *https://www.advamed.org/resource-center/advamed-code-ethics-2020.*

[7] Amarnath Annapureddy et al., *Association Between Industry Payments to Physicians and Device Selection in ICD Implantation,* 324 *JAMA 17,* 2020, at 1759, 1762–63; William Fleischman et al., *Association between payments from manufacturers of pharmaceuticals to physicians and regional prescribing: cross sectional ecological study,* 354 BMJ i4189, 2016, at 1, 4–7; James P. Orlowski & Leon Wateska, *The effects of pharmaceutical firm enticements on physician prescribing patterns. There's no such thing as a free lunch.,* 102 Chest, 1992, 270.

[8] *OIG Compliance Program Guidance for Pharmaceutical Manufacturers,* 68 FR 23731 (May 5, 2003), available at *https://oig.hhs.gov/authorities/docs/03/050503FRCPGPharmac.pdf.* The guidance is not limited to pharmaceutical manufacturers; it states, ''the compliance program elements and potential risk areas addressed in this compliance program guidance may also have application to manufacturers of other products that may be reimbursed by [F]ederal health care programs, such as medical devices and infant nutritional products.'' Id. at 23742, n.5.

[9] Id. at 23738.

[10] *A Roadmap for New Physicians, Avoiding Medicare and Medicaid Fraud and Abuse,* HHS–OIG, 22 (Nov. 2010), *available at https://oig.hhs.gov/compliance/physician-education/roadmap_web_version.pdf; OIG Compliance Program for Individual and Small Group Physician Practices,* 65 FR 59434 (Oct. 5, 2000), available at *https://oig.hhs.gov/authorities/docs/physician.pdf.*

[11] Id. at 23.

to attend the program, including, for example, friends, significant others, or family members of the speaker or HCP attendee; employees or medical professionals who are members of the speaker's own medical practice; staff of facilities for which the speaker is a medical director; and other individuals with no use for the information;

- The company's sales or marketing business units influence the selection of speakers or the company selects HCP speakers or attendees based on past or expected revenue that the speakers or attendees have or will generate by prescribing or ordering the company's product(s) (*e.g.,* a return on investment analysis is considered in identifying participants);
- The company pays HCP speakers more than fair market value for the speaking service or pays compensation that takes into account the volume or value of past business generated or potential future business generated by the HCPs.

IV. Conclusion

OIG has significant concerns about companies offering or paying remuneration (and HCPs soliciting or receiving remuneration) in connection with speaker programs. Based on our investigations and enforcement actions, this remuneration is often offered or paid to induce (or solicited or received in return for) ordering or prescribing items paid for by Federal health care programs. If the requisite intent is present, both the company and the HCPs may be subject to criminal, civil, and administrative enforcement actions. This Special Fraud Alert is not intended to discourage meaningful HCP training and education. Rather, the purpose of this Special Fraud Alert is to highlight certain inherent risks of remuneration related to speaker programs. Drug and device companies and HCPs should consider the risks when assessing whether to offer, pay, solicit, or receive remuneration related to speaker programs.

We are issuing this alert during the pandemic emergency, which is necessarily curtailing many in-person activities. While companies may have decreased in-person speaker program-related remuneration to HCPs during the pandemic, risks remain whenever payments are offered or made to HCPs who generate Federal health care program business for the company. The risks associated with speaker programs will become more pronounced if companies resume in-person speaker programs or increase speaker program-related remuneration to HCPs. Companies should assess the need for in-person programs given the risks associated with offering or paying related remuneration and consider alternative less-risky means for conveying information to HCPs. HCPs should likewise consider the risks of soliciting or receiving remuneration related to speaker programs given other available means to gather information relevant to providing appropriate treatment for patients. If a company or HCP has questions about a specific speaker program arrangement involving remuneration to referral sources, the OIG Advisory Opinion process remains available. Information about that process may be found at: *https://oig.hhs.gov/faqs/advisory-opinions-faq.asp.*

III. Special Fraud Alert: OIG Alerts Practitioners To Exercise Caution When Entering Into Arrangements With Purported Telemedicine Companies

I. Introduction

The Office of Inspector General (OIG) has conducted dozens of investigations of fraud schemes involving companies that purported to provide telehealth, telemedicine, or telemarketing services (collectively, Telemedicine Companies) and exploited the growing acceptance and use of telehealth. For example, in some of these fraud schemes Telemedicine Companies intentionally paid physicians and nonphysician practitioners (collectively, Practitioners) kickbacks to generate orders or prescriptions for medically unnecessary durable medical equipment, genetic testing, wound care items, or prescription medications, resulting in submissions of fraudulent claims to Medicare, Medicaid, and other Federal health care programs. These fraud schemes vary in design and operation, and they have involved a wide range of different individuals and types of entities, including international and domestic telemarketing call centers, staffing companies, Practitioners, marketers, brokers, and others.

One common element of these schemes is the way Telemedicine Companies have used kickbacks to aggressively recruit and reward Practitioners to further the fraud schemes. Generally, the Telemedicine Companies arrange with Practitioners to order or prescribe medically unnecessary items and services for individuals (referred to here as ''purported patients'') who are solicited and recruited by Telemedicine Companies. In many of these arrangements, Telemedicine Companies pay Practitioners in exchange for ordering or prescribing items or services: (1) for purported patients with whom the Practitioners have limited, if any, interaction; and (2) without regard to medical necessity. Such payments are sometimes described as payment per review, audit, consult, or assessment of medical charts. Telemedicine Companies often tell Practitioners that they do not need to contact the purported patient or that they only need speak to the purported patient by telephone. In addition, Practitioners are not given an opportunity to review the purported patient's real medical records. Furthermore, the Telemedicine Company may direct Practitioners to order or prescribe a preselected item or service, regardless of medical necessity or clinical appropriateness. In many cases, the Telemedicine Company sells the order or prescription generated by Practitioners to other individuals or entities that then fraudulently bill for the unnecessary items and services.

These schemes raise fraud concerns because of the potential for considerable harm to Federal health care programs and their beneficiaries, which may include: (1) an inappropriate increase in costs to Federal health care programs for medically unnecessary items and services and, in some instances, items and services a beneficiary never receives; (2) potential to harm beneficiaries by, for example, providing medically unnecessary care, items that could harm a patient, or improperly delaying needed care; and (3) corruption of medical decision-making.

OIG encourages Practitioners to exercise caution and use heightened scrutiny when entering into arrangements with Telemedicine Companies that have one or more of the suspect characteristics described below. This Special Fraud Alert provides information to help Practitioners identify potentially suspect arrangements with Telemedicine Companies.

II. Multiple Federal Laws Implicated

The schemes described above may implicate multiple Federal laws, including the Federal anti kickback statute. The Federal anti-kickback statute is a criminal law that prohibits knowingly and willfully soliciting or receiving (or offering or paying) any remuneration in return for (or to induce), among other things, referrals for, or orders of, items or services reimbursable by a Federal health care program. One purpose of the Federal anti-kickback statute is to protect patients from improper medical referrals or recommendations by health care professionals and others who may be influenced by financial incentives.

When a party knowingly and willfully pays remuneration to induce or reward referrals of items or services payable by a Federal health care program, the Federal anti-kickback statute is violated. By its terms, the statute ascribes liability to parties on both sides of an impermissible kickback transaction. Practitioner arrangements with Telemedicine Companies may also lead to criminal, civil, or administrative liability under other Federal laws including, for example, OIG's exclusion authority related to kickbacks, the Civil Monetary Penalties Law provision for kickbacks, the criminal health care fraud statute, and the False Claims Act. Practitioners may be personally liable for these types of arrangements, including for submitting or causing the submission of claims if they are involved in ordering or prescribing medically unnecessary items or services.

III. Recent Enforcement Experience

In recent years, OIG and the Department of Justice (DOJ) have investigated numerous criminal, civil, and administrative fraud cases involving kickbacks from Telemedicine Companies to Practitioners who inappropriately ordered or prescribed items or services reimbursable by Federal health care programs in exchange for remuneration. In those cases, Practitioners, Telemedicine Companies, and other participants in schemes have been held civilly, criminally, and administratively liable for: (1) paying or receiving a payment in violation of the Federal anti-kickback statute, (2) causing a submission of claims in violation of the False Claims Act, and/or (3) other Federal criminal laws.

While the facts and circumstances of each case differed, often they involved at least one Practitioner ordering or prescribing items or services for purported patients they never examined or meaningfully assessed to determine the medical necessity of items or services ordered or prescribed. In addition, Telemedicine Companies commonly paid Practitioners a fee that correlated with the volume of federally reimbursable items or services ordered or prescribed by the Practitioners, which was intended to and did incentivize a Practitioner to order medically unnecessary items or services. These types of volume-based fees not only implicate and potentially violate the Federal anti-kickback statute, but they also may corrupt medical decision-making, drive inappropriate utilization, and result in patient harm.

IV. Suspect Characteristics

Based on OIG's and DOJ's enforcement experience, we have developed the below list of suspect characteristics related to Practitioner arrangements with Telemedicine Companies which, taken together or separately, could suggest an arrangement that presents a heightened risk of fraud and abuse. This list is illustrative, not exhaustive, and the presence or absence of any one of these factors is not determinative of whether a particular arrangement with a Telemedicine Company would be grounds for legal sanctions.

- The purported patients for whom the Practitioner orders or prescribes items or services were identified or recruited by the Telemedicine Company, telemarketing company, sales agent, recruiter, call center, health fair, and/or through internet, television, or social media advertising for free or low out-of-pocket cost items or services.
- The Practitioner does not have sufficient contact with or information from the purported patient to meaningfully assess the medical necessity of the items or services ordered or prescribed.
- The Telemedicine Company compensates the Practitioner based on the volume of items or services ordered or prescribed, which may be characterized to the Practitioner as compensation based on the number of purported medical records that the Practitioner reviewed.
- The Telemedicine Company only furnishes items and services to Federal health care program beneficiaries and does not accept insurance from any other payor.
- The Telemedicine Company claims to only furnish items and services to individuals who are not Federal health care program beneficiaries but may in fact bill Federal health care programs.
- The Telemedicine Company only furnishes one product or a single class of products (*e.g.,* durable medical equipment, genetic testing, diabetic supplies, or various prescription creams), potentially restricting a Practitioner's treating options to a predetermined course of treatment.
- The Telemedicine Company does not expect Practitioners (or another Practitioner) to follow up with purported patients nor does it provide Practitioners with the information required to follow up with purported patients (*e.g.,* the Telemedicine Company does not require Practitioners to discuss genetic testing results with each purported patient).

Practitioners who enter into arrangements with Telemedicine Companies in which one or more of these suspect characteristics are present should exercise care and may face criminal, civil, or administrative liability depending on the facts and circumstances. This Special Fraud Alert is not intended to discourage legitimate telehealth arrangements. For example, OIG is aware that many Practitioners have appropriately used telehealth services during the current public health emergency to provide medically necessary care to their patients. However, OIG encourages Practitioners to use heightened scrutiny, exercise caution, and consider the above list of suspect criteria prior to entering into arrangements with Telemedicine Companies. This Special Fraud Alert does not alter any person's obligations under any applicable statutes or regulations, including those governing the billing or submission of Federal health care program claims.

For more information on telehealth-related issues, please visit our website, which includes additional materials relating to the provision of telehealth. If you have information about Practitioners, Telemedicine Companies, or other individuals or entities engaging in any of the activities described above, please contact the OIG Hotline at *https://oig.hhs.gov/fraud/report-fraud* or by phone at 1–800–447–8477 (1–800–HHS–TIPS).

Dated: August 17, 2022.

Gregory D. Demske,

Acting Principal Deputy Inspector General.

[FR Doc. 2022–18063 Filed 8–22–22; 8:45 am]

BILLING CODE 4150–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council, September 07, 2022, 10:00 a.m. to September 08, 2022, 2:00 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 29, 2021, 304543.

The meeting notice is amended to change and adjust the format of the meeting from Regular to Video Assisted Meeting. The meeting is partially closed to the public.

Dated: August 18, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18135 Filed 8–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Advisory Council for Biomedical imaging and Bioengineering.

The meeting will be open to the public as indicated below. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public in accordance with the provisions set forth in section 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 Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 13, 2022.

Open: 12 p.m. to 3 p.m.

Agenda: Report from Institute Director, other Institute Staff and presentations of task group.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David T. George, Ph.D., Associate Director for Research Administration, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 200, Room 239, Bethesda, Maryland 20892, *georged@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nibib.nih.gov/about-nibib/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

Dated: August 18, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18160 Filed 8–22–22; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of this 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/or proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 20–21, 2022.

Open: September 20, 2022, 12 p.m. to 4:30 p.m.

Agenda: Presentation of the NIMH Director's Report and discussion of NIMH programs.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Closed: September 21, 2022, 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Tracy L. Waldeck, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, DHHS, Neuroscience Center, 6001 Executive Boulevard, Bethesda, MD 20892, (301) 480–6833, *tracy.waldeck@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: August 18, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18145 Filed 8–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Early Phase Clinical Trials of Natural Products (NP).

Date: September 30, 2022.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: MARTA V Hamity, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, *marta.hamity@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: August 18, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18162 Filed 8–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, NIH Research Enhancement Award (R15) in Oncological Sciences, September 28, 2022, 9 a.m. to 6 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, which was published in the **Federal Register** on August 11, 2022, 87 FR 49598, Doc 2022–17301.

This meeting is being amended to change the meeting start time from 9 a.m. to 10 a.m. The meeting is closed to the public.

Dated: August 18, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18159 Filed 8–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Institutional Training Grant Review.

Date: September 15, 2022.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Grant (P50) Review.

Date: September 19–20, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; RFA DC 22–001 Translational Review.

Date: September 22, 2022.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trial Review.

Date: September 29, 2022.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Boulevard, Room 8351, Bethesda, MD 20892, (301) 451–6339, *kellya2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 18, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18161 Filed 8–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public via online meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 8–9, 2022.

Closed: September 8, 2022, 1 p.m. to 4 p.m.

Agenda: To review and evaluate the second level of grant applications.

Place: Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892 (Virtual Meeting).

Open: September 9, 2022, 12 p.m. to 3 p.m.

Agenda: Update and discussion of current and planned Fogarty International Center activities.

Place: Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892 (Virtual Meeting).

Meeting Access: https://www.fic.nih.gov/About/Advisory/Pages/default.aspx.

Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International

Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, 301–496–1415, *kristen.weymouth@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.fic.nih.gov/About/Advisory/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: August 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18119 Filed 8–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2267]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before November 21, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2267, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Racine County, Wisconsin and Incorporated Areas Project: 12–05–2816S Preliminary Date: December 23, 2021	
City of Burlington	City Hall, 300 North Pine Street, Burlington, WI 53105.
City of Racine	City Hall, 730 Washington Avenue, Racine, WI 53403.
Unincorporated Areas of Racine County	Ives Grove Office Complex, 14200 Washington Avenue, Sturtevant, WI 53177.
Village of Caledonia	Caledonia Village Hall, 5043 Chester Lane, Racine, WI 53402.
Village of Mount Pleasant	Village Hall, 8811 Campus Drive, Mount Pleasant, WI 53406.
Village of North Bay	North Bay Village Hall, 3615 Hennepin Place, Racine, WI 53402.
Village of Rochester	Village Hall, 300 West Spring Street, Rochester, WI 53167.
Village of Waterford	Village Hall, 123 North River Street, Waterford, WI 53185.
Village of Wind Point	Wind Point Village Office, 215 East Four Mile Road, Racine, WI 53402.

[FR Doc. 2022–18126 Filed 8–22–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2264]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before November 21, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2264, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Sacramento County, California and Incorporated Areas Project: 20–09–0040S Preliminary Date: March 31, 2022	
City of Citrus Heights	General Services Department Engineering Division, 6360 Fountain Square Drive, Citrus Heights, CA 95621.
City of Folsom	Public Works Department, 50 Natoma Street, Folsom, CA 95630.
City of Sacramento	Department of Utilities Engineering & Water Resources Division, 1395 35th Avenue, Sacramento, CA 95822.
Unincorporated Areas of Sacramento County	Sacramento County Department of Water Resources, 827 7th Street, Suite 301, Sacramento, CA 95814.
Hanson County, South Dakota and Incorporated Areas Project: 18–08–0012S Preliminary Date: March 25, 2022	
City of Alexandria	City Hall, 421 Main Street, Alexandria, SD 57311.
City of Emery	City Hall, 560 South Dakota Highway 262, Emery, SD 57332.
Town of Fulton	City Hall, 230 North Main Avenue, Fulton, SD 57340.
Unincorporated Areas of Hanson County	Hanson County Courthouse, 720 5th Street, Alexandria, SD 57311.
Marshall County, South Dakota and Incorporated Areas Project: 18–08–0041S Preliminary Date: September 1, 2020	
Sisseton Wahpeton Oyate Tribe	Sisseton Wahpeton Oyate Emergency Management Office, 12554 BIA Highway 711, Agency Village, SD 57262.
Town of Langford	City Finance Office, 306 Main Street, Langford, SD 57454.
Town of Veblen	Marshall County Courthouse, 911 Vander Horck Street, Britton, SD 57430.
Unincorporated Areas of Marshall County	Marshall County Courthouse, 911 Vander Horck Street, Britton, SD 57430.

[FR Doc. 2022–18125 Filed 8–22–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2262]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before November 21, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2262, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Grafton County, New Hampshire (All Jurisdictions) Project: 18–01–0026S Preliminary Date: December 13, 2021	
Town of Alexandria	Town Office, 47 Washburn Road, Alexandria, NH 03222.
Town of Ashland	Town Office, 20 Highland Street, Ashland, NH 03217.
Town of Benton	Town Hall, 221 Coventry Road, Benton, NH 03785.
Town of Bethlehem	Planning Board Office, 2155 Main Street, Bethlehem, NH 03574.
Town of Bridgewater	Town Office, 297 Mayhew Turnpike, Bridgewater, NH 03222.
Town of Bristol	Town Office, 5 School Street, Bristol, NH 03222.
Town of Campton	Town Office, 12 Gearty Way, Campton, NH 03223.
Town of Canaan	Town Office, 1169 U.S. Route 4, Canaan, NH 03741.
Town of Dorchester	Town Office, 1021 New Hampshire Route 118, Dorchester, NH 03266.
Town of Ellsworth	Town Office, 3 Ellsworth Pond Road, Ellsworth, NH 03223.
Town of Franconia	Town Hall, 421 Main Street, Franconia, NH 03580.
Town of Grafton	Town Office, 7 Library Road, Grafton, NH 03240.
Town of Groton	Town Office, 754 North Groton Road, Groton, NH 03241.
Town of Hebron	Select Board Office, 7 School Street, Hebron, NH 03241.
Town of Holderness	Town Hall, 1089 U.S. Route 3, Holderness, NH 03245.
Town of Lincoln	Town Hall, 148 Main Street, Lincoln, NH 03251.
Town of Orange	Town Office, 8 Town House Road, Orange, NH 03741.
Town of Orford	Town Office, 2529 Route 25A, Orford, NH 03777.
Town of Piermont	Municipal Offices, 130 Route 10, Piermont, NH 03779.
Town of Plymouth	Town Office, 6 Post Office Square, Plymouth, NH 03264.
Town of Rumney	Town Office, 79 Depot Street, Rumney, NH 03266.
Town of Thornton	Town Office, 16 Merrill Access Road, Thornton, NH 03285.
Town of Warren	Selectmen's Office, 8 Water Street, Warren, NH 03279.
Town of Waterville Valley	Rust Municipal Building, 14 TAC Lane, Waterville Valley, NH 03215.
Town of Wentworth	Town Office, 7 Atwell Hill Road, Wentworth, NH 03282.
Town of Woodstock	Town Office, 165 Lost River Road, Woodstock, NH 03262.
Ross County, Ohio and Incorporated Areas Project: 13–05–4987S Preliminary Date: April 29, 2022	
City of Chillicothe	City Administration Building, 35 South Paint Street, Chillicothe, OH 45601.
Unincorporated Areas of Ross County	Ross County Building Department, 15 North Paint Street, Chillicothe, OH 45601.

[FR Doc. 2022–18127 Filed 8–22–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2263]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and

where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before November 21, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2263, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Grant County, North Dakota and Incorporated Areas Project: 21–08–0007S Preliminary Date: April 8, 2022	
City of Carson	Nodak Mutual Insurance Building, 100 Main Street South, Carson, ND 58529.
City of Leith	Grant County Courthouse, 106 2nd Avenue Northeast, Carson, ND 58529.
City of New Leipzig	City Hall, 19 1st Street East, New Leipzig, ND 58562.
Unincorporated Areas of Grant County	Grant County Courthouse, 106 2nd Avenue Northeast, Carson, ND 58529.

[FR Doc. 2022–18128 Filed 8–22–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2265]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before November 21, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2265, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Mitchell County, Kansas and Incorporated Areas Project: 20–07–0025S Preliminary Date: April 29, 2022	
City of Beloit	Municipal Building, 119 North Hersey Avenue, Beloit, KS 67420.
City of Cawker City	City Hall, 804 Locust Street, Cawker City, KS 67430.
City of Glen Elder	City Hall, 213 South Market Street, Glen Elder, KS 67446.
City of Hunter	City Hall, 1776 1st Street, Hunter, KS 67452.
City of Scottsville	Mitchell County Emergency Management Office, 114 South Campbell Avenue, Beloit, KS 67420.
City of Simpson	Simpson City Hall, 107 North Elkhorn Street, Beloit, KS 67420.
Unincorporated Areas of Mitchell County	Mitchell County Emergency Management Office, 114 South Campbell Avenue, Beloit, KS 67420.

[FR Doc. 2022–18124 Filed 8–22–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0026]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Immigrant Petition by Standalone Investor; Immigrant Petition by Regional Center Investor

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 24, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0026 in the body of the letter, the agency name and Docket ID USCIS–2007–0021. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2007–0021.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2022, President Biden signed the EB–5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) into law, which revised INA 203(b)(5). The law immediately repealed the former Regional Center (RC) Program statute at Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993, Public Law 102–395, 106 Stat. 1828, § 610(b).

The law also reauthorized a substantially reformed EB–5 Regional Center (RC) Program which became effective on May 14, 2022. Though USCIS will continue to provide similar services for the newly reformed RC program as it did under the former RC program (such as initial designations, petition adjudications, etc.), the newly authorized RC program has a different legal framework and requirements from the previously authorized program. Consequently, the current form I–526, Immigrant Petition by Alien Entrepreneur, associated with the EB–5 Program, would not gather sufficient information to adjudicate investor petitions under the new program.

Accordingly, USCIS split the former Form I–526, Immigrant Petition by Alien Entrepreneur, into two versions: Form I–526, Immigrant Petition by Standalone Investor, and Form I–526E, Immigrant Petition by Regional Center Investor. The revision of Form I–526 resulted in creating two separate forms to better streamline the adjudication process for Standalone Investors and Regional Center Investors; specifically, Form I–526 will be used by a Standalone Investor and Form I–526E will be used by an investor pooling their investment with one or more qualified immigrants under the new EB–5 Regional Center Program to petition for status as an immigrant to the United States under section 203(b)(5) of the Immigration Nationality Act (INA), as amended. USCIS began accepting the new Form I–526 and Form I–526E starting on July 12, 2022. USCIS will continue to adjudicate all Forms I–526 filed before March 15, 2022 (the date of the enactment of the EB–5 Reform and Integrity Act of 2022), according to the applicable eligibility requirements at the time the petition was filed.

On June 24, 2022, the U.S. District Court for the Northern District of California preliminarily enjoined USCIS from ''treating as deauthorized the previously designated regional centers'' including ''processing new I–526 petitions from immigrants investing through previously authorized regional centers . . . just as the agency would do for a newly approved regional center.'' *Behring* v. *Mayorkas,* Order Granting Plaintiff's Motion for a Preliminary Injunction, Case No. 22–cv–02487–VC (N.D. Cal. Jun 24, 2022). As USCIS is working to implement the Court Order, if it determines changes to the Forms I–526 and I–526E are necessary, it will pursue such changes through either this form revision process or other appropriate mechanism.

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2007–0021 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Standalone Investor; Immigrant Petition by Regional Center Investor.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–526; I–526E; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The form I–526 is used by a standalone investor to petition USCIS for status as an immigrant to the United States under section 203(b)(5) of the Immigration and Nationality Act (INA), as amended. The form I–526E is used by an investor pooling their investment with one or more qualified immigrants participating in the Regional Center Program to petition USCIS for status as an immigrant to the United Stated under section 203(b)(5) of the Immigration Nationality Act (INA), as amended. A regional center investor may also use Form I–526E to report any amendments necessary to establish ongoing eligibility if the regional center, new commercial enterprise, or job-creating entity in which the investor has invested is terminated or debarred from participation in the Regional Center Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–526 is 504 and the estimated hour burden per response is 1 hour and 50 minutes; the estimated total number of respondents for the information collection I–526E is 3,980 and the estimated hour burden per response is 1 hour and 50 minutes; and the estimated total number of respondents providing biometrics for the information collection I–526E is 3,980 and the estimated hour burden per response is 1 hour and 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 12,860 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $4,932,400.

Dated: August 16, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–18131 Filed 8–22–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–36]

30-Day Notice of Proposed Information Collection: Low-Income Housing Tax Credit (LIHTC) Data Collection; OMB Control No.: 2528–0320

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 22, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 25, 2022 at 87 FR 17098.

A. Overview of Information Collection

Title of Information Collection: Low-Income Housing Tax Credit (LIHTC) Data Collection.

OMB Approval Number: 2528–0320.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–52695; HUD–52697.

Description of the need for the information and proposed use: Section 2835(d) of the Housing and Economic Recovery Act, or HERA, (Public Law 110–289, approved July 30, 2008) amends Title I of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) to add a new section 36 (codified as 42 U.S.C. 1437z-8) that requires each state agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (low-income housing tax credits or LIHTC) to furnish HUD, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the U.S. Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency.

New section 36 requires HUD to establish standards and definitions for the information to be collected by state agencies and to provide states with technical assistance in establishing systems to compile and submit such information and, in coordination with other federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Tenant Data Form HUD–52697	61	1.00	60.00	40.00	2,440	$47.60	$116,144
Project Data Form HUD–52695	61	1.00	60.00	8.00	488	47.60	23,229

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	122	.....	.....	48.00	2,928	.....	139,373

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Data Officer.

[FR Doc. 2022–18163 Filed 8–22–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2022–0109; FXES11140400000–223–FF04EN1000]

Programmatic Enhancement of Survival Permit for a Safe Harbor Agreement and Candidate Conservation Agreement With Assurances for Aquatic Species in North Carolina; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from the North Carolina Wildlife Resources Commission (applicant, NCWRC) for an enhancement of survival permit for take of aquatic species in North Carolina. The applicant also submitted a combined proposed programmatic safe harbor agreement (SHA) and candidate conservation agreement with assurances (CCAA) in support of the application. The Service has prepared an environmental action statement and low-effect screening form, both of which are also available for public review. We invite the public and local, State, Tribal, and Federal agencies to comment on these documents.

DATES: We must receive your written comments on or before September 22, 2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents at *https://www.regulations.gov* in Docket No. FWS–R4–ES–2022–0109.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2022–0109.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2022–0109; U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Jason Mays, by telephone at 828–747–2394 or via email at *jason_mays@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), have received an application from the North Carolina Wildlife Resources Commission (applicant, NCWRC) for an enhancement of survival permit for take of aquatic species in North Carolina. The applicant also submitted a combined proposed programmatic safe harbor agreement (SHA) and candidate conservation agreement with assurances (CCAA) (agreement) in support of the application. The applicant intends to implement the agreement to actively manage the covered species to benefit the recovery of federally listed species and to prevent the need to list candidate species within the boundaries of State of North Carolina. The Service has made a preliminary determination that the proposed agreement qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Covered Species

The Service and the applicant have mutually agreed that the following 21 aquatic species (covered species) will benefit from the implementation of management activities on private lands enrolled by NCWRC as part of the agreement.

Common name	Scientific name	Status (endangered or threatened)	Where listed
Fishes			
Chub, Spotfin	*Erimonax monachus*	Threatened	Wherever found, except where listed as an experimental population.
Floater, Brook	*Alasmidonta varicosa*	N/A	N/A.
Logperch, Roanoke	*Percina rex*	Endangered	Wherever found.
Madtom, Carolina	*Noturus furiosus*	Endangered	Wherever found.
Madtom, orangefin	*Noturus gilberti*	N/A	N/A.
Redhorse, robust	*Moxostoma robustum*	N/A	N/A.
Shiner, Cape Fear	*Notropis mekistocholas*	Endangered	Wherever found.
Sturgeon, lake	*Acipenser fulvescens*	N/A	N/A.
Clams			
Clubshell, Tennessee	*Pleurobema oviforme*	Under Review	N/A.
Elktoe, Appalachian	*Alasmidonta raveneliana*	Endangered	Wherever found.
Floater, green	*Lasmigona subviridis*	Under Review	N/A.
Heelsplitter, Carolina	*Lasmigona decorata*	Endangered	Wherever found.
Lance, yellow	*Elliptio lanceolata*	Threatened	Wherever found.
Longsolid	*Fusconaia subrotunda*	Proposed Threatened	Wherever found.
Moccasinshell, Cumberland	*Medionidus conradicus*	Under Review	N/A.
Pigtoe, Atlantic	*Fusconaia masoni*	Threatened	Wherever found.
Spinymussel, James	*Parvaspina collina*	Endangered	Wherever found.
Spinymussel, Tar River	*Parvaspina steinstansana*	Endangered	Wherever found.
Wedgemussel, dwarf	*Alasmidonta heterodon*	Endangered	Wherever found.
Snails			
Ramshorn, magnificent	*Planorbella magnifica*	Candidate	N/A.
Amphibians			
Waterdog, Neuse River	*Necturus lewisi*	Threatened	Wherever found.

The covered species that are already listed as endangered or threatened under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), would be eligible for the SHA component of the agreement, while species currently not listed, including species considered to be candidate and proposed species at the time of its issuance, would be eligible for the CCAA component of the agreement. NCWRC is requesting a permit that would be valid for a period of 50 years from the date of permit issuance, with the possibility of extension if requested by the applicant in accordance with the Service's applicable implementing regulations. We request public comment on the application, which includes the agreement, and on the Service's preliminary determination that this agreement qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in our regulations as an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, including, but not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided that the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32.

Under an SHA, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs and the associated certificates of inclusion issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property or increase the numbers or distribution of listed species already on their property. Enrolled landowners may make lawful use of the enrolled property during the permit term and may incidentally take the listed species named on the permit.

Application requirements and issuance criteria for permits associated with SHAs are found at 50 CFR 17.22(c) and 17.32(c). As provided in the Service's final Safe Harbor Policy (64 FR 32717; June 17, 1999), SHAs provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that the property is returned to the originally agreed-upon baseline

conditions existing at the time of enrollment. Private landowners may voluntarily terminate an SHA at any time, in accordance with 50 CFR 13.26. If this occurs, landowners must relinquish the associated certificate of inclusion authorizing incidental take pursuant to section 10(a)(1)(A) of the ESA.

Under a CCAA, participating property owners voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species that may warrant listing under the ESA. CCAAs encourage private and other non-Federal property owners to implement conservation efforts for candidate and at-risk species by assuring that they will not be subjected to increased property use restrictions should the species become listed as threatened or endangered under the ESA in the future. As provided in the Service's Candidate Conservation Agreement with Assurances Policy (81 FR 95164; December 27, 2016), CCAAs provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that the property is returned to the originally agreed-upon existing conditions present at the time of enrollment. Application requirements and issuance criteria for enhancement of survival permits through CCAAs are found in 50 CFR 17.22(d) and 17.32(d).

Proposed Safe Harbor Agreement

The private or State lands enrolled in the proposed SHA will consist of those properties identified by the applicant and approved by the Service within the State of North Carolina where the conditions for an agreement with a landowner (landowner agreement) meet the needs for management activities for one or more of the covered species already listed as endangered or threatened by the ESA. Lands that are suitable for inclusion must be located within the species' native range but where the species is not currently found, and must contain suitable habitat conditions for the species. The intention of the SHA is for the applicant to reintroduce and manage populations of these species to benefit their recovery, but to do so where their re-establishment does not interfere with the management of existing populations. As such, the baseline assigned to these properties at enrollment will be zero, because none of the covered species would be present. Under the landowner agreement, the cooperator will agree to (1) provide for habitat enhancement activities on their property; (2) allow access by the applicant and the Service to conduct management activities; (3) and only engage in take of the covered species that is incidental to otherwise lawful activities. The Service seeks comment on NCWRC's request for issuance of a permit with a 50-year term that allows the applicant to find and enroll cooperators for the benefit of the covered species.

Proposed Candidate Conservation Agreement With Assurances

The private or State lands covered under the proposed CCAA will consist of those areas identified by the applicant, and approved by the Service, within the State of North Carolina where the conditions for an agreement with a private landowner meet the needs for species management activities for one or more of the covered species that are not already listed as endangered or threatened under the ESA. Lands that are suitable for inclusion must have a willing landowner (cooperator) whose property contains suitable habitat conditions for the species, within the native range of the species, but where the species is not currently found. The intention of the CCAA is for the applicant to reintroduce and manage these species to benefit their long-term conservation and possibly preclude or remove the need to list the species under the ESA, but to do so where re-establishment does not interfere with the management of existing populations. As such, the existing conditions on these properties will be zero, as the species would not be present on the property. Under the landowner agreement, the cooperator will agree to (1) provide for habitat enhancement activities on their property; (2) allow access by the applicant and the Service to conduct management activities; and (3) only engage in take of the covered species that is incidental to otherwise lawful activities. The Service seeks comment on NCWRC's request for issuance of a permit with a 50-year term that allows the applicant to find and enroll cooperators for the benefit of the covered species.

National Environmental Policy Act Compliance

The issuance of this permit is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the proposed permit issuance is eligible for categorical exclusion under NEPA, based on the following criteria: (1) Implementation of the SHA and CCAA would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA and CCAA would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the SHA and CCAA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative adverse effects to environmental values or resources which would be considered significant. To make this determination, we used our EAS and low-effect screening form, which are also available for public review.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We also will conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(A) of the ESA have been met. If met, the Service will issue a permit to the applicant for the incidental take of the covered species.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46).

Janet Mizzi,

Field Supervisor, Asheville Field Office.

[FR Doc. 2022–18137 Filed 8–22–22; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1578–1579 (Final)]

Lemon Juice From Brazil and South Africa, Scheduling of the Final Phase of Anti-Dumping Duty Investigations

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1578–1579 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of lemon juice from Brazil and South Africa, provided for in subheadings 2009.31.40, 2009.31.60, and 2009.39.60 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be sold at less-than-fair-value.

DATES: July 28, 2022.

FOR FURTHER INFORMATION CONTACT: Stamen Borisson (202–205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as certain lemon juice (1) with or without addition of preservatives, sugar, or other sweeteners; (2) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (3) regardless of the grade, horticulture method (*e.g.,*organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (4) regardless of the U.S. Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (2) beverage products, such as lemonade, that contain 20 percent or less lemon juice as an ingredient by actual volume. ''Retail-sized containers'' are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding, nutritional facts listed, etc.) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to these investigations. Only the subject lemon juice component of such blended merchandise is covered by the scope of these investigations. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to these investigations is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Background.—The final phase of these investigations is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of affirmative preliminary determinations by Commerce that imports of lemon juice from Brazil and South Africa are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on December 30, 2021, by Ventura Coastal LLC, Ventura, California.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 27, 2022, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 11, 2022. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should

be filed in writing with the Secretary to the Commission on or before October 5, 2022. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigations, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing.

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference at 9:30 a.m. on October 6, 2022, if held. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is October 4, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 18, 2022. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 18, 2022. On November 2, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 4, 2022, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.
Issued: August 17, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–18107 Filed 8–22–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0010]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application To Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms—ATF Form 5320.20

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit 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 collection OMB 1140–0010 (Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms—ATF Form 5320.20) is being revised due to an increase in the total respondents, responses, and burden hours since the last renewal in 2019. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until October 24, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Connor Brandt, National Firearms Act Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *nfaombcomments@atf.gov,* or by telephone at 304–616–4594.

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;
- Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form number: ATF Form 5320.20.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): Business or other for-profit, Federal Government, State Local or Tribal Government.

Abstract: The Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA)—ATF Form 5320.20 is used by persons other than a qualified Federal firearms licensee, to request approval to transport interstate or temporarily export certain NFA firearms.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 20,000 respondents will respond to this collection once annually, and it will take each respondent approximately 20 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,667 hours, which is equal to 20,000 (total respondents) * 1 (# of response per respondent) * .333333 (20 minutes or the time taken to prepare each response).

7. *An Explanation of the Change in Estimates:* Due to more filings of this application, both the total respondents and responses to this collection have increased from 17,000 in 2019 to 20,000 in 2022. Consequently, the total burden hours have also increased from 5,610 to 6,667 hours since the last renewal.

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E–206, Washington, DC 20530.

Dated: August 18, 2022,

Robert J. Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–18120 Filed 8–22–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1804]

Notice of Charter Renewal of the Global Justice Information Sharing Initiative Advisory Committee (GAC)

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of charter renewal.

SUMMARY: Notice that the charter of the Global Justice Information Sharing Initiative Advisory Committee (GAC) has been renewed.

FOR FURTHER INFORMATION CONTACT: Visit the website for the Advisory Committee at *https://bja.ojp.gov/program/it/global* or contact David P. Lewis, Designated Federal Official (DFO), BJA, by telephone at (202) 616–7829 (not a toll-free number) or via email: *david.p.lewis@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This **Federal Register** Notice notifies the public that the Charter of the Global Justice Information Sharing Initiative Advisory Committee (GAC) has been renewed in accordance with the Federal Advisory Committee Act, Section 14(a)(1). The renewal Charter was signed by U.S. Deputy Attorney General Lisa O. Monaco on July 9, 2022. One can obtain a copy of the renewal Charter by accessing the Global Justice Information Sharing Initiative Advisory Committee (GAC)'s website at *https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/fy22globalcharter_signed_071922.pdf.*

David P. Lewis,

Designated Federal Official for GAC, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 2022–18109 Filed 8–22–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Pharmacy Billing Requirements

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-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 September 22, 2022.

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: Standardized Pharmacy Billing Data Requirements are the electronic billing format used by pharmacies throughout the country to request payment for prescription drugs through data clearinghouses. They identify the provider, claimant, prescribing physician, drug by National Drug Code number, prescription volume and charge. Similar data elements are required to process paper-based pharmacy bills. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 17, 2022 (87 FR 22951).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3)

years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Pharmacy Billing Requirements.

OMB Control Number: 1240–0050.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 874,414.

Total Estimated Number of Responses: 874,414.

Total Estimated Annual Time Burden: 14,481 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–18108 Filed 8–22–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Cyberinfrastructure (25150).

Date and Time: September 19, 2022; 10:00 a.m.–5:00 p.m.; September 20, 2022; 10:00 a.m.–5:00 p.m.

Place: Virtual Meeting, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

This meeting will be held virtually. The final meeting agenda and instructions to register will be posted on the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

Type of Meeting: Open.

Contact Person: Dr. Manish Parashar, CISE, Office of Advanced Cyberinfrastructure, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–2274.

Minutes: May be obtained from Christine Cristy, CISE, Office of Advanced Cyberinfrastructure, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; *CChristy@nsf.gov* and will be posted within 90-days after the meeting end date to the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities in the OAC community. To provide advice to the Director/NSF on issues related to long-range planning.

Agenda: Updates on NSF wide OAC activities.

Dated: August 18, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–18140 Filed 8–22–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Site visit review of Platform for the Two-Dimensional Crystal Consortium, a Materials Innovation Platform (2DCC–MIP), (DMR) (#1203).

Date and Time: September 14, 2022; 9:00 a.m.–6:00 p.m.; September 15, 2022; 9:00 a.m.–4:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 (Virtual).

Type of Meeting: Part Open.

Contact Person: Z. Charles Ying, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone (703) 292–8428.

Purpose of Meeting: Virtual site visit to provide advice and recommendations concerning further support of the 2DCC–MIP at Pennsylvania State University.

Agenda

Wednesday, September 14, 2022

9:00 a.m.–10:00 a.m. Closed—Executive Session

10:00 a.m.–11:45 a.m. Open—Review of PARADIM MIP

11:45 a.m.–6:00 p.m. Closed—Executive Session

Thursday, September 15, 2022

9:00 a.m.–4:00 p.m. Closed—Executive Session

Reason for Closing: Topics to be discussed and evaluated during the virtual site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C.552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–18111 Filed 8–22–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0226]

Information Collection: Disposal of High-Level Radioactive Waste in Geologic Repositories

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Disposal of High-Level Radioactive Waste in Geologic Repositories.''

DATES: Submit comments by September 22, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0226 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0226.
- *NRC's Agencywide Documents Access and Management System*

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The final supporting statement for part 60 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Disposal of High-Level Radioactive Wastes in Geologic Repositories'' (3150–0127) is available in ADAMS under Accession No. ML22186A216.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Disposal of High-Level Radioactive Waste in Geologic Repositories.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 6, 2022 (87 FR 19985).

1. *The title of the information collection:* Disposal of High-Level Radioactive Waste in Geologic Repositories.

2. *OMB approval number:* 3150–0127.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* The information need only be submitted one time.

6. *Who will be required or asked to respond:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, which is regulated under 10 CFR part 63).

7. *The estimated number of annual responses:* 6.

8. *The estimated number of annual respondents:* 6.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 726 hours (121 hours per response).

10. *Abstract:* 10 CFR part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site, which is regulated under 10 CFR part 63). States and Indian Tribes are required to submit information regarding requests for consultation with the NRC and participation in the review of a site characterization plan and/or license application, but only if they wish to obtain NRC consultation services and/or participate in the reviews. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. The NRC anticipates conducting a public rulemaking to revise portions of 10 CFR part 60 in the future. If, as part of this rulemaking, revisions are made affecting the information collection requirements, the NRC will follow OMB requirements for obtaining approval for any revised information collection requirements. [Note: All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR part 63 and were approved by OMB under control number 3150–0199. The Yucca Mountain site is regulated under 10 CFR part 63 (66 FR 55792, November 2, 2001).]

Dated: August 17, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–18075 Filed 8–22–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–98 and CP2022–102]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 25, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. Docket No(s).: MC2022–98 and CP2022–102; *Filing Title:* USPS Request to Add Priority Mail Contract 756 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 17, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr *Comments Due:* August 25, 2022.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2022–18152 Filed 8–22–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95526; File No. SR–NYSEARCA–2022–51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Thrivent Small-Mid Cap ESG ETF Under NYSE Arca Rule 8.601–E

August 17, 2022.

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 August 5, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Thrivent Small-Mid Cap ESG ETF under NYSE Arca Rule 8.601–E. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[4] Commentary .01 to Rule 8.601–E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (''Shares'') as Active

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95). Rule 8.601–E(c)(1) provides that ''[t]he term ''Active Proxy Portfolio Share'' means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.'' Rule 8.601–E(c)(2) provides that ''[t]he term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.'' Rule 8.601–E(c)(3) provides that ''[t]he term ''Proxy Portfolio'' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.'' Rule 8.601–E(c)(4) provides that the term ''Custom Basket'' means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares.

Proxy Portfolio Shares of the Thrivent Small-Mid Cap ESG ETF (the ''Fund'') under Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E [5] and for which a ''Disclosed Portfolio'' is required to be disseminated at least once daily,[6] the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the ''1940 Act'').[7] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares. As set forth in NYSE Arca Rule 8.601–E(d)(2)(B)(ii), for Active Proxy Portfolio Shares using a Custom Basket, each Business Day,[8] before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34–E (a)), the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

The Commission has previously approved [9] and noticed for immediate effectiveness [10] the listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.

The Shares of the Fund will be issued by the Thrivent ETF Trust (the ''Trust''), which is organized a Massachusetts Business Trust and registered with the Commission as an open-end management investment company.[11] Thrivent Asset Management, LLC will be the investment adviser to the Fund (the ''Adviser''). State Street Bank and Trust Company (''State Street'') will serve as the Fund's transfer agent. State Street will serve as the Fund's custodian. ALPS Distributors, Inc. will act as the distributor (the ''Distributor'') for the Fund.

Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. Any person related to the

[5] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca-2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. *See* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[6] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[7] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information (''SAI''), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*.

[8] ''Business Day'' is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by Section 22(e) of the 1940 Act.

[9] *See* Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601–E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR–NYSEArca–2019–96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601–E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR–NYSEArca–2019–92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601–E); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR–NYSEArca–2020–51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E).

[10] *See* Securities Exchange Act Release Nos. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (NYSEArca–2021–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares); and 92958 (September 13, 2021), 86 FR 51933 (September 17, 2021) (NYSEArca–2021–77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares).

[11] The Trust is registered under the 1940 Act. On August 4, 2022, the Trust filed an amended registration statement on Form N–1A under the 1940 Act relating to the Fund (File No. 333–261454) (the ''Registration Statement''). The Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15288), dated February 9, 2022 (the ''Application''). *See* Investment Company Act Release No. 34345 (July 27, 2021). On March 15, 2022, the Commission issued an order (the ''Exemptive Order'') under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34534, March 15, 2022). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. *See e.g.,* note 12, *infra*. The description of the operation of the Fund herein is based, in part, on the Registration Statement, the Application and the Exemptive Order. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or has access to non-public information regarding the Investment Company's Actual Portfolio, Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[12] Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

The Adviser is not registered as a broker-dealer but is affiliated with broker-dealers. The Adviser has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliates regarding access to information concerning the composition of and/or changes to the Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

In the event (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a ''fire wall'' with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Any person related to the Adviser or the Fund who makes decisions pertaining to the Fund's Actual Portfolio, the Proxy Portfolio, or Custom Basket, as applicable, or has access to non-public information regarding the Fund's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto.

In addition, any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

Description of the Fund

According to the Registration Statement, the Fund will generate a Proxy Portfolio that will be designed to closely track the daily performance of the Fund but will not be the Fund's Actual Portfolio. The Proxy Portfolio is comprised of (1) some but not all of the Fund's actual holdings and will include only certain securities that trade on a national securities exchange contemporaneously with the Fund's Shares, and (2) cash and cash equivalents. The Fund will publish on its website the Proxy Portfolio before the commencement of trading of the Fund's Shares on each Business Day. In addition to the Proxy Portfolio, the Fund will disclose daily the percentage weight overlap between the holdings of the Proxy Portfolio and the Actual Portfolio that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day (''Proxy Overlap'') and the standard deviation over the past three months of the daily proxy spread (*i.e.,* the difference, in percentage terms, between the Proxy Portfolio per share NAV and that of the Actual Portfolio) (''Tracking Error''). Daily disclosure of the Proxy Portfolio, the Proxy Overlap, the Tracking Error and the other related proxy portfolio information is designed to ensure that investors can purchase and sell Fund shares in the secondary market at prices that are at or close to the underlying NAV per share of the Fund by enabling Authorized Participants and other market participants to accurately assess the profitability of arbitrage trades in Shares of the Fund.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be

[12] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

consistent with all requirements in the Application and Exemptive Order.[13] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek long-term capital growth. Under normal market conditions, the Fund will invest at least 80% of its net assets (including the amount of any borrowings for investment purposes) in securities of small and mid-sized companies that are listed or traded on a national securities exchange and that the Adviser believes have sustainable long-term business models and a demonstrated commitment to environmental, social and/or corporate governance (''ESG'') policies, practices or outcomes.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601–E. The Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.[14] The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

Creations and Redemptions of Shares

According to the Registration Statement, Shares of the Fund may be acquired or redeemed directly from the Fund only in specified minimum size ''Creation Units'' as defined below or multiples thereof. The Fund will offer and issue Shares at the applicable NAV to broker-dealers and other financial intermediaries who are participants in the National Securities Clearing Corporation (''NSCC'') and who have signed an Authorized Participant Agreement with the Distributor (each, an ''Authorized Participant''), and accepted by State Street, only in aggregations of a specified number of Shares (''Creation Units''), in exchange for a basket of securities and/or instruments (the ''Deposit Securities''), together with a deposit of a specified cash payment (the ''Cash Component''). The NAV of the Fund's Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. Eastern Time (''E.T.''). A Creation Unit will consist of at least 10,000 Shares.

In certain circumstances, the Fund may issue Creation Units solely in exchange for a specified all-cash payment (''Cash Deposit''). Shares of the Fund are likewise redeemable by the Fund only in Creation Units, generally in exchange for a basket of securities and instruments (''Redemption Securities''), together with a Cash Component. The names and quantities of the securities and instruments that constitute the Deposit Securities and Redemption Securities are generally the same as the Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or partially on a cash basis. In addition, the Fund may determine to use baskets that differ from the Proxy Portfolio in that they include instruments that are not in the Proxy Portfolio, or are included in the Proxy Portfolio but in different weightings. As with the offer and sale of Creation Units, the Fund may, in certain circumstances, redeem Creation Units in exchange for a specified all-cash payment.

In order to initiate a creation order for a Creation Unit, an Authorized Participant must submit an irrevocable order to purchase Shares in proper form to State Street by the close of regular trading on the NYSE, typically 4:00 p.m. E.T. on a Business Day for creation of Creation Units to be effected based on the NAV of Shares of the Fund on that Business Day. The date on which an order to create Creation Units (or an order to redeem Creation Units, as discussed below) is placed is referred to as the ''Transmittal Date.'' Orders must be transmitted by an Authorized Participant via the electronic order entry system, by telephone or other transmission method acceptable to State Street and the Distributor pursuant to procedures set forth in the Authorized Participant Agreement.

Fund Shares may be redeemed only in Creation Units at the NAV next determined after receipt of a redemption request in proper form and only on a Business Day. The redemption proceeds for a Creation Unit will generally consist of securities represented in the Proxy Portfolio or a Custom Basket (such securities, ''Fund Security'' or ''Fund Securities'') plus cash in an amount equal to the difference between the NAV of the Creation Unit being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, minus any fees. The Fund may substitute a ''cash-in-lieu'' amount to replace any Fund Security in certain limited circumstances. The amount of cash paid out in such cases will be equivalent to the value of the instrument listed as a Fund Security. In the event that the Fund Securities have a value greater than the NAV of the Creation Unit, a compensating cash payment equal to the difference will be included in the Cash Component required to be delivered by an Authorized Participant. In order to initiate a redemption order for a Creation Unit to be effected based on the NAV of Shares of the Fund on that Business Day, an Authorized Participant must submit an irrevocable order to redeem the Creation Unit in proper form to State Street by the close of regular trading on the NYSE, typically 4:00 p.m. E.T. on that Business Day.

Availability of Information

The Fund's website (*www.thriventfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include on a daily basis, per Share of the Fund, the prior Business Day's NAV, the prior Business Day's ''Closing Price'' or ''Bid/Ask Price'' [15] and a

[13] Pursuant to the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and Exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). For purposes of the application, exchange-traded futures are U.S. listed futures contracts where the futures contract's reference asset is an asset that the Fund could invest in directly, or in the case of an index future, is based on an index of a type of asset that the Fund could invest in directly. All futures contracts that the Fund may invest in will be traded on a U.S. futures exchange. For purposes of this footnote only, ''Exchange'' means a national securities exchange as defined in section 2(a)(26) of the Act.

[14] *Id.*

[15] The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The ''Closing Price'' of Shares is the official closing price of the Shares on the Exchange.

calculation of the premium/discount of such Closing Price or Bid/Ask Price against such NAV.[16] The Adviser has represented that the Fund's website will also provide: (1) any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The Fund's website also will disclose the information required under Rule 8.601–E(c)(3).[17] The website and information will be publicly available at no charge.

The identity and quantity of investments in the Proxy Portfolio for the Fund will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The website will also include information relating to the Proxy Overlap and the Tracking Error, as discussed above. With respect to each Custom Basket utilized by the Fund, each Business Day, before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34–E (a)), the Fund's website will also include the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Fund's Commission filings will be provided on the Fund's website on a current basis.[18] Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Fund's SAI, Shareholder Reports, Form N–CSR, N–PORT, and Form N–CEN. The prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to the Application, the Fund must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association (''CTA'') high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[19] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Rule 8.601–E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Trust that the NAV per Share of the Fund will be calculated daily, that the NAV, Proxy Portfolio, and the Actual Portfolio for the Fund will be made publicly available to all market participants at the same time, and the Trust and any person acting on behalf of the Trust will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will continue to monitor Exchange members for compliance with such requirements.

[16] The ''premium/discount'' refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on such trading day.

[17] *See* note 4, *supra*. Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weighting of the holding in the portfolio.

[18] *See* note 7, *supra*.

[19] *See* NYSE Arca Rule 7.12–E.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[20] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[21]

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

With respect to the Fund, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.[24]

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[25]

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place

[20] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[21] For a list of the current members of ISG, *see www.isgportal.org.*

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

[25] *See* note 15 [sic], *supra.*

a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Trust that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio, Actual Portfolio, and/or Custom Basket, as applicable, for the Fund will be made available to all market participants at the same time. Investors can obtain the Fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT, and Form N–CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N–CSR, Form N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of the Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires the issuer of the Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The website for the Fund will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio and quotation and last sale information for the Shares. The identity and quantity of investments in the Proxy Portfolio will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601–E.[26]

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[27] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

[26] *See* note 4, *supra.*

[27] *See* note 15 [sic], *supra.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of an additional actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 [28] and Rule 19b–4(f)(6) thereunder.[29]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [30] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the Commission has approved and noticed for immediate effectiveness proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Fund.[31] The proposed listing rule for the Fund raises no novel legal or regulatory issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[32]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2022–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2022–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2022–51 and should be submitted on or before September 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18096 Filed 8–22–22; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6)(iii).

[31] *See supra* notes 9 and 10.

[32] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95530; File No. SR–CBOE–2022–042]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Facility Fees Section in the Fees Schedule in Connection With the Exchange's New Trading Floor

August 17, 2022.

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 August 5, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Facility Fees section in the Fees Schedule in connection with the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Exchange's new trading floor. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with the opening of a new trading floor.[4] Until June 6, 2022, the Exchange conducted open outcry trading at 400 S LaSalle, Chicago, Illinois (''LaSalle trading floor''). On June 6, 2022, the Exchange moved its open outcry trading operations to a new trading floor located at 141 W Jackson Blvd., Chicago, Illinois (''CBOT Building''). As a result of this transition, certain infrastructure and technology on the LaSalle trading floor were rendered obsolete, and the new trading floor in the CBOT Building has new infrastructure and offers new technology. Accordingly, the Exchange proposes to adopt new, and/or update current, facility fees with respect to the new trading floor, as well as eliminate obsolete facility fees that are only applicable to the Exchange's LaSalle facility and trading floor which is no longer in use as of June 6, 2022.

Booth Fees

Under the current Fees Schedule, the Exchange assesses monthly fees for ''standard Booths'', which refers to a portion of designated space on the trading floor of the Exchange adjacent to or in particular trading crowds, which may be occupied by a Trading Permit Holder (''TPH''), clerks, runners, or other support staff for operational and other business-related activities. The Exchange assesses a monthly fee of $195 for standard Booths located along the perimeter of the trading floor, and $550 for standard Booths located in the OEX, Dow Jones, MNX and VIX trading crowds. The Exchange also assesses monthly fees for ''nonstandard Booths'', which refers to space on the trading floor of the Exchange that is set off from a trading crowd, which may be rented by a TPH for whatever support, office, back-office, or any other business-related activities for which the TPH may choose to use the space. A TPH that rents non-standard booth space on the floor of the Exchange is subject to a base non-standard booth rental fee of $1,250 per month in addition to a square footage fee of $1.70 per square foot per month based on the size of the TPH's non-standard booth. The Exchange proposes to modify and simplify its fees assessed for booth rentals. First, the Exchange proposes to eliminate the distinction between standard and non-standard Booths. The Exchange also proposes to adopt a tiered pricing schedule for Booths based on the number of Booths rented by a TPH. Particularly, the Exchange proposes to adopt the following fees for Booths that are set off from a trading crowd:

Quantity of booths	Monthly fee
1–2	$400
3–6	300
7–10	200
11 or more	100

The proposed tiered pricing provides discounted pricing for additional Booths. For example, if a TPH rented 4 Booths, the TPH would be assessed $1,400 a month (2 Booths at $400 and 2 Booths at $300). The Exchange also proposes to adopt a monthly fee of $750 per booth for any booth located in a trading crowd. The Booth Pass-Through Fee would remain unchanged.[5] The Exchange notes that use of Booths, whether or located away from or in a trading crowd are optional and not necessary in order to conduct open outcry trading on the trading floor. Booth spaces are also uniform and nearly identical in size. The Exchange also notes that at this time, the Exchange has ample space on its new trading floor for booth space.

Policy

The Exchange also proposes to update the Exchange's policy (''Policy'') regarding the rental and use of booth space on its trading floor by TPH organizations. The Exchange memorialized the Policy and filed it with the Commission in 1994.[6] The Exchange proposes to update the Policy in a few respects. First, the Exchange proposes to change references to ''Chicago Board Options Exchange, Incorporated'' and ''CBOE'' to ''Cboe Exchange, Inc.,'' and ''Cboe Options'', respectively to reflect the Exchange's current legal name which has been updated since the last update to the Policy. The Exchange also proposes to update the rule reference relating to the Appeals process from Chapter ''19'' to Chapter ''15'' to reflect recent updates to the Exchange's rulebook.

The Exchange notes the Policy includes a section that sets forth the requirement that all TPH organizations renting Booths execute a ''Trading Floor Booth Rental Agreement'' (hereinafter, ''Agreement'') which sets forth the contractual terms, conditions and restrictions governing rental and use of Booths by TPH organizations.[7] A copy of the Agreement was included in the Exchange's 1994 rule filing noted above for the Commission's information.[8] The Agreement specifically sets forth the details of the parties' contractual relationship regarding rental and use of the Booths. Among other provisions, the Agreement includes specific provisions delineating the termination rights of both the TPH organization and the Exchange and sets forth a procedure for adding Booths to and deleting Booths from the Agreement. The Agreement also spells out requirements respecting the TPH's use of the Booths, such as those governing the installation of equipment, the conduct of business, and access of persons to the Booths.

The Exchange has updated the Agreement (which is now referred to as the Agreement for ''standard Booths''). In 2012, the Exchange also created a separate form of the Agreement for non-

[4] The Exchange initially filed the proposed fee changes on June 1, 2022 (SR–CBOE–2022–026). On June 10, 2022, the Exchange withdrew that filing and submitted SR–CBOE–2022–029. The Exchange notes no comment letters were received for either filing. On August 5, 2022, the Exchange withdrew that filing and submitted this filing.

[5] Pursuant to the Booth Pass-Through Fee, TPHs bear responsibility for all costs associated with any modifications and alterations to any trading floor Booths leased by the TPH (or TPH organization) and must reimburse the Exchange for all costs incurred in connection therewith.

[6] *See* Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

[7] The Agreement is non-negotiable and its terms are the same for every TPH organization.

[8] *See* Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

standard Booths.[9] In connection with the proposal to eliminate non-standard Booths, the Exchange proposes to eliminate use of that agreement. A copy of the standard form of Agreement is included with this filing in Exhibit 3. The Exchange proposes to update this section of the Policy to eliminate references to the non-standard booth agreement. The Exchange also proposes to update the Agreement to (i) change references to ''Chicago Board Options Exchange, Incorporated'' and ''CBOE'' to ''Cboe Exchange, Inc.,'' and ''Cboe Options'', respectively; (ii) update the link to where the Cboe Options Fees Schedule can be found; (iii) eliminate the requirement for Cboe to provide TPH organizations with a copy of TPH Organization's current booth assignments, as it no longer believes such record is necessary or desired by TPHs; and (iv) eliminate Section 13, which prohibits TPH Organizations leasing SPX arbitrage Booths from installing data equipment in such Booths, as the Exchange does not intend to provide such Booths and to the extent it determines to do so in the future does not anticipate maintaining such prohibition. The Exchange will disseminate the updated Policy and forms of the Agreement to TPHs by posting them on the Trading Permit Holder portion of the Cboe website.

Line to Cboe Floor Network

On the LaSalle trading floor, TPHs used various lines and telecommunications (''telco'') circuits to connect to the trading floor. Independent wiring had to be used for each line or telco circuit, which means firms may have needed to relocate their lines or telco circuits if they moved into, or relocated to, a new trading space or Booth. These telco circuits are also on a per device basis. The new trading floor utilizes a single floor network (*i.e.,* ''Cboe Floor Network'') for TPHs' devices consisting of both wired jacks and wireless network access located at kiosks, in trading pits, and in Booths throughout the new trading floor. As such, unlike the LaSalle trading floor infrastructure, TPHs do not need to order lines from the Exchange to specific locations on the floor. Rather, a TPH only needs to order one Ethernet port (''Line'') (or a pair for redundancy) to connect to the Cboe Floor Network and will be able to connect their devices to the Exchange's network anywhere on the trading floor through wired jack ports or the wireless network. Additionally, firms no longer need to provide network equipment to support dedicated lines to the floor, as on the new trading floor the Exchange provides the network switches and local area network (LAN) lines for all firms.

The Exchange believes the new trading floor will provide TPHs more flexibility to move and relocate as needed, as compared to the LaSalle trading floor. If a TPH wished to relocate trading spaces or trading booths on the LaSalle trading floor, it could have triggered installation, relocation and removal of various lines and circuits, which subsequently triggered various installation, relocation and removal fees.[10] For example, on the LaSalle trading floor, if a Market-Maker needed to move to a new trading space, it may have needed to relocate the lines or circuits from its current space to the new space and would be subject to relocation fees such as $129 relocation fee to relocate any Exchangefones and $200 relocation fee for relocation of any Market-Maker Handheld Terminal.[11] As another example, if a TPH needed to relocate to a new Booth, it may have been subject to a relocation fee of $625 for relocating lines from the trading floor to local carriers or the Communications Center.[12] Since all network access is wireless or plug and play at any location on the new trading floor, the new infrastructure eliminates the need for installation of multiple lines, as well as relocation and removal of connectivity lines to devices and also renders the following Lines fees (including fees relating to installation, relocation and removal) obsolete: Intra-Floor, Voice Circuits, Appearances, Data Circuits at Local Carrier, and Data Circuits at In-House Frame. The Exchange therefore proposes to instead adopt a monthly fee of $350 per Line and notes it does not expect TPHs to purchase more than one Line and one redundant Line. The Exchange also proposes to adopt a one-time $500 installation fee for the installation of the line to the Cboe Floor Network, which is a pass-through fee of what the Exchange is assessed by the building within which the new trading floor resides (*i.e.,* the CBOT Building). The proposed $500 installation fee would include installation of a redundant line at no additional cost and allows the Exchange to recoup the costs it incurs from third-party vendors for the installation of the Lines.

Co-Location and Meet-me-Room

For a monthly fee, the Exchange historically has provided TPHs (and third-party vendors, collectively ''firms'') with cabinet space in its building for placement of network and server hardware. Particularly, TPHs are charged a monthly fee of $50 per ''U'' of shelf space[13] and Sponsored Users[14] are assessed a monthly fee of $100 per ''U''. Fees are charged in increments of 4 ''U'' (*i.e.,* a minimum of $200 per 4 ''U'' is charged or, for Sponsored Users, a minimum of $400 per 4 ''U'' is charged). A firm also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange's servers, at no additional charge.

The Exchange will continue to provide firms cabinet space in the new facility (''Meet-me-Room'') for placement of network and server hardware at the same rate of $50 per ''U'', billed in increments of 4 ''U''. The Exchange proposes however to eliminate the separate rate for Co-Location of Equipment Fee for Sponsored Users, as the Exchange does not currently have any Sponsored Users, nor has it had any Sponsored users in several years. As such, the Exchange no longer believes its necessary to maintain a separate rate for Sponsored Users.[15] The Exchange also proposes to relocate the ''Co-Location'' section in the Fees Schedule to immediately follow the ''Lines'' section in the Fees Schedule, as it believes such fees are more appropriately grouped together and will make the Fees Schedule easier to read and follow. The Exchange also believes it will make the Fees Schedule easier to read and follow if it reflects the rate of the minimum increment charged, instead of a broken-out rate that can never be assessed. As noted above, the Fees Schedule currently sets forth the monthly rate per ''U'' (*i.e.,* ''$50 per ''U''), even though it states it only charges in increments of 4 ''U'' (*i.e.,* fee is really $200 per 4 ''U''). The Exchange will continue to charge in increments of 4 ''U'' in the new facility and therefore proposes to update the fee language in

[9] *See* Securities Exchange Act Release No. 66727 (April 9, 2012), 77 FR 21134 (April 3, 2012) (SR–CBOE–2012–025).

[10] *See* Cboe Options Fees Schedule, Lines Table.

[11] *See* Cboe Options Fees Schedule, Communications Table, Exchangefone and Miscellaneous Table, Market-Maker Handheld Terminal Tethering Services.

[12] *See* Cboe Options Fees Schedule, Lines Table, Lines Direct from Local Carrier to Trading Floor and Lines Between Communication Center and Trading Floor.

[13] The term ''U'' is used to indicate an equipment unit 1.75'' high with a maximum power of 125 watts per U space. Per the Fees Schedule, Co-Location fees are charged in increments of 4 ''U'' (7 inches).

[14] *See* Cboe Options Rule 3.60.

[15] To the extent the Exchange has Sponsored Users in the future, such participants will be assessed the same rate as all other firms (*i.e.,* $50 per ''U'', billed in minimum increments of 4 ''U'').

the relocated line item to reflect the rate for the minimum increment of 4 ''U''. Despite this language change, the Exchange reiterates it is not changing the amount assessed for the Co-Location of Equipment Fee. Within the new Meet-me-Room however, the Exchange is proposing to limit firms to 8 ''U'' in order to ensure all firms can be accommodated in the Meet-me-Room.

The Exchange next proposes to adopt monthly and installation fees for cross connects, including telecommunication (*i.e.,* telco) and Cboe Floor Network cross connects,[16] within the Meet-Me-Room. Particularly, each cross connect will be subject to a $25 per month per cross connect fee, which is a pass-through fee of what the Exchange is assessed by the CBOT Building for each cross connect. Additionally, firms will be subject to a one-time $500 installation fee for each cross connection, which is also a pass-through fee of what the Exchange is assessed by the CBOT Building. The Exchange notes that at the LaSalle trading floor, the Exchange assessed third-party vendors a $50 per month fee for ''Data Circuits from Local Carrier to Equipment Shelf'' which offers similar cross-connectivity from Local Carriers (telco providers) to a firm's equipment shelf in the current meet-me-room. The Exchange no longer uses data circuits from Local Carriers to equipment on the shelf and proposes to therefore eliminate this fee (currently under the Vendor Services section) from the Fee Schedule.

The Exchange next proposes to adopt a fee relating to accessing the Meet-me-Room. Particularly, in order for a firm to access the Meet-me-Room (*e.g.,* if they need technical support), they must request access. The Exchange notes that because the Meet-me-Room now resides in a building not owned by the Exchange, the Exchange is assessed a fee by a third-party (CBOT Building) for providing firms access to the Meet-me-Room. The Exchange notes that the CBOT Building requires individuals accessing the Meet-me-Room to be accompanied by CBOT Building representatives and therefore assesses a fee associated with the visit. Exchange staff personnel are also present for each visit. The Exchange therefore proposes to adopt a fee to recoup fees it is billed by the CBOT Building for providing this access (''Cboe Datacenter Services''). Specifically, the Exchange proposes to assess a fee of $100 per half-hour (with a 1 hour minimum required). The Exchange notes that it waived this fee for the month of June 2022.[17] Particularly, the Exchange believed that firms may have had a greater need during the first month of operations on the new trading floor to visit the Meet-me-Room. The waiver therefore allowed firms to respond to any potential issues that may have arisen in the Meet-me-Room during the first month at no additional cost. The Exchange anticipates that firm requests for this type of access will be infrequent going forward. The Exchange also notes that it similarly assessed fees for various third-party technical support or vendor services on the LaSalle trading floor.[18] However, these services are no longer be available in the new trading floor and the Exchange therefore proposes to eliminate the following corresponding fees: Technical Support Outside Normal Hours, IPC (vendor) Time & Material, IPC (vendor) Time & Material Overtime, After Hours Technician Service, Market-Maker Handheld Tethering Services, and Market-Maker Handheld Tethering Services For Indexes.

Trading Floor Device Fees

The Exchange currently lists various fees under the Trading Floor Terminal Rentals section of the Facility Fees table.[19] For example, TPHs are currently assessed $125 per month for ''PAR Workstations'' to help offset hardware costs incurred by the Exchange in making PAR workstations available to TPHs. A PAR (Public Automated Routing System) Workstation is an Exchange-provided order management tool for use on the Exchange's trading floor by TPHs and PAR Officials to manually handle orders pursuant to the Rules and facilitate open outcry trading. Access to PAR is only available on Exchange-provided tablets (currently Surface Tablets) and the current monthly fee covers both the Exchange-provided tablet and PAR access. In connection with the transition to the new trading floor, the Exchange proposes to modify the way it assesses fees for use of PAR[20] and also adopt fees for non-Exchange provided tablets that connect to the Exchange's network. Particularly, the Exchange proposes to adopt a separate monthly Exchange Tablet fee of $140 for any tablet provided by the Exchange and a separate monthly fee of $45 to access PAR. TPHs will continue to utilize PAR on the new trading floor, which will continue to only be available on Exchange-provided tablets. Exchange tablets used for PAR may also be used for access to Silexx.[21]

The Exchange also proposes to adopt a separate Exchange Tablet fee as TPHs will have the option of using Exchange-provided tablets for Cloud9, which is the new telecommunication system the Exchange offers on the new trading floor.[22] The Exchange notes that TPHs have the option of using their own tablet to access Cloud9 in lieu of using an Exchange-provided tablet. Such tablets would be subject to the ''TPH-Owned Device Authentication Fee'' described more fully below.

On the new trading floor, TPHs will be able to use a variety of devices such as tablets, laptops, Market-Maker handheld devices, printers, and phone systems. TPHs will be able to connect these devices to the Exchange's network anywhere on the trading floor through wired jack ports or the wireless network on the trading floor, as long as they are onboarded to the Cboe Network Authentication System. The Exchange proposes to assess a fee for TPH-owned devices that connect to the Exchange's network on the new trading floor (''TPH-Owned Device Authentication Fee''). Particularly, the Exchange proposes to assess a fee of $100 per authenticated connection (*i.e.,* when a device connects to the wired jack and/or wireless network on the trading floor).[23] The proposed fee will be based

[16] The Exchange offers fiber cross connect. The cross connects may run between a firm's hardware to a third-party telecommunications service or the Cboe Floor Network switches that will service the trading floor.

[17] *See* Securities Exchange Act Release No. 95155 (June 24, 2022), 87 FR 39145 (June 30, 2022) (SR–CBOE–2022–029).

[18] *See* Cboe Options Fees Schedule, Vendor Services, Technical Support Outside Normal Hours, and Miscellaneous, IPC (vendor) Time & Material, IPC (vendor) Time & Material Overtime, After Hours Technician Service, Market-Maker Handheld Tethering Services, and Market-Maker Handheld Tethering Services For Indexes.

[19] The Exchange proposes to rename this section ''Trading Floor Device Fees''.

[20] The Exchange proposes to replace the reference to ''PAR Workstation'' to ''PAR Access''. Particularly, the current version of PAR is no longer a physical touch screen terminal (*i.e.,* workstation) but an order management tool that can be accessed on a tablet such as a Surface.

[21] Silexx is a User-optional order entry and management trading platform. The Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders, and a ''back-end'' platform which provides a connection to the infrastructure network. The Silexx front-end and back-end platforms are a software application that is installed locally on a user's laptop.

[22] Cloud9 is the voice communication solution for the new trading floor. Cloud9 is a VoIP cloud-based service offering a traditional turret, the Cloud Hub. The Cloud Hub will be provided by Cboe and will need to connect to a laptop or device provided either by the TPH or by Cboe. TPHs may not use the same Exchange Tablet for both PAR and Cloud9.

[23] For example, a TPH that connects to Cloud9 using its own laptop would be assessed $100 per month for that connection. If that same TPH chooses to connect an additional laptop and a printer to the network, that TPH will be assessed

on the maximum number of concurrent authenticated connections made during market hours during the calendar month. As discussed above, the Exchange believes the new trading floor provides TPHs more flexibility to move and relocate any of their devices by eliminating the need for installation, relocation and removal of connectivity lines to devices. Consequently, corresponding monthly, installation, relocation and removal fees will also be eliminated on the new trading floor.

Replacement Fees

The Exchange currently assesses fees related for certain hardware that needs to be replaced because of loss or because of non-normal wear and tear. Particularly, the Exchange assesses the following replacement fees:

Replacement Tablet	$1,300 each.
Replacement Stylus Pen	$100 each.
Replacement Chargers	$75 each.
Replacement Adapters and Protective Cases.	$50 each.

The Exchange proposes to maintain these replacement fees on the new trading floor. However, the Exchange proposes to increase the fee to replace a table from $1,300 per tablet to $1,400 per tablet to reflect increased costs to the Exchange. The Exchange also proposes to adopt a new replacement fee for lost Access Badges at the rate of $100 per badge in order to encourage TPHs to hold onto their badges and not misplace them.

Obsolete Fees

The Exchange next proposes to eliminate fees assessed for technology and infrastructure and related services that will be rendered obsolete upon the transition to the new trading floor. Particularly, the Exchange proposes to eliminate the following fees that have not otherwise been discussed above:

Description	Fee
Arbitrage Phone Positions	$550/month.
HP Laser Printer Paper	$5.00 per packet of 500 sheets.
Zebra Printer Papers	$19.50 per roll.
Zebra Printer Ink	$19.50 per roll.
Forms Storage	$11.
Exchangefone	$935/installation; $129/relocation; $100/removal.
Exchangefone—Maintenance	$57/month.
Exchangefone—With Recorded Coupler Between Booths	$126/relocation.
Exchangefone—Within Booth	$25/relocation.
Single Line—Maintenance	$11.50/month.
Phone Rentals—Monthly Fee	$110/month.
Phone Rentals—Replacement Repairs	cost.
Lines—Intra Floor	$57.75/per month.
Lines—Voice Circuits	$16/month; $52.50/installation; $36.75/removal.
New Circuits—First	$120/installation; $50/removal.
New Circuits—@Additional	$18/installation; $18/removal.
Existing Line Appearance—First	$50/installation; $25/removal.
Existing Line Appearance—A Additional	$18/installation: $18/removal.
Data Circuits (DC) at Local Carrier (entrance)	$16/month; $52.50/installation; $36.75 removal.
DC @In-House Frame—Lines between Local Carrier and Comms Center.	$12.75/month; $550/installation.
DC @In-House Frame—Lines Between Comms Center and Trading Floor.	$12.75/month; $725/installation; $625/relocation.
DC @In-House Frame—Lines Direct from Local Carrier to Trading Floor.	$12.75/month; $725/installation; $625/relocation.
Shelf for Equipment	$100/month.
Lines from Equipment to Floor	$50/month.
Handsets	$79/installation.
Headset Jack	$131/installation; $58 relocation; $28/removal.
Recorder Coupler	$150 new/$50 existing installation; $25/relocation; $25/removal.
Thomson/Other (Basic Service)	$425/month.
Satellite TV	$50/month.
Cboe Options Trading Floor Terminal	$250/month; $175/installation; $225 relocation; $125/removal.
Trading Floor Printer Maintenance[24]	$75/month.

The Exchange also proposes to eliminate all PULSe Workstation fees as PULSe was decommissioned in January 2021, but the Exchange inadvertently did not delete references to PULSe-related fees at that time.

Temporary Fees

In June 2020, the Exchange adopted Footnote 24 of the Fees Schedule to govern pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in connection with the COVID–19 pandemic. By way of background, the Exchange closed its trading floor on March 16, 2020 due to the COVID–19 pandemic and reopened its trading floor on June 15, 2020, but with a modified configuration of trading crowds in order to implement social distancing and other measures consistent with local and state health and safety guidelines to help protect the safety and welfare of individuals accessing the trading floor. As a result, the Exchange relocated and modified the physical area of certain trading crowds and also determined and reduced how many floor participants may access the trading floor. In connection with these changes, the Exchange proposed a number of modified billing changes that would remain in place for the duration of the time the Exchange operated in a modified manner. Particularly, the following fees are modified when the

a total of $300 per month (*i.e.,* $100 for each of the tablet used for Cloud9, the laptop and the printer).

[24] The Exchange proposes to eliminate a corresponding reference in Footnote 50 to Trading Floor Printer Maintenance in light of the proposal to eliminate this fee.

Exchange is operating in a modified state due to the COVID–19 pandemic:

Trading Permits	Floor trading permit fees are not be assessed on the total number of floor trading permits a TPH organization holds, and instead are based on the floor trading permits used by nominees of the TPH each day during the month using the following formula: (i) the number of floor trading permits that have a nominee assigned to it in the Customer Web Portal system (''Portal'') in a given month, multiplied by the number of trading days that the floor is open and that a nominee is assigned to each respective trading permit in that month, divided by (ii) the total number of trading days in a month. The Exchange rounds up to determine the total number of trading permits assessed the fees set forth in the Floor Trading Permit Sliding Scales.
SPX Tier Appointment Fee	The monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee will be increased to $5,000 per Trading Permit from $3,000 per Trading Permit.
Inactive Nominee Status (Parking Space).	$300 Parking Space Fees is not applied.
Inactive Nominee Status Change (Trading Permit Swap).	$100 Trading Permit Swap Fee is not applied.
SPX/SPXW and SPESG Floor Brokerage Fees.	SPX/SPXW and SPESG Floor Brokerage Fees are be assessed the rate of $0.05 per contract for non-crossed orders and $0.03 per contract for crossed order instead of $0.04 and $0.02, respectively.
Facility Fees	Monthly fees are waived for the following facilities fees: arbitrage phone positions and satellite tv. If a TPH is unable to utilize designated facility services while the trading floor is operating in a modified state, corresponding fees, including for standard and non-standard booth rentals, Exchangefone maintenance, single line maintenance, intra floor lines, voice circuits, data circuits at local carrier (entrance), and data circuits at in-house frame, are waived.

The Exchange notes that while the LaSalle trading floor utilized social distancing and reconfigured trading crowds through its closure (and therefore was considered to be operating in a modified manner), it does not believe it was necessary to implement such safety measures on the new trading floor at the time of transition given recent developments relating to the COVID–19 pandemic. As such, upon moving to the new trading floor on June 6, 2022, the Exchange no longer operates in a modified manner and Footnote 24 does not apply. Accordingly, (1) Floor Trading Permit fees will be assessed based on the total number of floor trading permits a TPH holds each month; (2) Parking Space and Trading Swap fees will no longer be waived; and (3) SPX/SPXW and SPESG Floor Brokerage fees will be assessed $0.04 per contract for non-crossed orders (instead of $0.05 per contract) and $0.02 per contract for crossed orders (instead of $0.03 per contract). As noted above, arbitrage phone positions, satellite tv, Exchangefone maintenance, single line maintenance, intra floor lines, voice circuits, data circuits at local carrier (entrance), and data circuits at in-house frame are being eliminated as of June 1, 2022 so the Exchange proposes to also eliminate references to such fees from Footnote 24. The Exchange also proposes to maintain the current modified rate of $5,000 for the SPX Floor Tier Appointment Fee under Footnote 24 (*i.e.,* increase the fee from $3,000 per permit to $5,000 permit regardless of whether the Exchange is operating in a modified state due to COVID–19 pandemic). The Exchange notes that it has not amended the original Tier Appointment Fee since its inception almost twelve years ago in July 2010.[25]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[26] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[27] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the proposed changes are prompted by the Exchange's recent transition from its previous trading floor, which it had occupied since the 1980s, to a brand new, modern and upgraded trading floor facility. The Exchange believes customers continue to find value in open outcry trading and rely on the floor for price discovery and the deep liquidity provided by floor Market-Makers and Floor Brokers. The Exchange believes the build out of a new modern trading floor is therefore consistent with its commitment to open outcry trading and focus on providing the best possible trading experience for its customers. Indeed, the new trading floor provides a state-of-the-art environment and technology and more efficient use of physical space, which the Exchange believes better reflects and supports the current trading environment. The Exchange also believes the new infrastructure provides a cost-effective, streamlined, and modernized approach to floor connectivity. For example, the new trading floor has more than 330 individual kiosks, equipped with top-of-the-line technology, that enable floor participants to plug in and use their devices with greater ease and flexibility. It also provides floor Market-Makers and Floor Brokers with more space and increased capacity to support additional floor-based traders on the trading floor. Moreover, the new trading floor is conveniently located across the street from the LaSalle trading floor, resulting in minimal disruption to TPH floor participants, many of whom have office space nearby, including in the CBOT Building. The Exchange believes the CBOT Building, which was also home to the Exchange's original trading floor in the 1970s and early 1980s, is also able to support robust trading floor infrastructure as it currently hosts

[25] *See* Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR–CBOE–2010–060).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *Id.*

several banks, trading firms and even trading floors (*i.e.,* trading floors for the Chicago Mercantile Exchange and BOX Options Market).

As described above, the recent transition rendered much of the Exchange's previous trading floor technology and infrastructure obsolete, as it has been replaced by new infrastructure in a new building (no longer owned by the Exchange). As such, the proposed modifications to corresponding facility fees are not only necessary, but the Exchange believes reasonable, equitable and not unfairly discriminatory as discussed in further detail below. The Exchange also believes the proposed rule change results in a streamlined and simplified trading floor and facility fee structure.

Booth Fees

The Exchange believes the proposed Booth Fees are reasonable as they are not a significant departure from fees that were assessed for Booths on the LaSalle trading floor (and in some instances are even lower than currently assessed). Additionally, the Booths on the new trading floor are slightly larger than the standard Booths that were available on the LaSalle trading floor. The proposed fees are also in line with similar fees charged currently and historically at other exchanges with a physical trading floor.[29] The Exchange believes that the proposed booth space fee is equitable and not unfairly discriminatory because it applies uniformly to trading floor participants who choose to rent Booths (and all booths are uniform and nearly identical in size). Moreover, the use of Booths, whether located away from or in a trading crowd, are optional and not necessary in order to conduct open outcry trading on the trading floor.

The Exchange believes the proposed rule changes to the Booth Policy and Agreement make non-substantive changes that merely clarify the Policy and Agreement, make it more accurate, and alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The Exchange believes that notwithstanding any of the proposed changes, the Booth Policy and Agreement continues to ensure that trading floor Booths are leased to TPH organizations on equal and non-discriminatory terms.

Line to Cboe Floor Network

The Exchange believes the proposed Line to Cboe Floor Network fee is reasonable as TPHs will not be subject to the current lines and circuit fees set forth in the Fees Schedule, including for relocation and removal, that are assessed on the LaSalle trading floor for similar connectivity to the trading floor network. Additionally, unlike the current floor which requires independent wiring be used for each line or circuit and on a per device basis, the new trading floor will allow TPHs to maintain one Line (or 2 for redundancy purposes). Accordingly, the new trading floor will provide TPHs more flexibility to move and relocate as needed and with greater ease and be able to do so without incurring additional relocation and removal fees. Moreover, firms will no longer need to provide their own network equipment to support dedicated lines to the floor as the Exchange will be providing the network switches and local area network (LAN) lines for all firms on the new trading floor. The Exchange notes that on the LaSalle trading floor, TPHs had to supply their own pair of network switches, which the Exchange estimates cost approximately $5,000 for each switch (*i.e.,* $10,000 total), in addition to ongoing costs incurred for vendor support and staff personnel time. Under the proposal, TPHs are no longer subject to these costs, as the Exchange provides both the network switches and ongoing support. The Exchange also notes other exchanges assess a variety of facility fees relating to connectivity and equipment in order to maintain their trading floor facilities.[30]

The Exchange believes the proposed installation fee is also reasonable as the Exchange is passing through costs it incurs from a third party (*i.e.,* the CBOT Building) with respect to the installation of such Lines. The Exchange believes this fee reasonably represents the materials and labor costs of installation which, as discussed above, is assessed by a building that has experience in similar installations as it hosts many other participants in the financial industry, including trading firms and other exchanges' trading floors. The proposed fee also includes a redundant Line at no additional cost. The Exchange believes the proposed monthly and installation Line fees are equitable and not unfairly discriminatory as they will apply uniformly to all trading floor participants.

Co-Location and Meet-me-Room

The Exchange believes it is reasonable to cap all TPHs and non-TPHs to 8 ''U'' because the Exchange no longer owns the premises in which the Meet-me-Room resides and there is finite amount of space. The proposed cap however applies to all TPHs and non-TPHs uniformly. Additionally, the Exchange believes 8 ''U'' should be sufficient amount of space for any TPH or non-TPH and that with such cap in place there is sufficient space to accommodate all TPHs or non-TPHs who request co-location service. The Exchange believes it's reasonable, equitable and not unfairly discriminatory to eliminate the Co-Location of Equipment Fee for Sponsored Users as it has not had any Sponsored Users in several years. If the Exchange were to approve a Sponsored User, such participant would merely be subject to the remaining (and lower) Co-Location of Equipment Fee (*i.e.,* $200 per 4 ''U''). The Exchange believes the proposed relocation and language updates to the current Co-Location fee are reasonable as the Exchange is not proposing to change the amount assessed but is merely updating and simplifying the Fees Schedule and making it easier to read.

The Exchange believes the proposed $25 per cross-connect monthly fee is reasonable as it is a modest fee that is a pass-through of the fee the Exchange is assessed by a third-party (*i.e.,* the CBOT Building) to maintain such cross connect. Additionally, the Exchange notes third-party vendors such as telecommunication providers will no longer be subject to the $50 per month fee for ''Data Circuits from Local Carrier to Equipment Shelf''. Additionally, the Exchange believes the proposed amount is in line (and lower than) the amount assessed by another exchange for similar cross connects.[31] The proposed cross connect installation fee is also reasonable as it is intended to recoup the fees incurred by the Exchange by

[29] In 2011, Nasdaq PHLX charged a flat $300 per month fee for Trading/Administrative Booth paid by floor brokers and clearing firms. See Securities Exchange Act Release No. 34–66086 (January 3, 2012), 77 FR 1111 (January 9, 2012) (SR–Phlx–2011–181). NYSE American currently assesses $40 per linear foot per month for all booth space utilized by such Floor Broker.

[30] For example, Nasdaq PHLX assesses a Floor Facility Fee of $330 per month for such purpose. *See* Securities Exchange Act Release No 69672 (June 5, 2013), 78 FR 33873 (May 30, 2013) (SR–PHLX–2013–58). Nasdaq PHLX also assesses a variety of options trading floor fees including for equipment services and relocation requests. *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 9. Other Member Fees, A. Option Trading Floor Fees. *See also* NYSE America Options Fees Schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees and NYSE Price List, Equipment Fees.

[31] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 9. Other Member Fees, A. Option Trading Floor Fees, Cabinet-to-Cabinet Connectivity and Cabinet-to-Cabinet MPOE Connectivity, which are both subject to a $50 per month fee.

third-party vendors for establishing the cross connects. The Exchange believes the installation fee assessed by the CBOT Building is also reasonable as it is in line with installation fees assessed by other data centers and exchanges for installation of cross-connections.[32]

The Exchange believes the proposed Cboe Datacenter Services fee is reasonable as it recoups the costs the Exchange is assessed by the CBOT Building (as the owner of the building) when firms needs to access to the Meet-me-Room for purposes such as on-site support. The Exchange notes that it is aware that other data center facilities similarly require security escorts for Meet-me-Room access and assess fees for such access. Additionally, the Exchange waived the fee for the month of June 2022, so that visits to the Meet-me-Room to address any onboarding questions or issues that arose during the first month in the new facility were free of charge. Moreover, as noted above, the Exchange does not anticipate that access to the Meet-me-Room will be needed on a frequent basis.

The Exchange believes the proposed cross connect and Cboe Datacenter Services fees are also equitable and not unfairly discriminatory as they will apply uniformly to all market participants that request these services, respectively.

Trading Floor Devices

The Exchange believes the proposed changes related to the PAR fee are reasonable as the combined proposed fees for using PAR (*i.e.,* Exchange Tablet fee and PAR Access fee) are only modestly higher than the fee TPHs are currently assessed for use of PAR. The Exchange notes that although TPHs that use PAR will be subject to a modestly higher fee, the PAR Workstation fee has remained unchanged for over eleven years, notwithstanding technology changes and improvements over the last decade, including for example, the ability to also access Silexx from the same tablet on which PAR is accessed.[33] Moreover, the Exchange notes the proposed fee is still lower than fees assessed at other exchanges for trading floor terminals. For example, NYSE American assesses $450 per device per month for Floor Broker Handheld and an additional $215 per month per Exchange sponsored Floor Broker order entry system.[34] Moreover, the Exchange notes that the Exchange provides technical support services for these tablets, eliminating the need for TPHs to purchase protection plans themselves for their device. The Exchange also incurs other costs associated with the tablets that it does not otherwise separately pass through, such as fees incurred for replacement of batteries and other parts. The Exchange will also replace a tablet at no additional cost if a tablet is damaged from normal wear and tear. Further, the Exchange replaces tablets at no additional cost approximately every 3 years. The Exchange believes the proposed Exchange Tablet fee is also reasonable as TPHs may, but do not have to, use an Exchange Tablet to access Cloud9. Indeed, they may use their own TPH-owned device for purposes of accessing Cloud9 and be subject to the alternative, and lower, TPH-Owned Device Authentication Fee.

The Exchange believes the proposed PAR Access fee is equitable and not unfairly discriminatory as it applies to all TPHs using PAR. Moreover, the proposed changes enable the Exchange to offer Exchange-provided tablets for a separate monthly fee to TPHs that wish to use them for Cloud9, which is the Exchange's new telecommunications system that it will offer on the new trading floor. Currently, TPHs are subject to various communication fees including monthly fees, installation fees, relocation fees and removal fees which will no longer be assessed by the Exchange as the Exchange's current communications offerings will be rendered obsolete upon the transition to the new trading floor.[35]

The Exchange believes the proposed TPH-Owned Device Authentication Fee is reasonable as the proposed fee is lower than the proposed fee assessed for Exchange Tablets which may alternatively be used if a TPH is looking to access Silexx or Cloud9. Additionally, the Exchange believes it's reasonable to assess TPHs a monthly fee for access to its network. Particularly, the Exchange expends resources to monitor and maintain the network, and importantly, ensure its secure and resilient. The Exchange also offers assistance during the onboarding process for the devices and expends resources monitoring and troubleshooting networking issues. The Exchange notes that as the number of devices connected to the network increases, demand of Exchange time and resources may therefore also increase. As such, the Exchange also believes the proposed fee may encourage firms to be efficient with the number of devices it chooses to connect to the network. Moreover, the Exchange believes the new trading floor provides TPHs more flexibility to move and relocate any of their devices by eliminating the need for installation, relocation and removal of connectivity lines to devices and consequently, corresponding monthly, installation, relocation and removal fees. The proposed fee also applies to all TPHs accessing the Cboe floor Network from their own device.

Replacement Items

The Exchange believes the proposed change to increase the tablet replacement fee is reasonable as the proposed amount better reflects the approximate cost to the Exchange to provide a replacement tablet to TPHs. Additionally, the Exchange believes adopting a $100 fee for replaced access badges is reasonable as the Exchange believes it will incentivize TPHs to keep track of their access badges and reduce the need for the Exchange to expend resources to print additional replacement badges. The Exchange believes these changes are also reasonable, equitable and not unfairly discriminatory because TPHs that lose these items or damage these items from non-normal wear or tear should be responsible for the cost of replacement. The Exchange believes the proposed fees will encourage TPHs to take proper care and track of these items. Additionally, the Exchange notes that it will not charge TPHs to replace defective items (that were not the result of non-normal wear and tear).

Obsolete Fees

The Exchange believes eliminating the facility fees discussed above is reasonable as such corresponding services and architecture will be rendered obsolete upon transitioning to the new trading floor. Additionally, the Exchange believes the proposed new fee structure as compared to the fees being eliminated provides for a more streamlined and simplified approach to facility fees. The Exchange believes the proposed elimination of these fees is equitable and not unfairly discriminatory as it will apply uniformly to all TPHs. The proposal to eliminate references to these fees in Footnote 12, 24 and 50 also maintains clarity in the Fees Schedule and avoids potential confusion.

[32] *See, e.g.,* NYSE American Options Fees Schedule, Section V(B).

[33] *See* Securities Exchange Act Release No. 63701 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR–CBOE–2010–116).

[34] *See also* NYSE America Options Fees Schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees.

[35] *See* Cboe Options Fee Schedule, Communications Fees.

Footnote 24

As discussed above, as of June 6, 2022, the Exchange no longer operates in a modified state due to the COVID–19 pandemic as the Exchange no longer maintains a modified configuration of trading crowds to implement social distancing nor does it reduce or limit how many floor participants may access the trading floor. Accordingly, because the Exchange is not considered to be operating in a modified configuration as of June 6, 2022, Footnote 24 is no longer applicable and the modified billing practices will revert back to original billing. The Exchange believes its proposal to maintain the current modified rate of $5,000 for the SPX Floor Tier Appointment Fee under Footnote 24 (*i.e.,* increase the fee from $3,000 per permit to $5,000 permit regardless of whether the Exchange is operating in a modified state due to COVID–19 pandemic) [36] is reasonable because the proposed amount is not significantly higher than was previously assessed. Additionally, the Exchange notes that it has not amended the Market-Maker SPX Tier Appointment Fee since such fee was adopted nearly twelve years ago in July 2010.[37] The proposed change also is equitable and not unfairly discriminatory as it applies to all similarly situated TPHs.

In sum and in addition to all the reasons discussed above, the Exchange believes its proposed fees are reasonable in light of the numerous benefits the new trading floor provides its floor participants. The Exchange believes the new trading floor provides for state-of-the-art infrastructure, enhanced technology capabilities, and a flexible, open and dynamic environment to facilitate more seamless and efficient interaction between traders. The Exchange also notes that it considered a number of factors in determining the location of the new trading floor including cost to the Exchange and its TPHs, as well as the convenience of location for the trading floor community and Exchange staff. Another critical consideration was whether the new building would have the necessary infrastructure and ability to support a sophisticated and state-of-the art trading floor. As the CBOT Building already hosts several trading firms and two other exchange trading floors, the Exchange felt confident the CBOT Building would be able to accommodate the Exchange's technology and infrastructure needs for its floor. The Exchange therefore believes the amounts of the fees assessed by the CBOT Building that it proposes to pass-through are reasonable. The proposed fees are also in line with fees assessed by other data centers and exchanges for similar technology and services. For example, as noted above, the $25 cross connect fee is lower than the fees assessed by other exchanges for similar cross connections.

The Exchange also notes that is has not sought to pass through other costs incurred in connection with the new trading floor, including design, construction and other on-going maintenance costs. Moreover, the Exchange has not modified many of its facilities fees in several years. The Exchange therefore believes the proposed fees are reasonable because they allow the Exchange to recoup fees associated with the costs of operating a modern and cutting-edge trading floor and offset and keep pace with increasing technology costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all similarly situated participants and as such, would not impose a disparate burden on competition among the same classes of market participants. As described in further detail above, the proposed fees are also applicable only to market participants that choose to avail themselves to the corresponding facility services. For example, only firms that choose to rent Booths (which are optional and not required for open-outcry trading) will be subject to the proposed Booth Fees. Similarly, only firms that choose to purchase Exchange-provided tablets are subject to the tablet fee, and firms may otherwise choose to purchase and provide their own tablets.

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 because the proposed rule changes apply only to fees relating to the Exchange's floor facility. Further, as described in detail above, the Exchange believes its proposed facilities fees are in line with facility fees assessed at other exchanges that maintain physical trading floors. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges (four of which also maintain physical trading floors), as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 16% of the market share of executed volume of options trades.[38] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [39] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[40] Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that

[36] The Exchange proposes to eliminate this language from Footnote 24 as it will no longer be considered a ''modified'' rate, and instead update the rate reflected in the Market-Maker Tier Appointment Fees table.

[37] *See* Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR–CBOE–2010–060).

[38] *See* Cboe Global Markets, U.S. Options Market Volume Summary by Month (May 31, 2022), available at *http://markets.cboe.com/us/options/market_share/.*

[39] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[40] NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [41] of the Act and subparagraph (f)(2) of Rule 19b–4 [42] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [43] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–042, and should be submitted on or before September 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18098 Filed 8–22–22; 8:45 am]

BILLING CODE 8011–01–P

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f)(2).

[43] 15 U.S.C. 78s(b)(2)(B).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34678; 812–05867]

Merrill Lynch Corporate Dividend Fund, Inc., et al.

August 17, 2022.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of the Commission's intention to rescind an order pursuant to section 38(a) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY: The Commission intends to rescind an order issued on April 9, 1985, on an application filed by Merrill Lynch Corporate Dividend Fund, Inc., et al. (the ''Applicants''), which granted exemptions from sections 18(f)(1) and 17(f) of the Act (the ''Exemptive Order'').[1]

Hearing or Notification of Hearing: An order rescinding the Exemptive Order will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.* Hearing requests should be received by the Commission by 5:30 p.m. on September 12, 2022. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, Commission, *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Leonardo, Senior Counsel, at 202–551–7125 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The Commission issued the Exemptive Order exempting the Applicants from the provisions of section 18(f)(1) and section 17(f) of the Act to the extent necessary to permit the Applicants to trade interest rate futures contracts, stock index futures contracts, municipal bond index futures contracts, and related options. The Exemptive Order was expressly subject to compliance with the undertakings made in the application.

On November 2, 2020, the Commission adopted rule 18f–4, which provides an updated and more comprehensive approach to the regulation of registered investment company (''fund'') and business development company use of derivatives and certain other transactions by replacing existing Commission and staff guidance with a codified, consistent regulatory framework.[2] The undertakings of the

[1] Merrill Lynch Corporate Dividend Fund, Merrill Lynch Corporate Bond Fund, Inc., Merrill Lynch Municipal Bond Fund, Inc., Merrill Lynch Federal Securities Trust, Merrill Lynch Asset Management, Inc. (''MLAM''), Fund Asset Management, Inc. (''FAMI''), and any other registered investment companies advised at the time of the notice, or which in the future may be advised, by MLAM or FAMI, and which may engage in the trading activities described in the application, Investment Company Act Release Nos. 14415 (Mar. 13, 1985) (notice) and 14462 (Apr. 9, 1985) (order). The Merrill Lynch Corporate Bond Fund, Inc. and Merrill Lynch Municipal Bond Fund, Inc. are currently reporting to the Commission as the BlackRock Bond Fund, Inc. and the BlackRock Municipal Bond Fund, Inc. respectively. The Merrill Lynch Federal Securities Trust has deregistered. The adviser applicants are no longer registered with the Commission.

[2] *See Use of Derivatives by Registered Investment Companies and Business Development Companies,*

Exemptive Order relating to section 18(f)(1) and the Applicants' investments in certain futures contracts and related options, are superseded by rule 18f–4, which became effective on February 19, 2021, and with which funds will have to comply as of August 19, 2022. In addition, as a general matter, a fund trading in exchange-traded futures and commodity options can rely on rule 17f–6, which permits funds to maintain their assets with futures commission merchants in connection with futures contracts and commodity options traded on U.S. and foreign exchanges.[3]

Section 38(a) of the Act states, in relevant part, that the Commission shall have authority to rescind an order as is necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act.[4] On the basis of rules 18f–4 and 17f–6 and the discussions in the releases adopting each of those rules, and on the authority granted to the Commission in section 38(a) of the Act, the Commission intends to rescind the Exemptive Order.

By the Commission,

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18101 Filed 8–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34677; 812–05753]

VALIC Timed Opportunity Fund, Inc.; Notice of Intention To Rescind Order

August 17, 2022.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of the Commission's intention to rescind an order pursuant to section 38(a) of the Investment Company Act of 1940 (''Act'').

SUMMARY: The Commission intends to rescind an order issued on May 16, 1984, on an application filed by VALIC Timed Opportunity Fund, Inc. (the ''Applicant''), which granted exemptions from sections 18(f)(1) and 17(f) of the Act (the ''Exemptive Order '').[1]

Hearing or Notification of Hearing: An order rescinding the Exemptive Order will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.* Hearing requests should be received by the Commission by 5:30 p.m. on September 12, 2022. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Leonardo, Senior Counsel, at 202–551–7125, (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The Commission issued the Exemptive Order exempting the Applicant from the provisions of section 18(f)(1) and section 17(f) of the Act to the extent necessary to permit it to invest in stock index futures contracts and interest rate futures contracts for hedging purposes. The Exemptive Order was expressly subject to compliance with the undertakings made in the application.

On November 2, 2020, the Commission adopted rule 18f–4, which provides an updated and more comprehensive approach to the regulation of registered investment company (''fund'') and business development company use of derivatives and certain other transactions by replacing existing Commission and staff guidance with a codified, consistent regulatory framework.[2] The undertakings of the Exemptive Order relating to section 18(f)(1) and the Applicant's investments in stock index futures contracts and interest rate futures contracts are superseded by rule 18f–4, which became effective on February 19, 2021 and with which funds will have to comply as of August 19, 2022. In addition, as a general matter, a fund trading in exchange-traded futures and commodity options can rely on rule 17f–6, which permits funds to maintain their assets with futures commission merchants in connection with futures contracts and commodity options traded on U.S. and foreign exchanges.[3]

Section 38(a) of the Act states, in relevant part, that the Commission shall have authority to rescind an order as is necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act.[4] On the basis of rules 18f–4 and 17f–6 and the discussions in the releases adopting each of those rules, and on the authority granted to the Commission in section 38(a) of the Act, the Commission intends to rescind the Exemptive Order.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18099 Filed 8–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95520; File No. SR–CBOE–2022–041]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 5.34(b) Related to Price Protections and Risk Controls for Complex Orders

August 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 2022, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

Investment Company Act Release No. 34084 (Nov. 2, 2020) at *https://www.sec.gov/rules/final/2020/ic-34084.pdf.*

[3] *See* 17 CFR 270.17f–6; *Custody of Investment Company Assets with Futures Commissions Merchants and Commodity Clearing Organizations,* Investment Company Act Release No. 22389 (Dec. 11, 1996), *https://www.sec.gov/rules/final/ic-22389.txt.* We also note that based on filings on Form N–CEN, no fund has reported that it relies on the Exemptive Order.

[4] 15 U.S.C 80a–37(a). (stating in relevant part, ''[t]he Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate . . . .'').

[1] VALIC Timed Opportunity Fund, Inc., Investment Company Act Release Nos. 13891 (Apr. 17, 1984) (notice) and 13943 (May 16, 1984) (order). The Applicant has undergone several name changes since the order was issued, and since December 31, 2001 has been named the ''Asset Allocation Fund'' (a series company of the registrant VALIC Company I). *See* VALIC Company I, Statement of Additional Information, Co, Oct. 1, 2015, *https://www.sec.gov/Archives/edgar/data/719423/000119312515327556/d93331d485bpos.htm.*

[2] *See Use of Derivatives by Registered Investment Companies and Business Development Companies,* Investment Company Act Release No. 34084 (Nov. 2, 2020) at *https://www.sec.gov/rules/final/2020/ic-34084.pdf.*

[3] *See* 17 CFR 270.17f–6; *Custody of Investment Company Assets with Futures Commissions Merchants and Commodity Clearing Organizations,* Investment Company Act Release No. 22389 (Dec. 11, 1996), *https://www.sec.gov/rules/final/ic-22389.txt.* We also note that based on its filings on Form N–CEN, the Applicant has not reported that it relies on the Exemptive Order.

[4] 15 U.S.C. 80a–37(a). (stating in relevant part, ''[t]he Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate . . . .'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.34(b) related to price protections and risk controls for complex orders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.34(b) related to price protections and risk controls for complex orders. Specifically, the proposed rule change amends Rule 5.34(b)(4), which provides for a buy strategy price check for complex orders, to adopt an additional buy strategy price check for certain complex orders and amends Rule 5.34(b)(1) to provide clarity regarding the definition of a skewed butterfly spread.

First, the proposed rule change amends Rule 5.34(b)(4) to adopt an additional buy strategy price check for complex orders.[3] Specifically, the proposed rule change adopts Rule 5.34(b)(4)(B) to provide that the System cancels or rejects a vertical or butterfly spread[4] order to buy that has a price of zero and is not designated as either IOC or Direct to PAR, and the System does not initiate a COA with a vertical or butterfly spread order to buy that has a price of zero unless the order is auctioned via PAR. The Exchange may apply this check on a class-by-class basis.

The proposed buy strategy price check is designed to prevent a significant number of resting zero-priced vertical and butterfly buy strategies from overwhelming the complex order book (''COB''). The Exchange has observed a significant and increasing number of zero-priced vertical and butterfly buy spread orders in certain classes submitted to rest in the COB, and does not believe the vast majority of these orders to be legitimately price.[sic][5] The Exchange notes that, while a zero-priced vertical or butterfly buy spread order may be a legitimately priced complex order, these orders infrequently execute against an opposing complex order and a majority of such orders remain resting in the COB. That is, it is rare that market participants desire to sell such strategies at a price of zero. The Exchange has observed relatively few fills as compared to the large number of these zero-bid strategy orders that remain resting in the COB.[6] Such strategy orders also create a substantial amount of excess market data through which market participants must parse. Indeed, the Exchange notes that multiple Trading Permit Holders (''TPHs'') have expressed concern to the Exchange in connection with the amount of excess data that stems from the high number of zero-priced vertical and butterfly buy strategies. In particular, the Exchange understands that the high number of zero-priced vertical and butterfly buy strategies can impede liquidity providers from executing against marketable customer interest, as the stream of incoming zero-priced vertical and butterfly strategies creates new data messages that liquidity providers must process and synthesize into their systems, interfering with liquidity providers' time and resources to otherwise process, synthesize and react to data messages in connection with marketable customer interest. The Exchange notes too that complex orders also generate a COA auction message before resting in the COB, and the COA auction message volume resulting from the influx of zero-priced vertical and butterfly buy spread orders saturates the auction market data and may deter liquidity providers from providing auction liquidity, which adversely impacts customer orders. Additionally, the Exchange has expended resources to implement multiple System enhancements in order to enable the System to continue to handle the large number of such strategies.

To illustrate this issue, the Exchange reviewed the top 25 classes in which the most orders were submitted during Q2 2022, and, of this sample of classes, the Exchange identified 10 classes that experienced (and continue to experience) resting zero-priced vertical and butterfly buy strategies overwhelming their respective COBs. On average, approximately 6.76% of the orders submitted in these 10 classes were zero-priced vertical and butterfly buy strategies, whereas only approximately 0.48% of the orders submitted in the other 15 classes (classes that the Exchange did not identify as experiencing this issue) were zero-priced vertical and butterfly buy strategies. That is, the 10 classes in the dataset reviewed by the Exchange and identified as subject to this particular issue, experienced approximately 1308% more zero-priced vertical and butterfly buy spreads resting in their COBs, on average, than the other 15 classes. Additionally, from an analysis of zero-priced buy vertical and butterfly spread orders submitted from January 2022 through July 2022, the Exchange identified that approximately only 1.3% of the approximately 177 million zero-priced buy vertical and butterfly spread contracts submitted to rest in the COB were filled. The Exchange further identified that the majority of the zero-priced buy vertical and butterfly spread orders were submitted by only a few

[3] Rule 5.34(b)(4) currently provides for one buy strategy price check; that the System cancels or rejects a limit complex order where all the components of the strategy are to buy and the order has (A) a price of zero, (B) a net credit price that exceeds a pre-set buffer (which the Exchange determines), or (C) a net debit price that is less than the number of individual legs in the strategy (or applicable ratio) multiplied by the minimum increment. As a result of the proposed additional buy strategy price check, the proposed rule change renumbers the current buy strategy price check in Rule 5.34(b)(4) as 5.34(b)(4)(A).

[4] For the purposes of Rule 5.34(b), the System considers a true butterfly and a skewed butterfly to be butterfly spread. The proposal explains this definition in further detail below.

[5] The Exchange believes that vertical and butterfly spreads particularly are being used in this manner given certain characteristics: a vertical spread has the fewest number of legs (two) that contain the same expiration and different strikes and, therefore, is relatively less expensive and has a greater chance of legging into the Simple book; and a butterfly spread also has comparatively fewer legs (three, as compared to a box spread, which has four legs) that contain the same strike and expiration [sic], and, given its structure, has a more defined PnL (minimum and maximum possible trading price limit) than other strategies, providing it with more manageable risk.

[6] From its analysis of such orders submitted from January 2022 through July 2022, the Exchange identified that approximately only 1.3% of the approximately 177 million zero-priced buy vertical and butterfly spread orders submitted to rest in the COB received fills (including any in-part fills).

firms, that, on average, received fills on only approximately 0.04% of their zero-priced buy vertical and butterfly spread contracts submitted to rest in the COB.

The proposed price check requires zero-priced vertical and butterfly buy spread orders to be designated only as IOC [7] or Direct to PAR [8] to ensure that such orders are either executed against marketable orders immediately (in whole or in part) and then cancelled without resting in the COB or sent to directly to a PAR workstation for manual handling by a Floor Broker—that is, also without resting in the COB. Additionally, the proposed rule change allows a zero-priced vertical and butterfly buy spread order to initiate a COA, only if such order is auctioned via PAR.[9] By allowing zero-priced vertical and butterfly buy spread orders to be submitted only as IOC or for manual handling, including manual submission into a COA, the proposed rule change continues to provide execution opportunities for orders with these strategies that are legitimately priced at zero, while preventing a significant number of these orders from overwhelming the COB, many of which the Exchange believes do not have legitimate prices. Additionally, the proposed rule change provides that the proposed price check may be implemented on a class-by-class basis so that the Exchange may determine whether allowing zero-prices [sic] vertical and butterfly buy spread orders to rest in the COB is appropriate for different classes, which may exhibit different trading characteristics and have different market models. The Exchange notes that multiple provisions governing price checks and risk controls for complex orders permit the Exchange to administer such price protections or risk controls on a class-by-class basis.[10]

Second, the proposed rule change updates the definition of skewed butterfly spread to be consistent with the manner in which the System defines a skewed butterfly spread and what the System currently considers to be a butterfly spread. Rule 5.34(b)(1)(B) currently provides that, for the purposes of Rule 5.34(b) (order and quote price protection mechanisms and risk control for complex orders), a butterfly spread is a three-legged complex order with two legs to buy (sell) the same number of calls (puts) and one leg to sell (buy) twice as many calls (puts), all with the same expiration date but different exercise prices, and the exercise price of the middle leg is between the exercise prices of the other legs. If the exercise price of the middle leg is halfway [11] between the exercise prices of the other legs, it is a ''true'' butterfly; otherwise, it is a ''skewed'' butterfly. For the purposes of Rule 5.34(b), the System currently defines a skewed butterfly more granularly than the current rule text. The System considers a butterfly spread to be a skewed butterfly where the exercise price of the middle leg is less in-the-money than the average of the exercise prices of the other legs. To illustrate, the System currently considers, for example, a call butterfly to buy one $40 call, sell two $65 calls, and buy one $80 call to be a skewed butterfly as the middle leg (selling $65 calls) is less in the money [12] than a $60 strike (which is the average of the $40 and $80 strikes) between the legs to buy calls). Additionally, for the purposes of Rule 5.34(b), the System currently considers a true butterfly and a skewed butterfly to be a butterfly spread. That is, if a complex order is not a true butterfly or a skewed butterfly, the System does not consider it to be a butterfly spread for the purposes of the protection mechanisms and risk controls rules. Therefore, to reflect more accurately what the System considers to be a skewed butterfly and a butterfly spread generally, the proposed rule change adopts language in Rule 5.34(b)(1) to provide, in relevant part, that the System considers a true butterfly and a skewed butterfly to be a butterfly spread, and that if the exercise price of the middle leg is less in-the-money than the average [13] of the exercise prices of the other legs, it is a ''skewed'' butterfly. The proposed rule change is merely a definitional clarification to the rule text and does not alter any current System functionality, but instead adds clarity to the Rule by more accurately reflecting the manner in which the System currently defines a skewed butterfly and a butterfly spread.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system, and, in general, protects investors and the public interest as it is designed to prevent significant numbers of resting zero-priced vertical and butterfly buy spread orders from overwhelming the COB, many of which are likely not legitimately priced given their pattern of trading. As described above, the Exchange has recently observed a significant and increasing number of zero-priced vertical and butterfly buy spread orders in certain classes submitted to rest in the COB. Because these orders are infrequently executed, the majority of such orders remain resting in the COB, creating a substantial amount of excess market data, which requires market participants and the Exchange to unessentially expend additional resources to handle such data and which may impede

[7] The terms ''Immediate-or-Cancel'' and ''IOC'' mean, for an order so designated, a limit order that must execute in whole or in part as soon as the System receives it; the System cancels and does not post to the Book an IOC order (or unexecuted portion) not executed immediately on the Exchange or another options exchange. Users may designate bulk messages as IOC. A User may not designate an IOC order as Direct to PAR.

[8] A ''Direct to PAR'' order is an order a User designates to be routed directly to a specified PAR workstation for manual handling. A User must designate a Direct to PAR order as RTH Only.

[9] To note, orders submitted manually to a COA that do not execute at the end of the COA route back to PAR for manual handling. *See* Rule 5.33(d)(5)(B) [sic].

[10] *See e.g.,* Rule 5.34(b)(3), (b)(6), (c)(1), and (c)(10).

[11] See infra.

[12] A call option is in the money if the price of the underlying is higher than its strike price. Calls increase in moneyness as the strike price decreases.

[13] The proposed rule change also updates the current definition of a true butterfly to refer to ''the average of'' the exercise prices of the other legs, instead of ''halfway between'' the exercise prices of the other legs. The Exchange notes this verbiage does not change the meaning of the rule text and instead more specifically reflects the calculation that arrives at the halfway point between the other legs and is more consistent with proposed updated definition of skewed butterfly.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

liquidity providers from submitting liquidity in response to otherwise marketable interest, including resting customer orders, and auctions. The Exchange again notes that multiple TPHs have expressed concern to the Exchange in connection with the amount of excess data that stems from the high number of zero-priced vertical and butterfly buy strategies. By allowing zero-priced vertical and butterfly buy spread orders to be submitted only as IOC or for manual handling, including manual submission to COA, the proposed rule change continues to provide execution opportunities for these strategy orders, while preventing an influx of such orders from inundating the COB. Also, the Exchange believes that the proposed rule change to permit the Exchange to apply the proposed price check on a class basis protects investors as the proposed price check, like other price protections and risk controls permitted under the Rules on a class basis,[17] may be appropriate for different classes as different classes may exhibit different trading characteristics and have different market models.

Further, the Exchange believes that the proposed rule change to clarify the definition of a skewed butterfly and butterfly spread removes impediments to and perfects the mechanism of a free and open market and national market system by amending Rule 5.34(b)(1)(B) to be more consistent with the manner in which the System currently defines a skewed butterfly and a butterfly spread for the purposes of the protection mechanisms and risk controls rules. The proposed rule change is merely a definitional clarification intended to more accurately reflect how the System currently works, thereby increasing transparency in the Rule and ultimately benefitting investors. The proposed clarifications do not alter any current functionality, but instead provides clarity to the Rule by more precisely defining a skewed butterfly and a butterfly spread.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed price check for zero-priced vertical and butterfly buy spread orders will impose any burden on intramarket competition because the proposed priced check will apply to all such orders in the same manner. The proposed price protection will benefit investors and the marketplace generally by preventing significant numbers of resting zero-priced vertical and butterfly buy spread orders from overwhelming the COB, many of which are likely not legitimately priced, while continuing to provide execution opportunities for such orders that are legitimately priced at zero via the IOC instruction or manual handling. The Exchange does not believe the proposed price check will impose any burden on intermarket competition because it is designed solely to mitigate the adverse impacts of an increasingly significant number of certain, infrequently executed complex orders resting in the COB. Further, the proposed rule change to clarify the definition of skewed butterfly and butterfly spread in Rule 5.34(b)(1)(B) is not competitive in nature but are merely a definitional clarification in the Rule, consistent with existing System functionality and intended to provide clarity to the Rule by more accurately reflecting the System's current definition of a skewed butterfly and a butterfly spread for the purposes of the purposes of the protection mechanisms and risk controls rules. As stated, the proposed clarification does not alter any current functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–041. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–041, and should be submitted on or before September 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18095 Filed 8–22–22; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* note 10.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–548, OMB Control No. 3235–0609]

Proposed Collection; Comment Request; Extension: Regulation S–AM

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Regulation S–AM (17 CFR part 248, subpart B), under the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) (''FCRA''), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Regulation S–AM implements the requirements of Section 624 of the FCRA (15 U.S.C. 1681s–3) with respect to investment advisers and transfer agents registered with the Commission, as well as brokers, dealers and investment companies (collectively, ''Covered Persons''). Section 624 and Regulation S–AM limit a Covered Person's use of certain consumer financial information received from an affiliate to solicit a consumer for marketing purposes, unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations. Regulation S–AM potentially applies to all of the approximately 21,896 Covered Persons registered with the Commission, although only approximately 12,262 of them have one or more corporate affiliates, and the regulation requires only approximately 2,190 to provide consumers with an affiliate marketing notice and an opt-out opportunity.

The Commission staff estimates that there are approximately 12,262 Covered Persons having one or more affiliates, and that they each spend an average of 0.20 hours per year to review affiliate marketing practices, for, collectively, an estimated annual time burden of approximately 2,452 hours at an annual internal compliance cost of approximately $1,444,228. The staff also estimates that approximately 2,190 Covered Persons provide notice and opt-out opportunities to consumers, and that they each spend an average of 7.6 hours per year creating notices, providing notices and opt-out opportunities, monitoring the opt-out notice process, making and updating records of opt-out elections, and addressing consumer questions and concerns about opt-out notices, for, collectively, an estimated annual time burden of approximately 16,644 hours at an annual internal compliance cost of approximately $3,599,484. Thus, the staff estimates that the collection of information requires a total of approximately 12,262 respondents to incur an estimated total annual time burden of approximately 19,096 hours at a total annual internal cost of compliance of approximately $5,043,712.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by October 24, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 17, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18144 Filed 8–22–22; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0039]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Railroad Board (RRB). Under this matching program, the RRB will disclose to SSA information necessary to verify an individual's self-certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable SSA to identify individuals who may qualify for Extra Help as part of the agency's Medicare outreach efforts.

DATES: The deadline to submit comments on the proposed matching program is September 22, 2022. The matching program will be applicable on October 1, 2022, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2022–0039 so that we may associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2022–0039 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on

the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Andrea Huseth, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (303) 844–0815, or send an email to *stephanie.kiley@ssa.gov.*

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and RRB.

Authority for Conducting the Matching Program: This matching agreement between RRB and SSA is executed pursuant to the Privacy Act of 1974, (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, and the Office of Management and Budget Final Guidance interpreting those Acts.

The legal authority for the disclosures under this agreement is the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(3)), which authorizes a Federal agency to disclose information from its system of records, without prior written consent, when such disclosure is pursuant to a routine use.

The legal authority for SSA to conduct this matching activity is sections 1144 and 1860D–14 of the Social Security Act (Act) (42 U.S.C. 1320b–14 and 1395w–114).

Purpose(s): This matching agreement establishes the conditions under which the RRB will disclose to SSA information necessary to verify an individual's self certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable SSA to identify individuals who may qualify for Extra Help as part of the agency's Medicare outreach efforts.

Categories of Individuals: The individuals whose information is involved in this matching program are individuals who self certify for Extra Help or may qualify for Extra Help. SSA matches RRB's information with its Medicare Database (MDB) File, which includes claimants, applicants, beneficiaries, ineligible spouses and potential claimants for Medicare Part A, Medicare Part B, Medicare Advantage Part C, Medicare Part D and for Medicare Part D prescription drug coverage subsidies.

Categories of Records: RRB will transmit its annuity payment data monthly from its RRB–22, *Railroad Retirement Survivors and Pension Benefits System,* system of records. The file will consist of approximately 600,000 electronic records.

RRB will transmit its Post Entitlement System file daily. The number of records will differ each day, but consist of approximately 3,000 to 4,000 records each month.

RRB will transmit files on all Medicare eligible Qualified Railroad Retirement Beneficiaries from its RRB–20, *Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (Medicare),* and RRB–22 systems of records to report address changes and subsidy changing event information monthly. The file will consist of approximately 520,000 electronic records. The number of people who apply for Extra Help determines in part the number of records matched.

SSA's comparison file will consist of approximately 90 million records obtained from MDB File.

SSA will conduct the match using each individual's Social Security number, name, date of birth, RRB claim number, and RRB annuity payment amount in both RRB and MDB File.

System(s) of Records: RRB will provide SSA with data from its RRB–22 system of records, last published on September 30, 2014 (79 FR 58886), and RRB–20 systems of records, last published on May 15, 2015 (80 FR 28018).

SSA will match RRB's data with its MDB File, system of records No. 60–0321, published on July 25, 2006 (71 FR 42159), and amended on December 10, 2007 (72 FR 69723).

[FR Doc. 2022–18100 Filed 8–22–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11840]

United States Passports Invalid for Travel to, in, or Through the Democratic People's Republic of Korea (DPRK)

ACTION: Notice of extension of passport travel restriction.

SUMMARY: On September 1, 2017, all U.S. passports were declared invalid for travel to, in, or through the Democratic People's Republic of Korea (DPRK), unless specially validated for such travel. The restriction was extended for one year in 2018, 2019, 2020, and 2021 and, if not renewed, the restriction is set to expire on August 31, 2022. This notice extends the restriction until August 31, 2023, unless extended or revoked by the Secretary of State.

DATES: The extension of the travel restriction is in effect on September 1, 2022.

FOR FURTHER INFORMATION CONTACT: Kelly Cullum, Bureau of Consular Affairs, Passport Services, Office of Adjudication, 202–485–8800.

SUPPLEMENTARY INFORMATION: On September 1, 2017, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.63(a)(3), all U.S. passports were declared invalid for travel to, in, or through the DPRK unless specially validated for such travel. The restriction was renewed on September 1, 2018, September 1, 2019, September 1, 2020, and again for another year effective September 1, 2021. If not renewed again, the restriction is set to expire on August 31, 2022.

The Department of State has determined there continues to be serious risk to U.S. citizens and nationals of arrest and long-term detention constituting imminent danger to their physical safety, as defined in 22 CFR 51.63(a)(3). Accordingly, all U.S. passports shall remain invalid for travel to, in, or through the DPRK unless specially validated for such travel under the authority of the Secretary of State. This extension to the restriction of travel to the DPRK shall be effective on September 1, 2022, and shall expire August 31, 2023, unless extended or revoked by the Secretary of State.

Dated: June 29, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–18157 Filed 8–22–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that

are final. The actions relate to a proposed highway project, the State Route 132 Dakota Avenue to Gates Road Project on State Route 132 from post mile 4.5 to R11.7 in the county of Stanislaus, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 20, 2023. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

For Caltrans:

John Thomas, Branch Chief, Northern San Joaquin Valley Management Branch 1, 2015 E Shields Avenue, Suite 100, Fresno, CA 93726, (559) 408–4496, *john.q.thomas@dot.ca.gov*, Mon.–Fri. 9:00 a.m.–5:00 p.m.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The State Route 132 Dakota Avenue to Gates Road Project on State Route 132 from post mile 4.5 to R11.7 in County of Stanislaus, California. Caltrans proposes to construct an access controlled facility within the western central portion of Stanislaus County, from Gates Road/Paradise Road to Dakota Avenue, post miles 4.5 to R11.7, located two miles west of the City of Modesto. This project would be an extension of the State Route 132 West project that is being designed on a new alignment in the City of Modesto, California. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project, approved on April 21, 2022, in the FHWA Finding of No Significant Impact (FONSI) issued on April 21, 2022, and in other documents in the FHWA project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEA and FONSI can be viewed and downloaded from the project website at: *https://dot.ca.gov/caltrans-near-me/district-10/district-10-current-projects/state-route-132-dakota-avenue-to-gates-road-project.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335].

2. *Air:* Clean Air Act [23 U.S.C. 109 (j) and 42 U.S.C 7521(a)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; The Public Health and Welfare [42 U.S.C. 4331 (b)(2)].

4. *Wildlife:* Federal Endangered Species Act [16 U.S.C. 1531–1543]; Fish and Wildlife Coordination Act [16 U.S.C. 661–666(C); Migratory Bird Treaty Act [16 U.S.C. 760c–760g].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470 (ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* NEPA implementation [23 U.S.C. 109(h)]; Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1344]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 13112 Invasive Species; E.O. 11988 Floodplain management; E.O. 12898 Federal actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Antonio Johnson,

Director, Planning, Environment and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2022–17851 Filed 8–22–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Reporting, Recordkeeping, and Disclosure Requirements Associated With Proprietary Trading and Certain Interests in and Relationships With Covered Funds

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled ''Reporting, Recordkeeping, and Disclosure Requirements Associated with Proprietary Trading and Certain Interests in and Relationships with Covered Funds.''

DATES: Comments must be received on or before October 24, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0309, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0309'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any

information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' drop down menu and click on ''Information Collection Review.'' From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0309'' or ''Reporting, Recordkeeping, and Disclosure Requirements Associated with Proprietary Trading and Certain Interests in and Relationships with Covered Funds.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Reporting, Recordkeeping, and Disclosure Requirements Associated with Proprietary Trading and Certain Interests in and Relationships with Covered Funds.

OMB Control No.: 1557–0309.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB renew its approval of the collection.

Section 13 of the Bank Holding Company (BHC) Act generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a covered fund, subject to certain exemptions. The exemptions allow certain types of permissible trading and covered fund activities. The initial regulations implementing section 13 became effective on April 1, 2014. Twelve CFR 44.20(d) and Appendix A of the implementing regulations require certain of the largest banking entities to report to the appropriate agency certain quantitative measurements.

This collection of information was established pursuant to a rule [1] required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which was enacted on July 21, 2010.[2] The rule implemented section 619 of the Dodd-Frank Act, which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board of Governors of the Federal Reserve System (FRB) to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.

Section 619 of the Dodd-Frank Act added a new section 13 to the BHC Act (codified at 12 U.S.C. 1851) that generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund, subject to certain exemptions. The OCC's version of the rule is codified at 12 CFR part 44. The reporting, recordkeeping, and disclosure requirements associated with the rule permit banking entities and the OCC to enforce compliance with section 13 of the BHC Act and the rule and to identify, monitor, and limit risks of activities permitted under section 13.

Section-By-Section Analysis

Section 44.3(d)(3), regarding excluded liquidity management activities, includes recordkeeping requirements for security, foreign exchange forward, foreign exchange swap, or cross-currency swap transactions.

Section 44.4(b)(3)(i)(A), regarding permitted market making activities, provides that a trading desk or other organizational unit of another banking entity is not a client, customer, or counterparty of a trading desk relying on the market-making exemption if that other entity has trading assets and liabilities of $50 billion or more unless the trading desk documents how and why a particular trading desk or other organizational unit of the other entity should be treated as a client, customer, or counterparty of the trading desk.

Section 44.4(c)(3)(i) requires a banking entity that relies on the market making presumption of compliance to make available to the OCC upon request records regarding (1) any limit that is exceeded and (2) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the OCC.

Section 44.5(c) includes documentation requirements for banking entities that have significant trading assets and liabilities and rely on the risk-mitigating hedging exemption.

Section 44.10(c)(18)(ii)(C)(1) requires a banking entity relying on the exclusion from the covered fund definition for customer facilitation vehicles to maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to a transaction, investment strategy, or service.

Section 44.11(a)(2) requires a banking entity (or an affiliate thereof) that organizes and offers a covered fund in connection with the provision of *bona fide* trust, fiduciary, investment advisory, or commodity trading advisory services to persons that are customers of such services of the banking entity (or an affiliate thereof) to organize and offer the fund pursuant to a written plan or similar documentation outlining how the banking entity or such affiliate intends to provide advisory or similar services to its customers through organizing and offering such fund.

Section 44.11(a)(8)(i) requires a banking entity that organizes and offers

[1] 79 FR 5536 (January 31, 2014).

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

covered funds to make certain disclosures to investors in such funds. This provision also applies to banking entities relying on exclusions for credit funds, venture capital funds, family wealth management vehicles, or customer facilitation vehicles.

Section 44.12(e) outlines the requirements for requesting an extension of time to divest an ownership interest in a covered fund.

Section 44.20(b) requires a compliance program from banking entities with significant trading assets and liabilities.

Section 44.20(c) requires a CEO attestation from any banking entity that has significant trading assets and liabilities.

Section 44.20(d) requires a banking entity with significant trading assets and liabilities (or any other banking entity to which the OCC has provided written notification) to report metrics specified in appendix A. Section 20(d) further specifies that a banking entity that is required to report these metrics must do so within 30 days of the end of each calendar quarter.

Section 44.20(e) requires a banking entity with significant trading assets and liabilities to maintain additional documentation for covered funds.

Section 44.20(f)(1) provides that a banking entity with no covered activities (other than trading activities permitted pursuant to § 44.6(a) of subpart B) can satisfy the requirements of § 44.20 by establishing the required compliance program prior to becoming engaged in such activities or making such investments.

Section 44.20(f)(2) provides that a banking entity with moderate trading assets and liabilities may satisfy the requirements of § 44.20 by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and part 44 and adjustments as appropriate given its activities, size, scope, and complexity.

Section 44.20(i) covers notice and response procedures. The OCC will notify a banking entity in writing of any determination requiring notice under part 44 and will provide an explanation of the determination. The banking entity may respond to the notice and should include any matters that the banking entity would have the OCC consider in deciding whether to make the determination. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the banking entity received the notice.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents: 39.

Estimated Total Annual Burden: 20,410.

Comments submitted in response to this notice will be summarized and included in the submission to OMB. Comments are requested on:

(a) Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2022–18142 Filed 8–22–22; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL REGISTER

Vol. 87 Tuesday,
No. 162 August 23, 2022

Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Consumer Clothes Dryers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2014–BT–STD–0058]

RIN 1904–AD99

Energy Conservation Program: Energy Conservation Standards for Consumer Clothes Dryers

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including consumer clothes dryers. EPCA also requires the U.S. Department of Energy (''DOE'') to periodically determine whether more stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed rulemaking (''NOPR''), DOE proposes amended energy conservation standards for consumer clothes dryers, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Meeting: DOE will hold a public meeting via webinar on September 13, 2022, from 1:00 p.m. to 4:00 p.m. See section VII, ''Public Participation'' for webinar registration information, participant instructions and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this NOPR no later than October 24, 2022.

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 September 22, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2014–BT–STD–0058, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *ResClothesDryers2014STD0058@ee.doe.gov.* Include docket number EERE–2014–BT–STD–0058 in the subject line of the message.

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

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2014-BT-STD-0058.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII for information on how to submit comments through *www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy following the instructions at *www.RegInfo.gov.*

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

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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SUPPLEMENTARY INFORMATION:

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I. Synopsis of the Proposed Rule

Title III, Part B [1] of EPCA,[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include consumer clothes dryers, the subject of this proposed rulemaking.

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

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for consumer clothes dryers. The proposed standards, which are expressed as the combined energy factor as determined in accordance with the appendix D2 test procedure (''CEF_{D2}'') in pounds per kilowatt-hour (''lb/kWh'')—a metric based on the clothes dryer test load weight in pounds (''lb'') divided by the sum of ''active mode'' and ''inactive mode'' per-cycle energy use in kilowatt-hours (''kWh''), are shown in Table I.1. These proposed standards, if adopted, would apply to all consumer clothes dryers listed in Table I.1 manufactured in, or imported into, the United States starting on the date 3 years after the publication of the final rule for this proposed rulemaking.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER CLOTHES DRYERS AS MEASURED UNDER APPENDIX D2

Product class	CEF_{D2} (lb/kWh)
1. Electric, Standard (4.4 cubic feet (''ft^3'') or greater capacity)	3.93
2. Electric, Compact (120 volts (''V'')) (less than 4.4 ft^3 capacity)	4.33
3. Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	3.57
4. Vented Gas, Standard (4.4 ft^3 or greater capacity)	3.48
5. Vented Gas, Compact (less than 4.4 ft^3 capacity)	2.02
6. Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.68
7. Ventless Electric, Combination Washer-Dryer	2.33

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

[2] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

DOE also considered more-stringent energy efficiency levels as potential standards, and is still considering them in this proposed rulemaking. DOE may also consider adopting more stringent-energy efficiency levels for some or all classes. However, DOE has tentatively concluded at this time that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of consumer clothes dryers, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of consumer clothes dryers, which is estimated to be 14 years (see section IV.F of this document).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF CONSUMER CLOTHES DRYERS

Consumer clothes dryer class	Average LCC savings (2020$)	Simple payback period (years)
Electric, Standard (4.4 ft^3 or greater capacity)	$578	0.55
Electric, Compact (120V) (less than 4.4 ft^3 capacity)	160	1.81
Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	192	1.62
Vented Gas, Standard (4.4 ft^3 or greater capacity)	198	1.95
Vented Gas, Compact (less than 4.4 ft^3 capacity)	25.2	5.07
Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	145	0.33
Ventless Electric, Combination Washer-Dryer	15.1	0.00

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2022–2056). Using a real discount rate of 7.5 percent, DOE estimates that the INPV for manufacturers of consumer clothes dryers in the case without amended standards is $1,810.1 million in 2020$. Under the proposed standards, the change in INPV is estimated to range from –6.4 percent to –4.5 percent, which is approximately $115.6 million to $81.6 million. In order to bring products into compliance with amended standards, it is estimated that the industry would incur total conversion costs of $149.7 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

C. National Benefits and Costs[4]

DOE's analyses indicate that the proposed energy conservation standards for consumer clothes dryers would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for consumer clothes dryers purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2027–2056) amount to 3.11 quadrillion British thermal units (''Btu''), or quads.[5]

The cumulative net present value (''NPV'') of total consumer benefits of the proposed standards for consumer clothes dryers ranges from $9.07 billion (at a 7-percent discount rate) to $20.8 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 consumer clothes dryers purchased in 2027–2056.

In addition, the proposed standards for consumer clothes dryers are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 116 million metric tons (''Mt'')[6] of carbon dioxide (''CO_2''), 42.6 thousand tons of sulfur dioxide (''SO_2''), 181 thousand tons of nitrogen oxides (''NO_X''), 883 thousand tons of methane (''CH_4''), 1.09 thousand tons of nitrous oxide (''N_2O''), and 0.26 tons of mercury (''Hg'').[7]

DOE estimates the value of climate benefits from a reduction in greenhouse gases using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of greenhouse gases (SC–GHG). DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'').[8] 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 $5.42 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the

[3] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (*see* section IV.F.8 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (*see* section IV.F.9 of this document).

[4] All monetary values in this document are expressed in 2020 dollars.

[5] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, *see* section IV.H.2 of this document.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2021* (''*AEO2021*''). *AEO2021* represents current Federal and State legislation and final implementation of regulations as of the time of its preparation. *See* section IV.K of this document for further discussion of *AEO2021* assumptions that effect air pollutant emissions.

[8] *See* Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC (February 2021) (Available at: *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf*) (Last accessed March 17, 2022).

importance and value of considering the benefits calculated using all four SC–GHG estimates.[9]

DOE also estimates health benefits from SO_2 and NO_X emissions reductions. DOE estimates the present value of the health benefits would be $3.59 billion using a 7-percent discount rate, and $9.14 billion using a 3-percent discount rate. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.3 summarizes the monetized benefits and costs expected to result from the proposed standards for consumer clothes dryers. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

TABLE I.3—SUMMARY OF MONETIZED ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER CLOTHES DRYERS

[TSL 3]

	Billion 2020$
3% discount rate	
Consumer Operating Cost Savings	22.2
Climate Benefits*	5.42
Health Benefits**	9.14
Total Benefits†	36.8
Consumer Incremental Product Costs‡	1.36
Net Benefits	35.4
7% discount rate	
Consumer Operating Cost Savings	9.83
Climate Benefits*	5.42
Health Benefits**	3.59
Total Benefits†	18.8
Consumer Incremental Product Costs‡	0.76
Net Benefits	18.1

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

*Climate benefits are calculated using four different estimates of the social cost of carbon ($SC–CO_2$), methane ($SC–CH_4$), and nitrous oxide ($SC–N_2O$) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate), as shown in Table V.36, Table V.38, and Table V.40. Together these represent the global social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. *See* section. IV.L of this document for more details. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

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

†Total and net benefits include those consumer, climate, and health benefits that can be 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 the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. See Table V.46 for net benefits using all four SC–GHG estimates.

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

The benefits and costs of the proposed standards, for consumer clothes dryers sold in 2027–2056, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of the benefits of NO_X and SO_2 emission reductions, all annualized.[10]

[9] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

[10] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2021, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2021. The calculation uses discount rates of 3 and 7 percent for all costs and benefits. 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.

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of consumer clothes dryers shipped in 2027–2056. The benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of consumer clothes dryers shipped in 2027–2056. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section V.B.8 of this document. Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. 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 SO_2 and NO_X emissions, the estimated cost of the standards proposed in this rule is $85.7 million per year in increased equipment costs, while the estimated annual benefits are $1,111 million in reduced equipment operating costs, $320 million in climate benefits, and $406 million in health benefits (accounting for reduced NO_X emissions and increased SO_2 emissions). In this case, the net benefit would amount to $1,752 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $80.7 million per year in increased equipment costs, while the estimated annual benefits are $1,313 million in reduced operating costs, $320 million in climate benefits, and $541 million in health benefits (accounting for reduced NO_X emissions and increased SO_2 emissions). In this case, the net benefit would amount to $2,094 million per year.

TABLE I.4—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER CLOTHES DRYERS

[TSL 3]

	Million 2020$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	1,313	1,227	1,403
Climate Benefits *	320	311	327
Health Benefits **	541	526	551
Total Benefits †	2,174	2,065	2,280
Consumer Incremental Product Costs ‡	80.7	80.5	76.6
Net Benefits	2,094	1,984	2,204
7% discount rate			
Consumer Operating Cost Savings	1,111	1,050	1,178
Climate Benefits *	320	311	327
Health Benefits **	406	395	413
Total Benefits †	1,837	1,757	1,917
Consumer Incremental Product Costs ‡	85.7	85.3	82.4
Net Benefits	1,752	1,671	1,835

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

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

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

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

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

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these standard levels are already commercially available for all product classes covered by this proposal. As for economic justification,

DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the proposed standards. Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, the estimated cost of the proposed standards for consumer clothes dryers is $85.7 million per year in increased product costs, while the estimated annual benefits are $1,111 million in reduced product operating costs, and $406 million in health benefits. The net benefit amounts to $1,752 million per year.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[11] For example, some covered products and equipment have substantial energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 3.11 quads, the equivalent of the electricity consumption of 78 million residential homes in one year.[12] DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying technical support document (''TSD'').

DOE also considered more-stringent energy efficiency levels as potential standards, and is still considering them in this proposed rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits.

Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

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

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer clothes dryers, the subject of this document. (42 U.S.C. 6292(a)(8)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(g)(3)), and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)).

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

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for consumer clothes dryers appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix D1 and appendix D2 (''appendix D1'' and ''appendix D2'', respectively).

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer clothes dryers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3) (B))

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

[11] 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).

[12] U.S. Environmental Protection Agency, Greenhouse Gas Equivalencies Calculator. Available at *www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.*

on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

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

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

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

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

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more product classes. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for consumer clothes dryers address standby mode and off mode energy use. In this rulemaking, DOE intends to incorporate such energy use into any amended energy conservation standards that it may adopt.

B. Background

1. Current Standards

The most recent standards rulemaking for consumer clothes dryers was promulgated on April 21, 2011. Specifically, DOE published a direct final rule (the ''2011 Direct Final Rule'') amending the energy conservation standard for consumer clothes dryers manufactured on and after January 1, 2015. 76 FR 22454 (Apr. 21, 2011). The energy conservation standards, as amended in the 2011 Direct Final Rule, represent the current standards and are in accordance with the appendix D1 test procedure as discussed in section III.B of this document. They are based on combined energy factor (''CEF'')—a metric that incorporates energy use in active mode, standby mode, and off mode. Compliance with the current standards was required as of January 1, 2015. 76 FR 52852 (Aug. 24, 2011).

Even though DOE maintained the same energy-efficiency descriptor for both appendix D1 and appendix D2, DOE notes that the CEF values are not equivalent because of the extensive differences in test methods. To avoid potential confusion that would result from using the same efficiency descriptor for both test procedures as it relates to the standards discussed in this document, DOE is including a ''D1'' or ''D2'' subscript when referring to the appendix D1 CEF and appendix D2 CEF, respectively (*i.e.,* CEF_{D1} and CEF_{D2}), in this document.[13]

These current consumer clothes dryer standards as measured under appendix D1 are set forth in DOE's regulations at 10 CFR 430.32(h) and are repeated in Table II.1. DOE has conducted the rulemaking analysis for this proposed rule under the appendix D2 test procedure because compliance will be required concurrent with amended energy conservation, if finalized. DOE discusses additional details about the engineering baseline in section IV.C.1 of this document.

[13] Note that while the current standards are based on CEF as determined in accordance with appendix D1, manufacturers are permitted to use the appendix D2 test procedure to comply with the current standards, as long as they use a single appendix for all representations.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER CLOTHES DRYERS AS MEASURED UNDER APPENDIX D1

Product class	CEF_{D1} (lbs/kWh)
(A) Vented Electric, Standard (4.4 ft^3 or greater capacity)	3.73
(B) Vented Electric, Compact (120V) (less than 4.4 ft^3 capacity)	3.61
(C) Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	3.27
(D) Vented Gas	3.30
(E) Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.55
(F) Ventless Electric, Combination Washer-Dryer	2.08

On December 16, 2020, DOE published a final rule establishing a separate product class for consumer clothes dryers that offer cycle times for a ''normal'' cycle [14] of less than 30 minutes. 85 FR 81359 (Dec. 16, 2020) (''December 2020 Final Rule''). Because no such ''short-cycle'' consumer clothes dryers are currently on the market in the United States, DOE did not include analysis of this newly established product class in the preliminary TSD.

While these short-cycle products had previously been subject to energy and water conservation standards, the December 2020 Final Rule stated that short-cycle product classes were no longer subject to any water or energy conservation standards. 85 FR 68723, 68742; 85 FR 81359, 81376. As a result, the short-cycle products were allowed to consume unlimited amounts of energy and water.

As discussed in a NOPR subsequently published on August 11, 2021, DOE noted that in amending the standards for short-cycle products to allow for unlimited water and energy usage, DOE failed to consider whether the amended standards met the criteria in EPCA for issuing an amended standard. Notably, among other things, DOE did not determine, as required, that the amended standards for short-cycle products were designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) 86 FR 43970, 43971. DOE has since published a final rule on January 19, 2022, which revoked the December 2020 Final Rule that improperly promulgated standards for this new product class and reinstated the prior product classes and applicable standards for these covered products. 87 FR 2673, 2686. Therefore, DOE did not include analysis of a short-cycle product class in the NOPR TSD.

2. Current Process

DOE published a request for information (''RFI'') on March 27, 2015 (the ''March 2015 RFI'') describing the approaches and methods DOE will use in evaluating potential amended standards for consumer clothes dryers. 80 FR 16309 (Mar. 27, 2015). In addition, the RFI solicited information from the public to help DOE determine whether amended standards for consumer clothes dryers would result in a significant amount of additional energy savings, and whether those standards would be technologically feasible and economically justified. *Id.* The March 2015 RFI is available at *www.regulations.gov/document/EERE-2014-BT-STD-0058-0001.*

DOE published a notice of public webinar and availability of the preliminary TSD on April 19, 2021 (''April 2021 Preliminary Analysis'') to collect data and information to inform its decision consistent with its obligations under EPCA. 86 FR 20327. DOE subsequently held a public webinar on May 26, 2021, to discuss and receive comments on the preliminary TSD. The preliminary TSD that presented the methodology and results of the preliminary analysis is available at: *www.regulations.gov/document/EERE-2014-BT-STD-0058-0020.*

DOE received comments in response to the April 2021 Preliminary Analysis from the interested parties listed in Table II.2.

TABLE II.2—APRIL 2021 PRELIMINARY ANALYSIS WRITTEN COMMENTS

Commenter(s)	Abbreviation	Commenter type
Association of Home Appliance Manufacturers	AHAM	Trade Association.
Appliance Standards Awareness Project, Natural Resources Defense Council.	ASAP, NRDC	Efficiency Organizations.
California Investor-Owned Utilities	California IOUs	Utilities.
GE Appliances, a Haier Company	GEA	Manufacturer.
Whirlpool Corporation	Whirlpool	Manufacturer.
Samsung Electronics America	Samsung	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Institute for Policy Integrity at NYU School of Law	IPI	Efficiency Organization.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[15]

In response to the preliminary analysis, AHAM and Whirlpool stated that as laundry products are designed and used in pairs, DOE should harmonize its rulemaking processes such that the compliance dates for residential clothes washers and consumer clothes dryers are, if not identical, very close in time. According to AHAM and Whirlpool, this would

[14] Section 3.3.2 of appendix D2 requires that the ''normal'' program shall be selected for the test cycle; for clothes dryers that do not have a ''normal'' program, the cycle recommended by the manufacturer for drying cotton or linen clothes shall be selected.

[15] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for consumer clothes dryers. (Docket No. EERE–2014–BT–STD–0058, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

greatly reduce burden on manufacturers as they work to design products to meet amended standards as well as on retailers and consumers as products are re-floored leading up to and on the compliance date of any amended energy conservation standards. (AHAM, No. 23 at p. 6; Whirlpool, No. 27 at p. 13)

DOE appreciates the comments from AHAM and Whirlpool and recognizes the benefits of aligning the schedule for future amended standards for both products and may investigate harmonization of future rulemaking processes.

Additionally, AHAM stated its strong opposition to Natural Resources Canada's (''NRCan'') proposal to make ENERGY STAR levels the minimum energy conservation standard for clothes dryers in Canada and strongly urged DOE to not only weigh in against NRCan's approach through the U.S.-Canada Regulatory Cooperation Council and under the recently signed Memorandum of Understanding on energy cooperation, but also to account for the burden of any misalignment in DOE's analysis. According to AHAM it is critical that amended standards are coordinated in both substance and timing in order to maintain a consistent U.S.-Canadian market for home appliances. (AHAM, No. 23 at p. 9)

DOE notes that review of efficiency standards efforts in other regions is discussed in chapter 3 of the NOPR TSD. DOE will continue to review and track these efforts as part of its analysis.

C. Deviation From Appendix A

Section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A'') specifies that, in those instances where the Department may find it necessary or appropriate to deviate from the procedures, interpretations or policies that are generally applicable to the development of energy conservation standards and test procedures, DOE will provide interested parties with notice of the deviation and an explanation. DOE finds that it is appropriate to deviate from its existing procedures by publishing this NOPR instead of releasing an additional framework document because such activity would be redundant due to the information previously obtained through the March 2015 RFI and the preliminary analysis. Additionally, DOE finds it necessary to deviate from its existing procedures by providing a 60-day comment period for this NOPR because interested parties received sufficient time to comment on earlier rulemaking documents that relied on many of the same analytical assumptions and approaches presented in this proposal.

In accordance with section 3(a) of appendix A, DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking. DOE is opting to deviate from this step by publishing a NOPR following the preliminary analysis without a framework document. A framework document is intended to introduce and summarize the various analyses DOE conducts during the rulemaking process and requests initial feedback from interested parties. As discussed, prior to the preliminary analysis and this NOPR, DOE published the March 2015 RFI, in which DOE identified and sought comment on the technical and economic analyses to be conducted in determining whether amended energy conservation standards would be justified. *See* 80 FR 16309. DOE provided a 45-day comment period for the RFI. *Id.* Comments received following publication of the March 2015 RFI assisted DOE in identifying and resolving issues related to the preliminary analyses. 86 FR 20327, 20330. Given the level of comments received to the March 2015 RFI, publication of a framework document would be largely redundant with the published RFI and preliminary analysis. As such, DOE is deviating from the procedures provided in appendix A and is not publishing a framework document prior to the publication of this NOPR. The Department has determined that it is appropriate to proceed with this proposal due to the information obtained through the March 2015 RFI and the preliminary analysis.

Section 6(f)(2) of appendix A specifies that the length of the public comment period for a NOPR will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this NOPR, DOE has opted to instead provide a 60-day comment period. As stated previously DOE requested comment in the March 2015 RFI on the technical and economic analyses and provided stakeholders a 45-day comment period. Additionally, DOE provided a 75-day comment period for the preliminary analysis. 86 FR 20327. DOE has relied on many of the same analytical assumptions and approaches as used in the preliminary assessment and has determined that a 60-day comment period in conjunction with the prior comment periods provides sufficient time for interested parties to review the proposed rule and develop comments. As such, DOE has determined that a 75-comment period is not necessary for this proposal and that a 60-day comment period is sufficient time for interested stakeholders to submit their comments on this document.

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In determining whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) DOE's review of the preliminary analysis and comments received in response to the preliminary analysis, in addition to results from an updated test sample, are discussed in more detail in section IV.A of this document.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. On October 8, 2021, DOE published a final rule for the test procedure rulemaking (86 FR 56608) (the ''October 2021 TP Final Rule''), in which it amended appendix D1 and appendix D2, both entitled ''Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers,'' to provide additional detail in response to questions from manufacturers and test laboratories, including additional detail regarding the testing of ''connected'' models, dryness level selection, and the procedures for maintaining the required heat input rate for gas clothes dryers;

additional detail for the test procedures for performing inactive and off mode power measurements; specifications for the final moisture content (''FMC'') required for testing automatic termination control dryers; specification of a narrower scale resolution for the weighing scale used to determine moisture content of test loads; and specification that the test load must be weighed within 5 minutes after a test cycle has terminated. In addition, DOE amended the test procedures to update the estimated number of annual use cycles for clothes dryers; provide further direction for additional provisions within the test procedures; specify rounding requirements for all reported values; apply consistent use of nomenclature and correct typographical errors; remove obsolete sections of the test procedures, including appendix D; and update the reference to the applicable industry test procedure to the version certified by the American National Standards Institute (''ANSI''). 86 FR 56608, 56610 DOE's current energy conservation standards for consumer clothes dryers are expressed in terms of CEF_{D1}. (*See* 10 CFR 430.32(h)(3).)

In response to the preliminary analysis, commenters requested that DOE finalize the test procedure rulemaking prior to proceeding with energy conservation standards rulemaking in order to capture any impacts a finalized test procedure would have on amended standards. (AHAM, No. 22 at pp. 7–8; AHAM, No. 23 at pp. 2–4; California IOUs, No. 26 at pp. 4–5; GEA, No. 28 at p. 2; NEEA, No. 30 at p. 8).

At the time of the publication of the preliminary analysis, the October 2021 TP Final Rule had not yet published; however, DOE noted in the October 2021 TP Final Rule that the amendments adopted, other than the amendment to the number of annual use cycles in appendix D2, would not substantively alter the measured efficiency of consumer clothes dryers, and that the test procedures would not be unduly burdensome to conduct. The amendment to the number of annual use cycles specified for calculating per-cycle standby mode and off mode energy consumption would alter the measured energy efficiency of consumer clothes dryers when using appendix D2, but use of the amended value in appendix D2 is not required until such time as DOE were to amend the energy conservations standards accounting for such changes in the test procedure, should such amended energy conservation standards be adopted. 86 FR 56608, 56611.

GEA, AHAM, and Samsung requested that DOE review the FMC requirement according to appendix D2, stating that the current 2-percent FMC requirement is too strict and not representative of consumer preference. (GEA, No. 22 at pp. 42–44; AHAM, No. 23 at p. 4; Samsung, No. 29 at pp. 2–3) AHAM questioned the degree of savings that can be achieved through more stringent standards, stating that the energy conservation standards would have less of an impact on consumer clothes dryer energy use than the FMC itself. As stated in the October 2021 TP Final Rule, the current 2-percent FMC requirement using the DOE test cloth was adopted as representative of approximately 5-percent FMC for ''real-world'' clothing, based on data submitted in a joint petition for rulemaking.[16] DOE determined in the August 2013 Final Rule that the specified 2-percent FMC using the DOE test load was representative of consumer expectations for dryness of clothing in field use. 78 FR 49608, 49620–49622, 49610–49611 (Aug. 14, 2013). DOE has not identified any systemic problems with any consumer clothes dryer types being able to achieve the required FMC of 2 percent or less, such that amendments to the test procedure would be warranted and therefore did not amend the FMC requirement for either appendix D1 or appendix D2 in the October 2021 TP Final Rule. 86 FR 56608, 56626.

ASAP, NRDC, and Samsung requested that DOE consider the testing of an additional smaller test load to supplement the current test load, stating a smaller test load could better represent consumer use and clothes dryer efficiency. (ASAP, NRDC, No. 25 at p. 1; Samsung, No. 29 at p. 3) As stated in the October 2021 TP Final Rule, with little expected change to the CEF_{D2} value when considering the energy consumption associated with a range of load sizes, DOE does not believe the additional testing would provide consumers with improved information that would change their purchasing decisions compared to the current test procedure. As such, any incremental benefit of testing with additional load sizes would be outweighed by the significant added burden that would be imposed by conducting such tests. For these reasons, DOE did not propose or adopt any amendments to the test procedure requiring additional test load sizes in the October 2021 TP Final Rule. 86 FR 56608, 56621.

In response to the preliminary analysis, the California IOUs presented data suggesting that consumer clothes dryers that have identical ratings under appendix D1 can vary considerably when tested to appendix D2, and also stated that DOE's analysis in the preliminary TSD shows that baseline efficiency consumer clothes dryers tested under appendix D1 significantly underperform when tested under appendix D2. For these reasons, the California IOUs recommended that DOE use this rulemaking or the open test procedure rulemaking to phase out appendix D1 in favor of an updated appendix D2 test procedure. Samsung further supported DOE requiring the appendix D2 test procedure for manufacturers as the mandatory procedure for testing consumer clothes dryers. (California IOUs, No. 26 at p. 5) According to Samsung, appendix D2 has been recognized by stakeholders as truly representing how automatic termination control dryers are used by consumers, and manufacturers of ENERGY STAR-qualified consumer clothes dryers are familiar with, and have invested in, the test procedure in appendix D2, as it is already mandated for ENERGY STAR qualification. Furthermore, Samsung asserted that the appendix D1 test procedure was intended as a stopgap measure to test ''sensor [automatic termination control] dryers'' using ''non-sensing'' settings (*i.e.,* timer drying cycle) and does not represent how automatic termination clothes dryers are used by consumers as accurately as the appendix D2 test procedure. Samsung recommended that, since appendix D2 has been used for many years for ENERGY STAR qualification, appendix D1 be phased out now, with an appropriate adjustment to the underlying energy conservation standards to reflect the change in test method as described in EPCA. (Samsung, No. 29 at p. 2)

As discussed in the October 2021 TP Final Rule, the version of appendix D2 adopted in that final rule would be used for the evaluation and issuance of updated energy conservation standards, with compliance with that version of appendix D2 required on the

[16] The petition was submitted by AHAM, Whirlpool Corporation, General Electric Company, Electrolux, LG Electronics, Inc., BSH, Alliance Laundry Systems, Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi, American Council for an Energy Efficient Economy, Appliance Standards Awareness Project, Natural Resources Defense Council, Alliance to Save Energy, Alliance for Water Efficiency, Northwest Power and Conservation Council, and Northeast Energy Efficiency Partnerships, Consumer Federation of America and the National Consumer Law Center. See Docket No. EERE–2011–BT–TP–0054, No. 3.

implementation date of updated standards. 86 FR 56608, 56635–56636 (Oct. 8, 2021). Accordingly, DOE notes that the preliminary analysis and this NOPR analysis are based on the appendix D2 test procedure, and therefore the proposed amended energy conservation standards in this document are also based on the appendix D2 test procedure. These proposed amendments are discussed in more detail in section IV.C of this document.

C. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, 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. Sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of appendix A. Section IV.B of this document discusses the results of the screening analysis for consumer clothes dryers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for consumer clothes dryers, 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 of this document and in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to consumer clothes dryers purchased in the 30-year period that begins in the year of compliance with the proposed standards (2027–2056).[17] The savings are measured over the entire lifetime of consumer clothes dryers purchased in the previous 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended or new standards for consumer clothes dryers. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[18] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.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.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[19] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors. As discussed in section V.C of this document, DOE is proposing to adopt TSL 3, which would save an estimated 3.11 quads of energy (FFC). DOE has initially determined that these energy savings 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

[17] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[18] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[19] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670), was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892).

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 a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may

affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of health benefits from certain emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

AHAM stated its continued objection to DOE's use of the social cost of carbon and other monetization of emissions reductions benefits in its analysis of the factors EPCA requires DOE to balance to determine the appropriate standard. According to AHAM, 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 trial standards levels DOE selects as a new or amended standard. (AHAM, No. 23 at pp. 11–12)

DOE's evaluation of whether a potential energy conservation standard is economically justified is guided by EPCA and also by OMB Circular A–4 (Sept. 17, 2003), which provides guidance to Federal agencies on the development of regulatory analysis. As indicated above, DOE believes that avoiding negative impacts to human health and the wide range of impacts associated with climate change are key factors behind the need for energy conservation.[20] OMB Circular A–4 states: ''Benefit-cost analysis is a primary tool used for regulatory analysis. Where all benefits and costs can be quantified and expressed in monetary units, benefit-cost analysis provides decision makers with a clear indication of the most efficient alternative, that is, the alternative that generates the largest net benefits to society.'' (p. 2) Monetizing public health benefits of regulations is a long-standing practice in Federal regulatory analysis. To not consider such benefits when evaluating whether a potential energy conservation standard is economically justified would be contrary to both EPCA and OMB's guidance. In addition, on March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

[20] As mentioned previously, following the preliminary injunction issued on February 11, 2022, in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.), DOE is currently not monetizing the costs of greenhouse gas emissions.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.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 consumer clothes dryers. Separate sections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www.regulations.gov/docket/EERE–2014–BT–STD–0058/.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*''), a widely known energy projection for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of consumer clothes dryers. The key findings of DOE's market assessment are summarized in the following sections. *See* chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Product Classes

DOE defines ''electric clothes dryer'' under EPCA as a cabinet-like appliance designed to dry fabrics in a tumble-type drum with forced air circulation. The heat source is electricity and the drum and blower(s) are driven by an electric motor(s). Similarly, DOE defines ''gas clothes dryer'' as a cabinet-like appliance designed to dry fabrics in a tumble-type drum with forced air circulation. The heat source is gas and the drum and blower(s) are driven by an electric motor(s). (10 CFR 430.2)

In response to the preliminary analysis, the California IOUs offered information on at least two manufacturers producing a dry-and-steam clothing cabinet and encouraged DOE to explore the market prevalence and potential growth of this equipment and what features represent an average use cycle. The California IOUs also suggested DOE consider the current clothes washers rulemaking or dehumidifiers rulemaking to provide guidance on how this product should be classified and, if appropriate, tested and rated. (California IOUs, No. 26 at p. 7) DOE may investigate this product in a future rulemaking; however, as this product does not meet the definition of a clothes dryer because it does not include a tumble-type drum, it was not included in this analysis.

The current product classes, which were established by the April 2011 Direct Final Rule, are presented in Table IV.1.

TABLE IV.1—CURRENT CONSUMER CLOTHES DRYER PRODUCT CLASSES

Vented dryers:
Electric, Standard (4.4 cubic feet (ft^3) or greater capacity).
Electric, Compact (120 volts (V)) (less than 4.4 ft^3 capacity).
Electric, Compact (240 V) (less than 4.4 ft^3 capacity).
Gas.
Ventless dryers:
Electric, Compact (240 V) (less than 4.4 ft^3 capacity).
Electric, Combination Washer-Dryer.

Based on its review of products available on the market in the United States, DOE notes that at least six manufacturers currently offer a ventless clothes dryer with a drum capacity greater than 4.4 ft^3. As a result, in the preliminary analysis, DOE analyzed an additional product class for ventless electric standard clothes dryers, with drum capacity larger than 4.4 ft^3.

In response to the preliminary analysis, the California IOUs requested that DOE investigate potential reporting errors within the Compliance Certification Database (''CCD''), as the California IOUs asserted that multiple products were incorrectly listed in the CCD as ''vented'' products while certified as ''ventless'' products in the ENERGY STAR product database and represented as ''ventless'' in manufacturer literature. (California IOUs, No. 26 at p. 4) DOE will work to investigate any classification errors within the CCD and requests comment on additional information regarding potential classification errors.

In response to the preliminary analysis, ASAP, NRDC, the California IOUs, and NEEA requested that DOE review the efficiencies of models currently available on the market, specifically for the vented electric standard product class, stating that there are currently available models with higher efficiencies than the max-tech efficiency level considered in the preliminary analysis for this product class. (ASAP, NRDC, No. 25 at pp. 1–2; California IOUs, No. 26 at pp. 3–4; NEEA, No. 30 at pp. 10–11) Upon review of these higher efficiency models, DOE discovered that many of the higher efficiency electric standard clothes dryers on the market are ventless and employ heat pump technology and that there are no lower-efficiency ventless electric standard models associated with the less efficient condensing technology that is available with the ventless electric compact (240V) product class. Given that most heat pump designs at the standard size are inherently ventless and result in higher efficiencies, establishing a product class for ventless electric standard clothes dryers would essentially result in a separate product class for heat pump dryers and leave the vented electric standard product class with less efficient conventional resistive heating-element dryers. This would effectively restrict the efficiency of the vented electric standard product class, as higher efficiency technologies would be associated with a different product class.

DOE received comments from AHAM and Whirlpool in response to the preliminary analysis stating that ventless electric clothes dryers, especially those implementing heat pump designs, have difficulty in meeting the 2-percent FMC requirement with Whirlpool stating that ventless electric clothes dryers result in longer cycle times than conventional vented clothes dryers. (AHAM, No. 23, p. 11; Whirlpool, No. 27 at pp. 13–17) Additionally, Whirlpool recommended that DOE consider the consumer utility of the differences that arise when consumer clothes dryers utilize heat pump technology and to establish a separate product class for heat pump clothes dryers (including hybrid heat pump clothes dryers). Whirlpool stated that differences in fabric care, drying time, heating and cooling energy impacts, lower drying temperatures, and technology used are all relevant performance-related features that distinguish heat pump and hybrid heat pump clothes dryers from all other consumer clothes dryer product classes, which may justify a higher standard than for other product types. (Whirlpool, No. 27 at p. 17) DOE observes that all standard size ventless electric clothes dryers and compact ventless electric (120V) clothes dryers are rated according to appendix D2 and are ENERGY STAR-qualified, and therefore meet the 80-minute cycle time requirement to receive ENERGY STAR recognition. Additionally, DOE found no issue in its own testing of ventless electric clothes dryers inherent in the ventless electric clothes dryer design that supports the claims made by commenters regarding difficulty in meeting the FMC requirement and longer cycle times (*i.e.,* all ventless electric clothes dryers tested, including those utilizing either condensing or heat pump technology, were able to meet the 2-percent FMC requirement).

As discussed, a rule prescribing an energy conservation standard must specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group have a

capacity or other performance-related feature which justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)(B)) For standard size electric clothes dryers, the ventless feature does not justify a separate standard as compared to standard size electric clothes dryers that are vented. Standard size ventless electric clothes dryers can accommodate heat pump technology that results in improved efficiency similar to that for standard size vented electric clothes dryers. Therefore, upon further consideration, no product class distinction is proposed in this NOPR between ventless and vented electric standard clothes dryers, nor between heat pump and non-heat pump clothes dryers.

Instead, DOE proposes an ''electric standard'' product class that would comprise both ventless and vented electric standard clothes dryers. Such a product class would not impact consumer utility, given that a consumer could install a ventless electric standard clothes dryer in the same locations as vented electric standard clothes dryers, and would not result in unacceptable drying performance or cycle time, as evidenced by the existing heat pump clothes dryers that are able to achieve the 2-percent FMC requirement within an 80-minute cycle time.

In response to the preliminary analysis, the California IOUs requested that DOE consider an additional product class for ventless electric compact (120V) models, as such clothes dryers are currently available on the market. (California IOUs, No. 26 at p. 3) Upon further review, DOE found that, as for ventless electric standard clothes dryers, all currently available ventless electric compact (120V) clothes dryers utilize heat pump technology. For the same reasons as for electric standard clothes dryers (*i.e.,* to capture the energy savings associated with heat pump technology and to avoid restricting potential efficiency gains for vented electric clothes dryers), DOE proposes an ''electric compact (120V)'' product class comprising ventless and vented electric compact (120V) models.

In light of the proposal to have single product classes containing all standard size electric clothes dryers and a single product class for all compact electric (120V) clothes dryers, DOE also considered whether to maintain the current separate product classes distinction based on venting for compact electric (240V) clothes dryers. DOE has previously determined that for compact electric clothes dryers, a ventless configuration is a consumer utility because these dryers provide for installations in space-constrained environments. 76 FR 22454, 22485 (Apr. 21, 2011). Based on the analysis presented in this NOPR, DOE has tentatively determined that the higher efficiencies for ventless compact (240V) clothes dryers would not be economically justified as they would be for vented compact (240V) clothes dryers. *See* Section IV.F of this document. Therefore, DOE tentatively determines that venting characteristics continue to justify a separate product class for compact (240V) clothes dryers.

As discussed, vented electric clothes dryers are divided, in part, based on capacity such that there is a standard size product class (4.4 ft^3 or greater capacity) and compact classes (capacity less than 4.4 ft^3). There is no similar class distinction for vented gas clothes dryers. Since the previous energy conservation standards rulemaking, DOE has identified at least one manufacturer of a vented gas clothes dryer with a drum less than 4.4 ft^3. Such capacity units are subject to the energy conservation standard for vented gas clothes dryers. AHAM supported splitting the product classes for gas clothes dryers based on capacity consistent with the product classes for electric dryers. (AHAM, No. 23 at p. 7)

As discussed, DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.*

In evaluating potential technologies to improve the energy efficiency of vented gas clothes dryers, DOE tentatively has determined that vented gas clothes dryers with a capacity of less than 4.4 ft^3 perform in a way that is substantively different than vented gas clothes dryers that are 4.4 ft^3 or greater in capacity. For example, DOE has observed that compact vented gas clothes dryers generally perform at a lower efficiency than standard size vented gas clothes dryers, likely due to the chassis size restrictions, and due to that inherent difference, DOE believes that a separate product class is warranted. Furthermore, creating a new product class for vented gas clothes dryers with a capacity of less than 4.4 ft^3 would ensure that efficiency levels and potential amended standards could better and more directly assess the impact of design option implementations for a given product configuration. Therefore, DOE has tentatively determined that a separate product class and standard for vented gas compact clothes dryers (*i.e.,* with a capacity less than 4.4 ft^3) are justified for similar reasons as DOE determined for vented electric compact clothes dryers. *See* 76 FR 22404, 22485 (Apr. 21, 2011). As a result, DOE analyzed separate product classes for vented gas standard and vented gas compact clothes dryers.

In sum, DOE proposes the consumer clothes dryer product classes listed in Table IV.2 in this NOPR, which expand the scope of certain product classes to include both vented and ventless designs, and include an additional product class for compact vented gas dryers.

TABLE IV.2—NOTICE OF PROPOSED RULEMAKING CONSUMER CLOTHES DRYER PRODUCT CLASSES

Product Classes:
1. Electric, Standard (4.4 cubic feet (ft^3) or greater capacity).
2. Electric, Compact (120 volts (V)) (less than 4.4 ft^3 capacity).
3. Vented Electric, Compact (240 V) (less than 4.4 ft^3 capacity).
4. Vented Gas, Standard (4.4 ft^3 or greater capacity).
5. Vented Gas, Compact (less than 4.4 ft^3 capacity).
6. Ventless Electric, Compact (240 V) (less than 4.4 ft^3 capacity).
7. Ventless Electric, Combination Washer/Dryer.

2. Technology Options

In the preliminary market analysis and technology assessment, DOE identified 16 technology options that would be expected to improve the efficiency of consumer clothes dryers, as measured by the DOE test procedure. DOE continues to consider these technology options in this NOPR analysis. These technology options can be broadly grouped into five main categories: dryer control or drum upgrades, methods of exhaust heat recovery (for vented models only), heat generation options, improvements to components, and options to reduce standby power.

TABLE IV.3—PRELIMINARY ANALYSIS: TECHNOLOGY OPTIONS FOR CONSUMER CLOTHES DRYERS

Dryer Control or Drum Upgrades:
Improved termination.
Increased insulation.
Modified operating conditions.
Improved air circulation.
Improved drum design.
Methods of Exhaust Heat Recovery (Vented Models Only):
Recycle exhaust heat.
Inlet air preheat.
Inlet air preheat, condensing mode.
Heat Generation Options:
Heat pump, electric only.
Thermoelectric heating, electric only.
Microwave, electric only.
Modulating heat.
Indirect heating.
Component Improvements:
Improved motor efficiency.
Improved fan efficiency.
Standby Power Improvements:
Transformerless power supply with auto-powerdown.

DOE notes that two recently developed consumer clothes dryer technologies were not included as part of the preliminary analysis: long wavelength radio frequency (''RF'') drying and ultrasonic drying. Despite the potential benefits of RF and ultrasonic clothes drying, however, both technologies are currently under patent or have received a provisional patent. Any energy conservation standard that relied on either of these technologies would unfairly advantage the manufacturer or individual holder of the patent, and thus DOE did not consider them as technology options for the preliminary analysis. Because these technologies are technologically feasible, however, DOE proposes in this NOPR to retain these as technology options in the technology assessment, noting one of the criteria for screening technology options for use in further analyses is whether a technology represents a unique proprietary pathway (*see* section IV.B of this document and chapter 4 of the NOPR TSD). DOE notes that the current energy conservation standards for consumer clothes dryers would not prohibit the use of these technologies.

DOE received several comments in response to the technologies proposed in the preliminary analysis to be analyzed for consumer clothes dryers.

Whirlpool suggested that reduced drum seal leakage be considered as a technology option. Additionally, Whirlpool stated that approaches to reduce standby power may not be consumer-friendly solutions that manufacturers would readily implement. Whirlpool suggested that delaying the drum light turning on after opening the door or delaying the start of a cycle after powering on the unit would frustrate consumers, as they typically expect appliances to turn on when action is taken such as pressing the power button or opening the door. Whirlpool also suggested an off position on the control dial but stated that intellectual property may exist around this and may result in higher costs. (Whirlpool, No. 27 at p. 17) DOE is not aware of data at this time to characterize the impacts reduced drum seal leakage may have on efficiency and requests information on efficiency impacts of this technology. In addition, the strategies that Whirlpool suggested to reduce energy use in standby mode, including delaying the activation of the drum light after a door opening or delaying the start of the cycle after powering on the unit, would not be measured by appendix D2. Furthermore, although appendix D2 incorporates measures of energy use in both off mode and inactive (standby) mode, DOE does not have information to indicate the relative power consumption in each of these modes for any consumer clothes dryers on the market which may have an off mode position on the controls, which would provide an estimate of the reduction in combined low-power mode energy use. For these reasons, at this time, DOE is not proposing to include these technology options in its analysis.

NEEA stated that manufacturers in the current consumer clothes dryer market utilize an ''eco mode'' as a lower heat/longer drying time strategy to achieve a given efficiency. NEEA asserted that the efficiency of a consumer clothes dryer increases substantially with lower heat and longer drying time, citing laboratory testing by the California IOUs that quantified this effect by alternating periods of heat with no heat during a cycle. According to the results of this work, NEEA claimed, the average efficiency of consumer clothes dryers with these modified controls increased 30 percent compared to their default settings used for appendix D2 testing, and drying time increased 140 percent. According to NEEA, a no-heat cycle took 4 hours to complete but achieved a CEF_{D2} value of 7.0. NEEA stated that with the energy savings associated with this strategy, as well as the relatively low cost associated with the redesign of the control panel to enable additional heater/burner algorithms, manufacturers have a solid incentive to extensively utilize eco mode as the sole redesign strategy to enable their models to meet DOE's forthcoming mandatory standard. NEEA warned that the longer drying times associated with these energy saving programs are unlikely to be acceptable to many consumers in some

circumstances (*e.g.,* serial dryer loads and other time-sensitive loads), which could potentially result in consumers regularly disabling these eco modes and may therefore significantly reduce the energy savings of dryers in everyday use relative to expectations created by the current appendix D2 test procedure. Therefore, NEEA requested that DOE require the sole use of appendix D2 for certification purposes as well as the required reporting of cycle times in order to mitigate against significant reductions in actual real-world energy savings associated with a low heat/long drying time eco mode strategy. According to NEEA, cycle time reporting would help moderate inordinately long cycle times during the D2 test, enable consumers and other stakeholders to consider trade-offs between the efficiency and cycle time for a given model, and provide data to possibly consider more sophisticated approaches to cycle time in subsequent standard updates. (NEEA, No. 30 at pp. 1–7) DOE recognizes that some consumer clothes dryers are currently certified using appendix D2, and their controls may include an ''eco mode'' or ''energy saver mode,'' which typically reduce the temperature used in the cycle at the expense of increasing the drying time. However, appendix D2 requires, for automatic termination control dryers, that the ''normal'' program be selected for the energy test cycle. In the event that the automatic termination control dryer does not have a ''normal'' program, the cycle recommended by the manufacturer for drying cotton or linen clothing is selected. Where the drying temperature setting can be chosen independently of the program (as would be the case if ''eco mode'' or ''energy saver mode'' were an optional setting that could be selected for the ''normal'' program), the drying temperature must be set to the maximum. Section 3.3.2, appendix D2. For timer dryers, the maximum temperature setting is selected for the energy test cycle. Section 3.3.1, appendix D2. Therefore, an available ''eco mode'' or ''energy saver mode'' would not be included in the energy test cycle, as they would not produce a measure of energy use during a representative cycle. For this reason, DOE did not consider such energy saving modes as a technology option in this NOPR.

NEEA further encouraged DOE to consider the following technology options: (1) coupled blower modulation with the multi-stage burner/heater efficiency level, (2) cabinet insulation, (3) backward curved fan blades, and (4) recuperation heat recovery in vented heat pump clothes dryers associated with a PNNL study. (NEEA, No. 30 at pp. 12–13) DOE notes that blower modulation is already coupled with the multi-stage burner/heater efficiency level for both electric and gas consumer clothes dryers, although this was not previously stated in chapter 5 of the preliminary TSD. DOE has not observed the technology option of cabinet insulation in clothes dryers used in this analysis, and therefore does not currently have sufficient information to determine the potential efficiency impacts associated with the suggested technology options, however, DOE notes that with the inherent risk of fires that may occur during operation of a consumer clothes dryer, any insulation used within the cabinet space would likely need to be fire retardant in order to satisfy the fire containment requirements according to the UL 2158 safety standard. While insulation of the dryer cabinet space would likely lead to potential energy savings, DOE expects that the insulation could lead to an increased internal cabinet temperature and may potentially lead to the degradation of other components within the clothes dryer assembly. DOE therefore requests information that would be beneficial in determining any impacts to efficiency or performance as a result of implementing each of the technology options mentioned. DOE notes that improvements to fan blades would be captured in the analyzed technology options as improved fan efficiency, however the efficiency improvements specified by NEEA refer to heating, ventilation, and air conditioning (''HVAC'') research and do not specifically refer to efficiency improvements in consumer clothes dryers. Therefore, until DOE has sufficient information on efficiency improvements associated with fan designs, the proposed incremental efficiency levels will not be associated with improved fan efficiency. Regarding the recuperation heat recovery technology option, DOE notes that this technology is already considered in this analysis referred to as the inlet-air preheat design option. Given the proposed change to the product class structure regarding the combination of vented and ventless clothes dryers in the standard and compact (120V) categories, this technology is now considered in the proposed design options for vented consumer clothes dryers, however given that DOE has not observed inlet-air preheat technology in consumer clothes dryers on the market, specifically heat pump consumer clothes dryers, this technology has not been considered at the max-tech level associated with heat pump technology.

Table IV.4 lists the technology options identified for consumer clothes dryers in this NOPR. With the inclusion of RF and ultrasonic drying technologies in the list of technology options in the NOPR, DOE has renamed the grouping for ''heat generation options'' as ''moisture removal options.'' *See* chapter 3 of the NOPR TSD for further discussion of the analyzed technologies.

TABLE IV.4—TECHNOLOGY OPTIONS FOR CONSUMER CLOTHES DRYERS

Dryer Control or Drum Upgrades:
Improved termination.
Increased insulation.
Modified operating conditions.
Improved air circulation.
Improved drum design.
Methods of Exhaust Heat Recovery (Vented Models Only):
Recycle exhaust heat.
Inlet air preheat.
Inlet air preheat, condensing mode.
Moisture Removal Options:
Heat pump, electric only.
Thermoelectric heating, electric only.
Microwave, electric only.
Modulating heat.
Indirect heating.
RF drying, electric only.

TABLE IV.4—TECHNOLOGY OPTIONS FOR CONSUMER CLOTHES DRYERS—Continued

Ultrasonic drying, electric only.
Component Improvements:
Improved motor efficiency.
Improved fan efficiency.
Standby Power Improvements:
Transformerless power supply with auto-powerdown.

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 working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products 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 or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would 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) *Adverse impacts on health or safety.* 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 design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns. 10 CFR part 430, subpart C, appendix A, 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 reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

AHAM requested that DOE consider the effects that different technology options may have on fabric care, specifically the impact longer drying cycles may have on fabric. (AHAM, No. 23 at p. 10) While certain technology options may be associated with an increase in cycle times (*e.g.,* modified operating conditions (reduced drying temperatures) and heat pump technology), DOE notes that AHAM did not provide, nor is DOE aware of, information correlating fabric care directly to cycle time. In addition, if longer cycle times are accompanied by lower drying temperatures, it is uncertain whether the net impact on fabric care is positive or negative, and how this result would vary based on fabric type. Therefore, DOE did not screen out any technology options solely on the basis of any fabric care considerations due to cycle time. However, DOE requests comment on any potential impacts that different technology options, including any that may impact cycle times, have on fabric care.

a. Thermoelectric Heating, Electric Only

DOE notes that Oak Ridge National Laboratory (''ORNL'') is still researching thermoelectric heating clothes dryers. While ORNL's test results of a preliminary prototype have shown the potential for improved efficiency, ORNL indicated that the initial prototype design produced longer-than-desired drying times due to direct-contact heat transfer limitations via the drum surface. ORNL has subsequently developed another prototype which added pumped secondary water loops that transferred heat from the thermoelectric modules to the process air via air-to-water heat exchangers to further improve efficiency and minimize cycle length. ORNL's testing indicated efficiency and cycle times for this prototype that are approximately equivalent to those of vapor compression heat pump clothes dryers.[21] Because the research for such a thermoelectric heating clothes dryer that produces energy savings and meets consumer expectations for drying cycle time is still in the prototype stage, DOE determined that this technology option would not be practicable to manufacture, install, and service on a scale necessary to serve the relevant market at the time of the projected compliance date of any new or amended consumer clothes dryer standards, and did not be consider it for further analysis.

b. Microwave, Electric Only

Due to the large energy savings associated with microwave drying, this technology was the subject of a multi-year development effort at the Electric Power Research Institute (''EPRI'') in the mid-1990s;[22] and at least one major manufacturer, Whirlpool Corporation (''Whirlpool''), developed a countertop-scale version of such a product as recently as 2002,[23] but to date this technology has not been successfully commercialized.

Significant technical and safety issues are introduced by the potential arcing from metallic objects in the fabric load, including zippers, buttons, or ''stray'' items such as coins. While efforts have been made to mitigate the conditions that are favorable to arcing, or to detect incipient arcing and terminate the cycle, the possibility of fabric damage cannot be completely eliminated.[24] In addition to consumer utility impacts, these conditions can also pose a safety hazard.

[21] Patel, V., Boudreaux, P., and Gluesenkamp, K. Oak Ridge National Laboratory. Validated Model of a Thermoelectric Heat Pump Clothes Dryer Using Secondary Pumped Loops. Applied Thermal Engineering, Volume 184, February 5, 2021.

[22] S. Ashley. 1998. ''Energy-Efficient Appliances'', Mechanical Engineering Magazine, March, 1998, pp. 94–97.

[23] E. Spagat. 2002. ''Whirlpool Goes Portable to Sell Dryers to Gen Y'', Wall Street Journal, June 4, 2002.

[24] J.F. Gerling. 2003. ''Microwave Clothes Drying—Technical Solutions to Fundamental Challenges'', Appliance Magazine, April, 2003, p. 120.

For these reasons, microwave drying was not considered further for analysis.

c. Indirect Heating

Indirect heating would be viable only in residences that use a hydronic heating system. Also, in order to derive clothes dryer heat energy from the home's heating system, significant plumbing work would be required to circulate heated water through a heat exchanger in the clothes dryer. Therefore, this technology option does not meet the criterion of practicability to install on a scale necessary to serve the relevant market at the time of the effective date of any new standard and will not be considered for further analysis.

d. RF Drying, Electric Only

CoolDry, LLC (''CoolDry''), developed an RF clothes dryer prototype, claiming an efficiency of 90 percent, compared to 50 percent for conventional clothes dryers.[25] CoolDry states that its RF drying technology operates at lower temperatures than do conventional clothes dryers and, because the transfer of energy to clothes is not dependent on convective heat transfer, the RF clothes dryer requires less tumbling and subsequently consumes less energy for drum rotation than a conventional clothes dryer. Because this technology was in the prototype stage at the time it was initially considered and the company is no longer in business and thus there is likely no longer research and development ongoing, DOE determined that this technology option would not be practicable to manufacture, install, and service on a scale necessary to serve the relevant market at the time of the projected compliance date of any new or amended consumer clothes dryer standards, and did not be consider it for further analysis.

e. Ultrasonic Drying, Electric Only

Researchers at ORNL have developed an ultrasonic drying prototype that uses piezoelectric transducers to separate water from clothes through water cavitation produced by ultrasonic vibrations. According to their research, the energy imparted to the water must overcome surface tension in order to break the water into droplets, but this energy is substantially less than the latent heat of vaporization of water, which is the primary thermodynamic barrier for conventional evaporation drying. The ORNL researchers anticipate that ultrasonic drying technology will result in an energy factor (''EF'') [26] of greater than 10 and a drying time of less than 20 minutes.[27] Because this technology is still in the prototype stage, DOE determined that this technology option would not be practicable to manufacture, install, and service on a scale necessary to serve the relevant market at the time of the projected compliance date of any new or amended consumer clothes dryer standards, and did not be consider it for further analysis.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 of this document met all five screening criteria to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the following technology options listed in Table IV.5.

TABLE IV.5—RETAINED DESIGN OPTIONS FOR CONSUMER CLOTHES DRYERS

Dryer Control or Drum Upgrades:
Improved termination.
Modified operating conditions.
Improved air circulation.
Increased insulation.
Improved drum design.
Methods of Exhaust Heat Recovery (vented models only):
Recycle exhaust heat.
Inlet air preheat.
Inlet air preheat, condensing mode.
Moisture Removal Options:
Heat pump, electric only.
Modulating heat.
Component Improvements:
Improved motor efficiency.
Improved fan efficiency.
Standby Power Improvements:
Transformerless Power Supply with Auto-Powerdown.

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, nor are unique-pathway proprietary technologies). For additional details, *see* chapter 4 of the NOPR TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of consumer clothes dryers. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a

[25] CoolDry does not specify the metric or test method used to determine the efficiency of its prototype. More information is available at: *http://www.cooldryrf.com/.*

[26] EF only incorporates active mode energy use and not standby and off mode energy use.

[27] Momen, A. *Ultrasonic Clothes Dryer: 2016 Building Technologies Office Peer Review.* 2016. Prepared for the U.S. Department of Energy at Oak Ridge National Laboratory, in partnership with the University of Florida and General Electric. p. 2.

set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

In this proposed rulemaking, DOE relied on an efficiency-level approach, supplemented with reverse-engineering. This approach involved testing and physically disassembling a representative sample of 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, considering the design options and the steps manufacturers would likely take to reach a certain efficiency level. As part of this NOPR analysis, DOE included additional test units beyond those considered in the preliminary analysis as part of its updated test sample. The additional test units were included to represent additional baseline models, newly introduced units on the market, units with unique configurations, and units with technologies that were not available at the time of the preliminary analysis. The efficiency levels analyzed as part of this engineering analysis are attainable using commercially available clothes dryer technologies, or technologies that have been demonstrated in working prototypes.

a. Baseline Efficiency Levels

For each product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product typical of that class. Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

The baseline clothes dryer efficiency levels for this NOPR differ from the existing energy conservation standards that were established in the 2011 rulemaking analysis primarily due to the difference between the then-current appendix D1, which DOE used to evaluate products in the previous rulemaking, and the present version of appendix D2, as established by the October 2021 TP Final Rule and which DOE used as the basis for this analysis. Appendix D2 includes test methods that more accurately measure the effects of automatic cycle termination and that may result in differences in the total measured energy consumption of the test cycle as compared to the test methods in appendix D1. Specifically, for automatic termination control dryers, appendix D2 requires a lower FMC of the test load and does not rely on a field use factor to account for the over drying energy consumption, instead requiring that the automatic termination drying program run to the end of the cycle. Additionally, appendix D2 contains instructions for the testing of timer dryers, which include a lower FMC of the test load as compared to the version of appendix D1 used for the 2011 rulemaking analysis.

For the engineering analysis, DOE begins the engineering analysis by identifying the efficiency level corresponding to the Federal minimum energy conservation standards for each product class. Due to the test procedure changes adopted in the October 2021 Final Rule, DOE determined the baseline efficiency level representative of minimally compliant products when tested under appendix D2. In order to identify the appendix D2 baseline levels, DOE tested 22 models that were certified as minimally compliant with the current energy conservation standards, from across all product classes. Because certified performance data are not available for models on the market as tested in accordance with both appendix D1 and appendix D2, DOE tested each basic model in its test sample in accordance with appendix D1 and appendix D2 and used the test values for appendix D2 to determine the baseline models in support of this engineering analysis. Due to the differences in the two test procedures described above, the baseline CEF_{D2} measured using appendix D2 is numerically lower for each product class than the corresponding CEF_{D1} value in the current energy conservation standards, though that does not indicate a lower efficiency. The test procedure differences are driving the lower baseline CEF_{D2} values and do not represent a lower efficiency or backsliding.

The consumer clothes dryer baseline efficiency levels for the preliminary analysis are presented in Table IV.6.

TABLE IV.6—PRELIMINARY ANALYSIS CONSUMER CLOTHES DRYER BASELINE EFFICIENCY LEVELS

Product class	CEF_{D2} (lb/kWh)
Vented Electric, Standard (4.4 ft^3 or greater capacity)	2.20
Vented Electric, Compact (120V) (less than 4.4 ft^3 capacity)	2.42
Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.00
Vented Gas, Standard (4.4 cubic ft^3 or greater capacity)	2.63
Vented Gas, Compact (less than 4.4 ft^3 capacity)	1.66
Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.03
Ventless Electric, Standard ((4.4 ft^3 or greater capacity)	2.23
Ventless Electric, Combination Washer-Dryer	2.27

In response to the preliminary analysis, AHAM agreed that testing was appropriate to determine the baseline and incremental efficiency levels, but stated that the testing of 18 models was insufficient to establish the baseline efficiency levels. AHAM also stated that basing DOE's analysis on a few baseline units may not accurately represent the market, especially when so many baseline models have electromechanical controls. AHAM therefore requested that DOE make its test results available so that representativeness could be assessed from a shipments perspective, and so that manufacturers could evaluate the test results for their models and compare to their own results. (AHAM, No. 23 at p. 3)

Upon request, DOE provided to individual manufacturers the test data for any of their units which were included in DOE's testing sample, otherwise maintaining confidentiality of the products tested. DOE also increased the number of units included in its updated test sample to better represent consumer clothes dryers currently available on the market, as discussed in chapter 5 of the NOPR TSD.

The California IOUs recommended that DOE revise the engineering analysis and investigate lowering the baseline efficiency of the vented gas standard dryer product class. According to the California IOUs, their testing data that were presented to DOE in response to the test procedure NOPR that was published on July 23, 2019 (84 FR 35484), support the baseline efficiency level for the vented electric standard product class. However, for the vented gas standard product class, the California IOUs referred to a currently available product with a CEF_{D2} value below the baseline efficiency level presented in the preliminary TSD. NEEA asserted that DOE has historically set standard levels for gas clothes dryers lower than the standards for electric clothes dryers because some energy counted in the higher heating value of the gas consumed, which is the basis of the CEF_{D2}, is not used by the consumer clothes dryer. NEEA encouraged DOE to re-evaluate the CEF_{D2} levels of electric and gas clothes dryers in its engineering analysis, as it pointed out that the electric clothes dryer efficiency levels are lower than the efficiency levels for gas clothes dryers that incorporate similar technology options. NEEA encouraged DOE to increase the stringency of the electric clothes dryer efficiency levels. (California IOUs, No. 26 at pp. 1–3; NEEA, No. 30 at pp. 13–14)

Additionally, NEEA submitted test data for 41 standard size electric and gas clothes dryers, which suggested that the average CEF_{D2} values for the non-ENERGY STAR-qualified electric and gas clothes dryers in its sample were significantly higher than the baseline efficiency levels in the preliminary analysis. NEEA also found that the least efficient electric clothes dryer in its sample had a measured CEF_{D2} that was more than 20 percent higher than DOE's value for electromechanically controlled consumer clothes dryers. NEEA encouraged DOE to use these data in developing appropriate efficiency levels for the engineering analysis. (NEEA, No. 30 at pp. 8–10)

DOE appreciates the data provided by NEEA and observes that, in general, the data support the historical trend regarding the lower efficiency of gas clothes dryers in comparison to electric clothes dryers. These data also support the updated baseline and incremental efficiency levels for gas clothes dryers, that latter of which are discussed in more detail in section IV.C.1.b of this document. Although the results of NEEA's test sample exhibit a higher average efficiency among baseline electromechanically controlled electric clothes dryers, as stated above, DOE set the baseline efficiency levels so that they would represent a minimally compliant, basic-construction consumer clothes dryer on the market. Accordingly, DOE has updated the baseline value for each product class to be equal to the minimum CEF_{D2}, measured using appendix D2, among the corresponding consumer clothes dryers in its NOPR test sample.

Similarly, DOE notes that the baseline efficiency level for the vented electric compact (120V) product class has been updated to reflect the CEF_{D2} value using the appendix D2 test procedure based on the best available data at this time.

Finally, DOE has considered the revised product classes proposed in this NOPR analysis in updating the baseline efficiency levels, based on further analysis of results and new testing since the preliminary analysis. The baseline efficiency levels considered for this NOPR analysis are presented along with the current standards in Table IV.7 and are discussed in more detail in chapter 5 of the NOPR TSD.

TABLE IV.7—NOTICE OF PROPOSED RULEMAKING CONSUMER CLOTHES DRYER BASELINE EFFICIENCY LEVELS

Product class	CEF_{D1} (lb/kWh)	CEF_{D2} (lb/kWh) *
Electric, Standard (4.4 ft^3 or greater capacity)	3.73	2.20
Electric, Compact (120V) (less than 4.4 ft^3 capacity)	3.61	2.36
Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	3.27	2.00
Vented Gas, Standard (4.4 cubic ft^3 or greater capacity)	3.30	2.00
Vented Gas, Compact (less than 4.4 ft^3 capacity)	3.30	** 1.66
Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.55	2.03
Ventless Electric, Combination Washer-Dryer	2.08	2.27

* As discussed above, the baseline CEF_{D2} values represent differences in test procedure between appendix D1 and appendix D2 and do not constitute backsliding.

** CEF_{D2} baseline efficiency levels as measured under the Appendix D2 account for differences in the effectiveness of automatic cycle termination. Manufacturers implement automatic termination in a variety of ways, which will impact the representations as measured under Appendix D2 resulting in a range of possible CEF_{D2} values, as compared to the same CEF_{D1} values in the existing Federal standards.

b. Incremental Efficiency Levels

DOE developed incremental efficiency levels by reviewing products currently available on the market and by testing and reverse engineering products in the DOE test sample in support of the NOPR. For each product class, DOE analyzed several efficiency levels and determined the incremental MPC at each of these levels. DOE initially reviewed data in DOE's CCD to evaluate the range of efficiencies for consumer clothes dryers currently available on the market.[28] As discussed in chapter 5 of the NOPR TSD, non-ENERGY STAR-qualified products (generally units with lower rated efficiencies) are typically

[28] DOE's Compliance Certification Database is available for review at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A**.

tested using appendix D1, while ENERGY STAR-qualified products are required to be tested using appendix D2. As a result, DOE conducted testing on a representative sample of non-ENERGY STAR products using appendix D2 to determine appropriate initial incremental efficiency levels for each product class. DOE observed that while electronic controls are typically implemented with other design options in this NOPR analysis, the improved automatic termination precision offered by switching to electronic controls contributed significantly to an increase in efficiency. This efficiency gain informed the first incremental efficiency levels for most product classes and was noted simply as electronic controls in the design options listed in the following tables. The design options associated with higher efficiency levels were subsequently distinguished according to specific design options DOE found manufacturers used to meet these higher efficiencies. As part of DOE's analysis, the maximum available efficiency level is defined by the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product.

The incremental efficiency levels developed in the preliminary analysis are presented in Table IV.8 through Table IV.15.

TABLE IV.8—PRELIMINARY ANALYSIS: VENTED ELECTRIC STANDARD EFFICIENCY LEVELS

Level	Design option	CEF_{D2} (lb/kWh)
Baseline	Baseline (Electromechanical Controls)	2.20
1	Baseline + Electronic Controls	2.68
2	EL1 + Optimized Heating System	3.04
3	EL2 + More Advanced Automatic Termination Control System	3.27
4	EL3 + Modulating (2-Stage) Heat	3.93
5	EL4 + Inlet Air Preheat	4.21
6	Heat Pump Dryer (Max-Tech)	4.30

TABLE IV.9—PRELIMINARY ANALYSIS: VENTED ELECTRIC COMPACT (120V) EFFICIENCY LEVELS

Level	Design option	CEF_{D2} (lb/kWh)
Baseline	Baseline (Electromechanical Controls)	2.42
1	Baseline + Electronic Controls	2.95
2	EL1 + Optimized Heating System	3.35
3	EL2 + More Advanced Automatic Termination Control System	4.28
4	EL3 + Modulating (2-Stage) Heat	4.33
5	EL4 + Inlet Air Preheat	4.63
6	Heat Pump Dryer (Max-Tech)	4.73

TABLE IV.10—PRELIMINARY ANALYSIS: VENTED ELECTRIC COMPACT (240V) EFFICIENCY LEVELS

Level	Design option	CEF_{D2} (lb/kWh)
Baseline	Baseline (Electromechanical Controls)	2.00
1	Baseline + Electronic Controls	2.44
2	EL1 + Optimized Heating System	2.76
3	EL2 + More Advanced Automatic Termination Control System	3.53
4	EL3 + Modulating (2-Stage) Heat	3.57
5	EL4 + Inlet Air Preheat	3.82
6	Heat Pump Dryer (Max-Tech)	2.91

TABLE IV.11—PRELIMINARY ANALYSIS: VENTED GAS STANDARD EFFICIENCY LEVELS

Level	Design option	CEF_{D2} (lb/kWh)
Baseline	Baseline (Electromechanical Controls)	2.63
1	Baseline + Electronic Controls	3.21
2	EL1 + Optimized Heating System and More Advanced Automatic Termination Control System	3.48
3	EL2 + Modulating (2-Stage) Heat	4.70
4	EL3 + Inlet Air Preheat (Max-Tech)	5.04

TABLE IV.12—PRELIMINARY ANALYSIS: VENTED GAS COMPACT EFFICIENCY LEVELS

Level	Design option	CEF_{D2} (lb/kWh)
Baseline	Baseline (Electromechanical Controls)	1.66
1	Baseline + Electronic Controls	2.02
2	EL1 + Optimized Heating System and More Advanced Automatic Termination Control System	2.19

TABLE IV.12—PRELIMINARY ANALYSIS: VENTED GAS COMPACT EFFICIENCY LEVELS—Continued

Level	Design option	CEF_{D2} (lb/kWh)
3	EL2 + Modulating (2-Stage) Heat	2.96
4	EL3 + Inlet Air Preheat (Max-Tech)	3.17

TABLE IV.13—PRELIMINARY ANALYSIS: VENTLESS ELECTRIC STANDARD EFFICIENCY LEVELS

Level	Design option	CEF_{D2} (lb/kWh)
Baseline	Baseline (Electronic Controls)	2.23
1	Baseline + More Advanced Automatic Termination Control System	2.95
2	Heat Pump Dryer (Max-Tech)	4.50

TABLE IV.14—PRELIMINARY ANALYSIS: VENTLESS ELECTRIC COMPACT (240V) EFFICIENCY LEVELS

Level	Design option	CEF_{D2} (lb/kWh)
Baseline	Baseline (Electronic Controls)	2.03
1	Baseline + More Advanced Automatic Termination Control System	2.68
2	Heat Pump Dryer (Max-Tech)	5.70

TABLE IV.15—PRELIMINARY ANALYSIS: VENTLESS ELECTRIC COMBINATION WASHER-DRYER EFFICIENCY LEVELS

Level	Design option	CEF_{D2} (lb/kWh)
Baseline	Baseline (Electronic Controls)	2.27
1	Baseline + High Speed Spin	2.55
2	Heat Pump Dryer (Max-Tech)	5.42

DOE received comments regarding the hybrid heat pump design investigated in a 2016 study by Pacific Northwest National Laboratory (''PNNL''), which utilizes a low-wattage electric resistance heater located downstream of the condenser to provide supplementary heating to minimize drying cycle time.[29] ASAP and NRDC encouraged DOE to review the max-tech level and heat pump technology design option based on current hybrid heat pump models available and the PNNL prototype hybrid heat pump clothes dryer which utilized a recuperative heat exchanger in addition to a resistive heating element and heat pump design. (ASAP, NRDC, No. 25 at p. 2)

At the time of the preliminary analysis, DOE was not aware of the efficiency impacts associated with consumer clothes dryers utilizing a hybrid heat pump design and therefore did not include this design as part of the preliminary analysis. In the time since the publishing of the preliminary analysis, DOE has identified at least two manufacturers that market consumer clothes dryers utilizing a hybrid heat pump design. DOE investigated the efficiency savings associated with hybrid heat pump clothes dryers and included in its updated test sample two hybrid heat pump clothes dryers. DOE observed that, compared to heat pump-only clothes dryer designs, the hybrid heat pump clothes dryers had lower efficiencies, albeit higher than the efficiencies of any non-heat pump clothes dryer. This analysis indicates that use of hybrid heat pump technology may provide a ''bridge'' in the market between consumer clothes dryer models utilizing conventional heating elements and models based on heat pump-only technology. Therefore, in this NOPR, DOE analyzed an intermediate efficiency level associated with the hybrid heat pump technology that would capture the efficiency savings from consumer clothes dryers implementing a conventional heating element in addition to heat pump technology. The efficiency savings associated with heat recovery are still captured in the efficiency levels modeling inlet air preheat.

ASAP, NRDC, the California IOUs, and NEEA requested that DOE review the consumer clothes dryers currently available on the market, asserting that at the time of publication of the preliminary analysis, there were models available with higher efficiency than the preliminary max-tech levels in the ventless electric standard and compact product classes. (ASAP, NRDC, No. 25 at pp. 1–2; California IOUs, No. 26 at pp. 3–4; NEEA, No. 30 at pp. 10–11) DOE reviewed the highest efficiency ventless clothes dryers on the market by examining DOE's Compliance Certification Management System database (''CCMS'') and ENERGY STAR databases and included a sample of them in the updated test sample to better represent the max-tech levels in the proposed electric standard, electric compact (120V), and ventless electric compact (240V) product classes.

Chapter 5 of the NOPR TSD discusses the incremental efficiency levels for each of the product classes proposed in this NOPR analysis. The revised CEF_{D2} efficiency levels for each product class are shown below in Table IV.16 through Table IV.21, along with the current energy conservation standards in CEF_{D1} for comparison. As discussed in section IV.C.1.a of this document, the baseline CEF_{D2} values estimated for the preliminary analysis are lower than the current CEF_{D1} values in the energy conservation standards due to the differences in testing using appendix D1 and appendix D2. DOE requests

[29] See: *www.pnnl.gov/main/publications/external/technical_reports/PNNL-25510.pdf.*

comment on the incremental efficiency levels used in the NOPR engineering analysis.

levels used in the NOPR engineering analysis.

TABLE IV.16—NOTICE OF PROPOSED RULEMAKING ANALYSIS: ELECTRIC STANDARD EFFICIENCY LEVELS

Efficiency level	Design option	Current standard CEF_{D1} (lb/kWh)	NOPR CEF_{D2} (lb/kWh) *
Baseline	Baseline (Electromechanical Controls)	3.73	2.20
1	Baseline + Electronic Controls		2.68
2	EL1 + Optimized Heating System		3.04
3	EL2 + More Advanced Automatic Termination Control System		3.27
4	EL3 + Modulating (2-Stage) Heat		3.93
5	EL4 + Inlet Air Preheat		4.21
6	Hybrid Heat Pump Dryer (Additional Resistance Heater)		5.20
7	Heat Pump Dryer (Max-Tech)		[30] 7.39

* As discussed above, the baseline CEF_{D2} values represent differences in test procedure between Appendix D1 and Appendix D2 and do not constitute backsliding.

TABLE IV.17—NOTICE OF PROPOSED RULEMAKING ANALYSIS: ELECTRIC COMPACT (120V) EFFICIENCY LEVELS

Efficiency level	Design option	Current standard CEF_{D1} (lb/kWh)	NOPR CEF_{D2} (lb/kWh)
Baseline	Baseline (Electromechanical Controls)	3.61	2.36
1	Baseline + Electronic Controls		3.15
2	EL1 + Optimized Heating System		3.35
3	EL2 + More Advanced Automatic Termination Control System		4.28
4	EL3 + Modulating (2-Stage) Heat		4.33
5	EL4 + Inlet Air Preheat		4.63
6	Heat Pump Dryer (Max-Tech)		6.37

TABLE IV.18—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTED ELECTRIC COMPACT (240V) EFFICIENCY LEVELS

Efficiency level	Design option	Current standard CEF_{D1} (lb/kWh)	NOPR CEF_{D2} (lb/kWh)
Baseline	Baseline (Electromechanical Controls)	3.27	2.00
1	Baseline + Electronic Controls		2.44
2	EL1 + Optimized Heating System		2.76
3	EL2 + More Advanced Automatic Termination Control System		3.30
4	EL3 + Modulating (2-Stage) Heat		3.57
5	EL4 + Inlet Air Preheat		3.82
6	Heat Pump Dryer (Max-Tech)		3.91

TABLE IV.19—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTED GAS STANDARD AND COMPACT EFFICIENCY LEVELS

Efficiency level	Design option	Current standard CEF_{D1} (lb/kWh) [31]	NOPR CEF_{D2} (lb/kWh)	
			Vented gas standard	Vented gas compact
Baseline	Baseline (Electromechanical Controls)	3.30	2.00	1.66
1	Baseline + Electronic Controls		2.44	2.02
2	EL1 + Optimized Heating System and More Advanced Automatic Termination Control System.		3.00	2.49
3	EL2 + Modulating (2-Stage) Heat		3.48	2.89
4	EL3 + Inlet Air Preheat (Max-Tech)		3.83	3.17

[30] DOE is aware of clothes dryers in the electric standard product class that perform at higher efficiencies than the proposed max-tech level, but those models are not representative of the typical capacity in the electric standard product class. Therefore, based on the certified performance of those models and additional investigative testing, DOE determined a representative max-tech efficiency for the electric standard product class that reflects an appropriate, representative unit capacity. *See* chapter 5 of the TSD for more information.

TABLE IV.20—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTLESS ELECTRIC COMPACT (240V) EFFICIENCY LEVELS

Efficiency level	Design option	Current standard CEF_{D1} (lb/kWh)	NOPR CEF_{D2} (lb/kWh)
Baseline	Baseline (Electronic Controls)	2.55	2.03
1	Baseline + More Advanced Automatic Termination Control System		2.68
2	Heat Pump Dryer (Max-Tech)		6.80

TABLE IV.21—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTLESS ELECTRIC COMBINATION WASHER-DRYER EFFICIENCY LEVELS

Efficiency level	Design option	Current standard CEF_{D1} (lb/kWh)	NOPR CEF_{D2} (lb/kWh)
Baseline	Baseline (Electronic Controls)	2.08	2.27
1	Baseline + High Speed Spin		2.55
2	Heat Pump Dryer (Max-Tech)		4.01

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 product on the market. The cost approaches are summarized as follows:

- Physical teardowns: Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials (''BOM'') 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 BOM for the product.
- Price surveys: If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using physical product teardowns to determine the baseline MPC for each product class as outlined in chapter 5 of the NOPR TSD. DOE developed the cost-efficiency relationships for each product class as discussed in section IV.C.3 of this document. DOE developed incremental MPCs based on product teardowns and manufacturing cost modeling of the expected design changes at each efficiency level. DOE observed that the basic product designs of vented electric and vented gas clothes dryers are similar except for the heating system. DOE also observed that the technology designs of standard size and compact size clothes dryers are similar as well, simply scaled in size. As a result, in the absence of models available on the market at certain efficiency levels for certain product classes, DOE estimated the incremental MPC for these based on the same design changes observed for the electric standard product class. DOE updated the cost-efficiency analysis from the preliminary analysis by updating the costs of raw materials and purchased components, as well as updating costs for manufacturing equipment, labor, and depreciation. DOE also used information from teardown of units in the updated test sample to inform updates to the cost-efficiency analysis. Not all units in the updated test sample were torn down; DOE focused on units recently introduced in the market, units with unique configuration, and units with technologies that were not available at the time of the preliminary analysis to better inform the costs associated with particular product classes and design options. The resulting BOMs provided the basis for the MPC estimates in this NOPR. The baseline MPCs for each consumer clothes dryer product class are listed in Table IV.22, with all costs presented in 2020 dollars. DOE requests comment on the baseline MPCs in the NOPR engineering analysis.

TABLE IV.22—NOTICE OF PROPOSED RULEMAKING: CONSUMER CLOTHES DRYER BASELINE MANUFACTURING PRODUCTION COSTS

Product class	Baseline MPC (2020$)
1. Electric, Standard (4.4 cubic feet (ft^3) or greater capacity)	$250.65
2. Electric, Compact (120 volts (V)) (less than 4.4 ft^3 capacity)	267.09
3. Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	267.68
4. Gas, Standard (4.4 cubic ft^3 or greater capacity)	284.33
5. Gas, Compact (less than 4.4 ft^3 capacity)	309.82

[31] The current standard does not distinguish a separate product class for compact sized gas consumer clothes dryers. As such, the current standard may apply to all gas consumer clothes dryers.

TABLE IV.22—NOTICE OF PROPOSED RULEMAKING: CONSUMER CLOTHES DRYER BASELINE MANUFACTURING PRODUCTION COSTS—Continued

Product class	Baseline MPC (2020$)
6. Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	464.90
7. Electric, Combination Washer-Dryer	629.65

The following section presents the incremental MPCs for each consumer clothes dryer product class.

3. Cost-Efficiency Results

The results of the engineering analysis are presented as cost-efficiency data for each of the efficiency levels for each of the product classes that were analyzed, as well as those extrapolated from a product class with similar features. DOE developed estimates of MPCs for each unit in the teardown sample to develop a comprehensive set of incremental MPCs (*i.e.,* the additional costs manufacturers would likely incur by producing consumer clothes dryers at each efficiency level compared to the baseline).

In response to the MPCs presented in the preliminary analysis, AHAM stated that due to unprecedented supply chain issues facing home appliance manufacturers resulting from the COVID–19 pandemic and increased tariffs on raw materials, components, and finished goods, DOE must take into account these challenges if it is to consider amending energy conservation standards. AHAM stated it is working to collect data on the impact of supply chain challenges and would be willing to share that data with DOE. (AHAM, No. 23 at p. 9) DOE also received similar feedback from manufacturers during the interview process. DOE notes that increased costs associated with recent supply chain issues have been implemented in the cost analysis and are presented in the MPCs in this NOPR analysis, specifically by way of 5-year moving averages for material and purchase parts prices.

The resulting incremental MPCs from this NOPR analysis are provided in Table IV.23 through Table IV.29. See chapter 5 of the NOPR TSD for additional detail on the engineering analysis. DOE requests comment on the incremental MPCs from the NOPR engineering analysis, as well as any data on the impact of supply chain challenges that could better inform the cost analysis.

TABLE IV.23—NOTICE OF PROPOSED RULEMAKING ANALYSIS: ELECTRIC STANDARD INCREMENTAL MANUFACTURING PRODUCTION COSTS

Efficiency level	Design option	Incremental MPC (2020$)
Baseline	Baseline (Electromechanical Controls)	
1	Baseline + Electronic Controls	$11.02
2	EL1 + Optimized Heating System	13.70
3	EL2 + More Advanced Automatic Termination Control System	16.59
4	EL3 + Modulating (2-Stage) Heat	21.00
5	EL4 + Inlet Air Preheat	70.51
6	Hybrid Heat Pump Dryer (Additional Resistive Heater)	226.18
7	Heat Pump Dryer (Max-Tech)	239.46

TABLE IV.24—NOTICE OF PROPOSED RULEMAKING ANALYSIS: ELECTRIC COMPACT (120V) INCREMENTAL MANUFACTURING PRODUCTION COSTS

Efficiency level	Design option	Incremental MPC (2020$)
Baseline	Baseline (Electromechanical Controls)	
1	Baseline + Electronic Controls	$13.43
2	EL1 + Optimized Heating System	17.76
3	EL2 + More Advanced Automatic Termination Control System	21.40
4	EL3 + Modulating (2-Stage) Heat	26.32
5	EL4 + Inlet Air Preheat	83.07
6	Heat Pump Dryer (Max-Tech)	220.29

TABLE IV.25—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTED ELECTRIC COMPACT (240V) INCREMENTAL MANUFACTURING PRODUCTION COSTS

Efficiency level	Design option	Incremental MPC (2020$)
Baseline	Baseline (Electromechanical Controls)	
1	Baseline + Electronic Controls	$13.99
2	EL1 + Optimized Heating System	18.31

TABLE IV.25—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTED ELECTRIC COMPACT (240V) INCREMENTAL MANUFACTURING PRODUCTION COSTS—Continued

Efficiency level	Design option	Incremental MPC (2020$)
3	EL2 + More Advanced Automatic Termination Control System	21.97
4	EL3 + Modulating (2-Stage) Heat	26.88
5	EL4 + Inlet Air Preheat	83.63
6	Heat Pump Dryer (Max-Tech)	220.84

TABLE IV.26—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTED GAS STANDARD INCREMENTAL MANUFACTURING PRODUCTION COSTS

Efficiency level	Design option	Incremental MPC (2020$)
Baseline	Baseline (Electromechanical Controls)	.....
1	Baseline + Electronic Controls	$14.50
2	EL1 + Optimized Heating System and More Advanced Automatic Termination Control System	17.46
3	EL2 + Modulating (2-Stage) Heat	26.75
4	EL3 + Inlet Air Preheat (Max-Tech)	76.25

TABLE IV.27—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTED GAS COMPACT INCREMENTAL MANUFACTURING PRODUCTION COSTS

Efficiency level	Design option	Incremental MPC (2020$)
Baseline	Baseline (Electromechanical Controls)	.....
1	Baseline + Electronic Controls	$12.32
2	EL1 + Optimized Heating System and More Advanced Automatic Termination Control System	16.49
3	EL2 + Modulating (2-Stage) Heat	26.97
4	EL3 + Inlet Air Preheat (Max-Tech)	83.72

TABLE IV.28—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTLESS ELECTRIC COMPACT (240V) INCREMENTAL MANUFACTURING PRODUCTION COSTS

Efficiency level	Design option	Incremental MPC (2020$)
Baseline	Baseline (Electronic Controls)	.....
1	Baseline + More Advanced Automatic Termination Control System	$3.01
2	Heat Pump Dryer (Max-Tech)	184.11

TABLE IV.29—NOTICE OF PROPOSED RULEMAKING ANALYSIS: VENTLESS ELECTRIC COMBINATION WASHER-DRYER INCREMENTAL MANUFACTURING PRODUCTION COSTS

Efficiency level	Design option	Incremental MPC (2020$)
Baseline	Baseline (Electronic Controls)	.....
1	Baseline + High Speed Spin	$0.00
2	Heat Pump Dryer (Max-Tech)	383.58

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 manufacturer selling price (''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 costs.

Before developing mark-ups, DOE defines key market participants and identifies distribution channels.

For consumer clothes dryers, the main parties in the distribution chain are retailers.

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 costs before and after new or amended standards.[32]

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;[33] and the 2017 Annual Wholesale Trade Survey for the ''household appliances, and electrical and electronic goods merchant wholesalers'' to estimate wholesaler markups.[34]

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for consumer clothes dryers.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of consumer clothes dryers at different efficiencies in representative U.S. single-family homes, multi-family residences, and mobile homes, and to assess the energy savings potential of increased consumer clothes dryer efficiency. The energy use analysis estimates the range of energy use of consumer clothes dryers in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

To establish a reasonable range of energy consumption in the field for consumer clothes dryers, DOE primarily used data from the EIA's *2015 Residential Energy Consumption Survey* (''*2015 RECS*'').[35] *2015 RECS* collected data on 5,686 housing units and was constructed by EIA to be a national representation of the household population in the United States. DOE developed household samples from *2015 RECS.*[36]

DOE divided the sample of households into four sub-samples to characterize the product classes being analyzed: standard or compact clothes dryer using electricity or natural gas as the clothes dryer fuel. For compact clothes dryers, DOE developed a sub-sample consisting of households with an electric or gas clothes dryer in multifamily buildings, manufactured homes, and single-family homes with less than 1,000 square feet and no garage or basement, since these products are most likely to be found in these housing types.

The energy use analysis requires DOE to establish a range of total annual usage (number of cycles) in order to estimate annual energy consumption by a clothes dryer. DOE estimated the number of clothes dryer cycles per year for each sample household using data given by *2015 RECS* on the number of laundry loads washed (clothes washer cycles) per week and the frequency of clothes dryer use.

AHAM agreed with DOE's use of the *2015 RECS* to establish the annual number of cycles for clothes dryers along with other available national, statistically significant field use data that may be available. (AHAM, No. 23 at pp. 10–11) In contrast, NEEA encouraged DOE to increase the number of annual dryer cycles in its energy analysis or conduct its own field study to more accurately determine this value. NEEA found that the *RECS* estimate of 243 dryer cycles per year was significantly lower than its own RBSA Laundry Study, which found 311 +/− 42 loads per year for the same group of products, which was based on metering of dryers in the field. NEEA also indicated that the *RECS* methodology is subject to recall bias and may not be an accurate representation of consumer use. (NEEA, No. 30 at pp. 14–15; Webinar Transcript, No. 22 at pp. 41–42) ASAP and NRDC encouraged DOE to consider data from the NEEA 2014 Field Study in estimating the number of dryer loads per year. (ASAP, NRDC, No. 25 at p. 2)

The RBSA study includes sample households from three states in the U.S. Northwest. Since sample households in *2015 RECS* are nationally representative, it is more accurate to use in the analysis.

GEA stated that DOE must consider product performance to prevent consumer usage with unintended energy consumption consequences, stating that long cycle times may lead to re-washing or re-drying of clothes. (GEA, No. 28 at pp. 2–3)

For this analysis, DOE did not find any studies supporting or indicating an increased usage resulting from cycle times. DOE will consider any new information or data that points to an impact on usage due to a change in cycle times. The California IOUs suggested that updated *RECS* data be utilized for the final rule analysis. (CA IOUs, No. 26 at p. 6) Data collection for the *2020 RECS* are in progress but it is unclear if the data needed to estimate clothes dryer cycles will be available for the final rule analysis.

The California IOUs recommended DOE consider the impact of the COVID–19 pandemic has had as updates are made. The California IOUs encouraged DOE to consider carefully what portions of updated *RECS* data are representative of current and future use as the updated data may have heavy influences from the COVID–19 pandemic. (CA IOUs, No. 26 at p. 6) Energy Solutions also requested that DOE consider how consumer usage has shifted due to the COVID–19 pandemic. (Webinar Transcript, No. 22 at p. 66)

If appropriate data from the *2020 RECS* are available for the final rule analysis, DOE will evaluate the extent to which the data may have been affected by changes in dryer usage due to the pandemic.

For each considered efficiency level, DOE derived the field energy use by separately estimating the active mode and standby mode energy use and then adding them together. The per-cycle active mode energy consumption is estimated using the DOE clothes dryer test procedure at appendix D2. It can be back-calculated from the test procedure results by dividing the weight (lb) of clothes dried per cycle (8.45 lb for standard and 3 lb for compact clothes dryers) by the CEF_{D2} (lb/kWh) and subtracting standby power. DOE adjusted the test procedure energy use to reflect field conditions by making an adjustment for clothes dryer load weight and moisture removal factor. Chapter 7 of the NOPR TSD provides more detail about these calculations.

DOE also considered the impact of clothes dryer operation on home heating and cooling loads. A clothes dryer releases heat to the surrounding environment. If the clothes dryer is located indoors, its use will tend to

[32] 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.

[33] US Census Bureau, *Annual Retail Trade Survey*. 2017. Available at *www.census.gov/programs-surveys/arts.html* (last accessed November 17, 2021).

[34] US Census Bureau, *Annual Wholesale Trade Survey*. 2017. Available at *www.census.gov/awts* (last accessed November 17, 2021).

[35] U.S. Department of Energy—Energy Information Administration, *Residential Energy Consumption Survey: 2015 Public Use Data Files*. Available at *www.eia.doe.gov/emeu/recs/recspubuse15/pubuse15.html* (last accessed November 18, 2021).

[36] Microdata of *2020 RECS*, which contains household samples, was released in July 2022. Hence it was not available at the time the NOPR analysis was conducted. However, DOE plans to use *2020 RECS* for the Final Rule analysis.

slightly reduce the heating load during the heating season and slightly increase the cooling load during the cooling season. To calculate this impact, DOE first estimated whether the clothes dryer in a *RECS* sample home is located in conditioned space (referred to as indoors) or in unconditioned space (such as garages, unconditioned basements, outdoor utility closets, or attics). Based on the *2015 RECS* and the 2015 *American Housing Survey* (''*AHS*''),[37] DOE assumed that 50 percent of vented standard electric and gas clothes dryers are located indoors, while 100 percent of compact and ventless clothes dryers are located indoors. For these installations, DOE utilized the results from a European Union study about the impacts of clothes dryers on home heating and cooling loads to determine the appropriate factor to apply to the total clothes dryer energy use.[38] This study reported that for vented clothes dryers there is a factor of negative 3 to 9 percent (average 6 percent), and for ventless clothes dryers there is a factor of positive 7 to 15 percent (average 11 percent).[39] This effect is likely to be approximately the same for all of the considered efficiency levels because the amount of air passing through the clothes dryer does not vary.

ASAP and NRDC requested that DOE confirm the baseline annual energy use for ventless electric standard dryers, pointing out that while baseline CEF_{D2} values for vented and ventless models are almost identical, the baseline annual energy consumption for ventless models is almost three times smaller than that for vented models. (ASAP, NRDC, No. 25 at pp. 2–3; ASAP, No. 22 at p. 40)

The difference in energy use between vented and ventless models is a function of dryer usage, efficiency, and additional impacts on heating and cooling loads from operating a dryer. DOE has since updated its product classes for electric standard dryers and the update removes the distinction between ventless and vented product classes in this NOPR. DOE proposes an ''Electric Standard'' product class containing both the vented electric standard product class and the ventless electric standard product class analyzed in the preliminary analysis. See the discussion of product classes in section IV.A.1 of this document.

Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for consumer clothes dryers.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for consumer clothes dryers. 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:

(1) The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

(2) The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of consumer clothes dryers 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 *2015 RECS*.[40] For each sample household, DOE determined the energy consumption for the consumer clothes dryers and the appropriate energy price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of consumer clothes dryers.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and consumer clothes dryers user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[41] The model calculated the LCC and PBP 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 and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of consumer clothes dryers as if each were to purchase a new product in the expected year of required compliance with new or amended standards. Amended standards would

[37] U.S. Census Bureau: Housing and Household Economic Statistics Division, *American Housing Survey National Data. 2015,* HUD. Available at *www.census.gov/programs-surveys/ahs/data.2015.html* (last accessed November 29, 2021).

[38] Rüdenauer, I. and C.-O. Gensch, *Energy demand of tumble dryers with respect to differences in technology and ambient conditions,* January 13, 2004. European Committee of Domestic Equipment Manufacturers (CECED).

[39] For units that are located in conditioned space, a negative factor for vented consumer clothes dryers translates to a penalty in energy use whereas a positive factor for ventless consumer clothes dryers translates to a credit in energy use. For details of the calculations see the Rüdenauer, I. and C.-O. Gensch study referenced above.

[40] DOE will update all the data to *2020 RECS* if it is available prior to the final rule.

[41] Crystal Ball™ is commercially-available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel. Available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed November 8, 2021).

apply to consumer clothes dryers manufactured 3 years after the date on which any amended standard is published. (42 U.S.C. 6295(m)(4)(A)(i)) At this time, DOE estimates publication of a final rule in 2023. Therefore, for purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for consumer clothes dryers.

Table IV.30 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.30—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.
Installation Costs	Baseline installation cost determined with data from RSMeans Residential Cost Data 2020. Assumed no change with efficiency level.
Annual Energy Use	The total per unit energy use multiplied by the cycles per year. Variability: Based on the *2015 RECS* (dryer usage), market data on remaining moisture content (''RMC'') and load weights.
Energy Prices	Electricity: Based on EEI 2020. Variability: Regional energy prices determined for each Census regions.
Energy Price Trends	Based on *AEO2021* price projections.
Repair and Maintenance Costs	Assumed no change with efficiency level for maintenance costs. Repair costs estimated for each product class and efficiency level.
Product Lifetime	Average: 14 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.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. Experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level. To derive the learning rate parameter for consumer clothes dryers, DOE obtained historical Producer Price Index (''PPI'') data for ''household laundry equipment'' between 1948 and 2016 and ''major household appliance: primary products'' between 2016 and 2020 from the Bureau of Labor Statistics (''BLS'') to form a time series price index representing household laundry equipment from 1948 to 2020.[42] Inflation-adjusted price indices were calculated by dividing the PPI series by the gross domestic product index from the Bureau of Economic Analysis for the same years. Using data from 1948–2020, the estimated learning rate (defined as the fractional reduction in price from each doubling of cumulative production) is 14.8 percent.

ASAP and NRDC encouraged DOE to investigate how the analysis could reflect learning rates associated with specific technology options for clothes dryers and suggested an approach similar to that taken in the 2017 Final Rule for ceiling fans where DOE estimated a learning rate specific to brushless DC motors. (ASAP, NRDC, No. 25 at p. 4)

DOE examined data pertaining to specific technologies, such as the heat pump. However, the heat pump producer price index series starts only from 2010, and the deflated PPI for the limited data does not indicate any observable trend specific to heat pump technology during this limited time series. DOE has therefore not incorporated a learning or experience trend specific to heat pump technology in this analysis. As heat pump technology continues to mature and gain market share over time, DOE expects that ''learning'' or ''experience'' curves are likely to become relevant to heat pump technology in the future. DOE seeks comment on this approach and how product costs for heat pump technology may change over time.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from RSMeans Residential Cost Data to estimate the baseline installation cost for consumer clothes dryers.[43] DOE estimated that for the new construction market it takes on average a total of one hour to install a clothes dryer, while for the replacement or new owners markets it takes a total of two-and a-half hours to install a clothes dryer (one hour for trip charge, half an hour to remove old clothes dryer, and one hour to install).

ASAP and NRDC encouraged DOE to reevaluate the increased installation costs associated with the additional labor hours DOE stated would be required for heat pumps due to their larger dimensions relative to conventional dryers. According to ASAP and NRDC, ENERGY STAR-certified heat pump dryers have total volumes of either 18.1 or 18.4 ft^3, while most non-heat pump models have total volumes between 17 and 23 ft^3, so it does not appear that heat pump dryers have larger dimensions than

[42] Household laundry equipment PPI (PCU3352203352204) is available till May 2016, and major household appliance: primary products (PCU335220335220P) is available starting from 2016. *See* more information at *www.bls.gov/ppi/* (last accessed November 29, 2021).

[43] RSMeans Online Residential Data (2020 Release). Gordian: Greenville, SC. Available at *www.rsmeansonline.com/* (last accessed November 8, 2021).

conventional dryers. (ASAP, NRDC, No. 25 at p. 3)

DOE collected and analyzed retail data of available models of both conventional dryers and dryers with heat pump technology, and found that the dimensions and weight of heat pump dryers are not significantly different from other conventional dryers. DOE has therefore revised its installation cost to not vary based on technology.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a consumer clothes dryer at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy Prices

Because marginal electricity and gas prices more accurately captures the incremental savings associated with a change in energy use from higher efficiency, they provide a better representation of incremental change in consumer costs than average electricity and gas prices. Therefore, DOE applied average electricity and gas prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity and gas prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2020 using data from Edison Electric Institute (''EEI'') Typical Bills and Average Rates reports.[44] 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. DOE calculated residential sector electricity prices using the methodology described in Coughlin and Beraki (2018).[45]

DOE obtained data for calculating regional prices of natural gas from the EIA publication, *Natural Gas Navigator.*[46] This publication presents monthly volumes of natural gas deliveries and average prices by state for residential, commercial, and industrial customers.

DOE's methodology allows electricity and gas prices to vary by sector, region and season. In the analysis, variability in electricity and gas prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. For consumer clothes dryers, DOE calculated weighted-average values for average and marginal electricity and gas price for the nine census divisions. See chapter 8 of the NOPR TSD for details.

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 *AEO2021,* which has an end year of 2050.[47] To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2040 through 2050.

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. Past rules indicate in general that small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. 76 FR 22454.

For consumer clothes dryers, DOE derived annualized repair frequencies based on Consumer Reports data on repair and maintenance issues for clothes dryers during the first five years of ownership. DOE estimated that on average 2.7 percent of electric and 3.3 percent of gas clothes dryers are repaired each year. DOE estimated that an average service call and repair takes about 2.5 hours and that the average material cost is equal to one-half of the equipment cost. The values for cost per service call are then annualized by multiplying by the frequencies and dividing by the average equipment lifetime of 14 years.

AHAM suggested that repair costs may be higher with increased efficiency because repairs will likely be more complex. AHAM stated that if energy conservation standards require baseline products to have electronic controls, repair and maintenance costs will likely increase for the same reason. Additionally, AHAM stated that longer cycle times may also drive increased rate of repair and shorter product lifetimes. (AHAM, No. 23 at p. 11) Whirlpool requested that DOE account for changes to components that may be needed to accommodate longer cycle times, as well as the possibility of increased maintenance costs associated with longer cycle times. According to Whirlpool, increased cycle time leads to more wear and tear on the dryer as components could fail before the end of the estimated lifespan of the entire dryer, resulting in additional expenses. (Whirlpool, No. 27 at p. 12)

DOE based its current estimates of repair and maintenance cost on available data. As stated above, DOE estimated that an average service call and repair for a consumer clothes dryer takes about 2.5 hours and the average material cost is equal to one-half of the equipment cost. DOE will take into consideration any data on frequency of repair for higher-efficiency dryers if it becomes available.

DOE requests information and data on repair cost for replacing an electromechanical and electronic control panel.

In addition, DOE seeks input on characterizing maintenance and repair costs for more-efficient consumer clothes dryers.

6. Product Lifetime

For consumer clothes dryers, 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 consumer clothes dryers of approximately 14 years. See chapter 8 of the NOPR TSD for further details.

Whirlpool requested that DOE account for changes to components that may be needed to accommodate longer cycle times, as well as the possibility of shorter product lifetimes associated with longer cycle times. (Whirlpool, No. 27 at p. 12)

DOE will take into consideration any data that becomes available on changes to components to accommodate longer cycle times and the possibility of its impact on product lifetime.

[44] Edison Electric Institute. Typical Bills and Average Rates Report. 2020. Winter 2020, Summer 2020: Washington, DC.

[45] 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.*

[46] U.S. Department of Energy–Energy Information Administration. *Natural Gas Navigator* 2020. Available at *www.eia.gov/naturalgas/data.php* (last accessed November 14, 2021).

[47] EIA. *Annual Energy Outlook 2021 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed November 8, 2021).

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for consumer clothes dryers 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.[48] The LCC analysis estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances [49] (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent. See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

Energy Solutions questioned whether DOE expects changes to be made regarding average real effective discount rate as a function of different income groups. (Webinar Transcript, No. 22 at p. 71)

As discussed above, DOE takes different income groups into consideration for establishing 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 consumer clothes dryers for 2027, DOE used data from DOE's CCMS and ENEGY STAR Clothes Dryer program.[50] [51] DOE estimated an annual 0.31 percent and 0.37 percent increase in shipment-weighted efficiency beginning in 2022 for electric standard and vented gas standard clothes dryers, respectively. Annual shipment-weighted efficiency for the other product classes (which in total have less than 2.5 percent market share) is held constant. The estimated market shares for the no-new-standards case for consumer clothes dryers are shown in Table IV.31 and Table IV.32. *See* chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

TABLE IV.31—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION IN 2027: ELECTRIC STANDARD, ELECTRIC COMPACT (120V), VENTED ELECTRIC COMPACT (240V), AND VENTLESS ELECTRIC COMPACT (240V)

Electric standard		Electric compact (120V)		Vented electric, compact (240V)		Ventless electric, compact (240V)	
CEF_{D2} (lb/kWh)	Share (%)	CEF_{D2} (lb/kWh)	Share (%)	CEF_{D2} (lb/kWh)	Share (%)	CEF_{D2} (lb/kWh)	Share (%)
2.20	30.8	2.36	58.6	2.00	73.7	2.03	10.4
2.68	0.89	3.15	0.0	2.44	0.0	2.68	87.5
3.04	1.07	3.35	10.3	2.76	10.5	6.80	2.08
3.27	1.94	4.28	0.0	3.30	15.8		
3.93	61.0	4.33	0.0	3.57	0.0		
4.21	2.62	4.63	0.0	3.82	0.0		
5.20	0.60	6.37	31.0	3.91	0.0		
7.39	1.06						

[48] 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.

[49] 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 November 8, 2021.)

[50] U.S. Department of Energy's Compliance Certification Database. Available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed November 8, 2021).

[51] ENERGY STAR, ENERGY STAR® Unit Shipment and Market Penetration Report Calendar Year 2020 Summary. Available at *www.energystar.gov/partner_resources/products_partner_resources/brand_owner_resources/unit_shipment_data* (last accessed November 8, 2021).

TABLE IV.32—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION IN 2027: VENTED GAS STANDARD, VENTED GAS COMPACT, AND VENTLESS ELECTRIC COMBINATION WASHER-DRYER

Vented gas standard		Vented gas compact		Ventless electric, combination washer-dryer	
CEF_{D2} (lb/kWh)	Share (%)	CEF_{D2} (lb/kWh)	Share (%)	CEF_{D2} (lb/kWh)	Share (%)
2.00	49.3	1.66	100	2.27	70.0
2.44	4.45	2.02	0.0	2.33	26.7
3.00	3.75	2.49	0.0	4.01	3.33
3.48	38.1	2.89	0.0		
3.83	4.44	3.17	0.0		

NEEA encouraged DOE to retain the market distribution of dryer efficiency levels shown in the NIA of the preliminary analysis TSD. (NEEA, No. 30 at p. 15)

DOE has revised its efficiency distribution based on more recent market data. DOE chose to not develop a consumer choice model for estimating the efficiency distribution for this round of analysis, as the only available model and price data are more than a decade old, and not as useful in capturing the current distribution. DOE will update the efficiency distribution if more recent price data becomes available.

DOE requests comments, information, and data on the no-new-standards case efficiency distribution of consumer clothes dryers.

9. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[52] 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 product shipments for consumer clothes dryers are developed by considering the demand from replacements for units in stock that fail and the demand from new installations in newly constructed homes. DOE calculated shipments due to replacements using the retirement function developed for the LCC analysis. DOE calculated shipments due to new installations using estimates for consumer clothes dryer saturation rate in newly constructed homes from 2010 to 2015 in *2015 RECS* and projections of new housing starts from *AEO2021.*

DOE disaggregated total product shipments into each product class using estimated market shares of each product class. To estimate these market shares, DOE first developed a linear time-series regression model to estimate market share between the product fuel type (gas or electric) by fitting the historical shipments of gas consumer clothes dryers. Historical shipments data shown a steady decline of market share of gas consumer clothes dryers from 23 percent in 2000 to 18 percent in 2020. The linear regression model indicates that market share of gas consumer clothes dryers is strongly correlated with its historical time-series.

After developing the market share estimation between the electric and gas consumer clothes dryers, DOE then subtracted estimated gas clothes dryer market share from total shipments and divided the electric clothes dryer market share into each electric consumer clothes dryer product class. DOE estimated that electric standard and vented gas standard consumer clothes dryers account for approximately 84 percent and 14 percent of the total shipments during the analysis period, respectively.

Whirlpool points out that the projected consumer clothes dryer market shares by product class do not show any change in the balance of sale between the product classes, aside from a loss of share from Vented Gas Standard and an increase in share of Vented Electric Standard. Whirlpool indicates that they have started to see more shipments of other product classes over the last few years, including the ventless and combination washer/dryer product classes and therefore suggests that DOE project some growth in the balance of sale of these product classes. (Whirlpool, No. 27 at pp. 17–18)

For this analysis, DOE does consider a slight growth in the market share of other product classes such as ventless and combination washer/dryers. DOE will consider any specific data that is available to project this category more accurately.

To estimate shipments under a standards case, DOE considers the impacts on shipments from changes in product purchase price and operating cost associated with higher energy efficiency levels using a price elasticity and an efficiency elasticity. As in the

[52] 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.

April 2021 Preliminary Analysis, DOE employed a 0.2 percent efficiency elasticity rate and a price elasticity of –0.45 percent in its shipments model. These values are based on analysis of aggregated data for five residential appliances including consumer clothes washers, dishwashers, refrigerators, freezers, and room air-conditioners.[53] The market impact is defined as the difference between the product of price elasticity of demand and the change in price due to a standard level, and the product of the efficiency elasticity and the change in operating costs due to a standard level. See chapter 9 of the NOPR TSD for details.

ASAP and NRDC encouraged DOE to clarify and confirm whether the efficiency elasticity is considered in calculating the standards-case shipments. Commenters noted that the preliminary TSD described a price elasticity of –0.45 and an efficiency elasticity of +0.2 but that the equation for calculating total shipments in the standards case included only the price elasticity of –0.45. (ASAP, NRDC, No. 25 at p. 4)

As discussed earlier, DOE considers the impact of increase in purchase price as well as efficiency in estimating the shipments through the use of a price elasticity. The NOPR TSD describes both elasticities and provides an equation in chapter 9.

DOE requests comment on its methodology for estimating shipments. DOE also requests comment on its approach to estimate the market share for each consumer clothes dryer product class.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[54] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of consumer clothes dryers sold from 2027 through 2056.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.33 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.33—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: Annual efficiency improvement of 0.31 percent for electric standard and 0.37 for vented gas standard consumer clothes dryers. Standards cases: ''Roll up'' equipment to meet potential efficiency level.
Annual Energy Consumption per Unit.	Calculated for no-new-standards case and each TSL based on inputs from energy use analysis.
Total Installed Cost per Unit	Calculated for no-new-standards case and each TSL based on inputs from the LCC analysis. Incorporates projection of future product prices based on historical data.
Repair and Maintenance Cost per Unit.	Assumed no change with efficiency level for maintenance cost. Repair cost is calculated for each efficiency level based on inputs from the LCC analysis.
Energy Prices	Estimated average and marginal electricity and gas prices from the LCC analysis based on EEI and EIA data.
Energy Price Trends	*AEO2021* projections (to 2050) and extrapolation using a fixed annual rate of price change between 2040 and 2050 thereafter.
Energy Site-to-Primary and FFC Conversion.	A time-series conversion factor based on *AEO2021.*
Discount Rate	3 percent and 7 percent.
Present Year	2021.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard. To project the trend in efficiency absent amended standards for consumer clothes dryers over the entire shipments projection period, DOE used an annual 0.31 percent and 0.37 percent increase in shipment-weighted efficiency beginning in 2022 for electric standard and vented gas standard consumer clothes dryers,

[53] Fujita, K. (2015) Estimating Price Elasticity using Market-Level Appliance Data. Lawrence Berkeley National Laboratory, LBNL–188289.

[54] The NIA accounts for impacts in the 50 states and the District of Columbia.

respectively. The efficiency for the other product classes remains at their 2021 shipments-weighted efficiency levels. The approach is further described in chapter 10 of the NOPR TSD.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (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.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each potential standards case (''TSL'') and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2021.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. DOE did not find any data on the rebound effect specific to consumer clothes dryers, so it did not include a rebound effect in the analysis.

Whirlpool suggested that additional energy usage may result from increased cycle times and the inability to complete serial loads when consumers decide to re-wash a load if wet clothes sit in the washer while waiting for the drying cycle to terminate. Whirlpool stated that such a scenario could result in additional and unnecessary energy consumption and should be closely examined as rebound effects from increased cycle times. (Whirlpool No. 27, at p. 11)

For this analysis, DOE did not find any studies supporting or indicating an increased usage resulting from cycle times. DOE requests comment on any new information or data that points to an impact on usage due to a change in cycle times and will consider such data at the final rule stage and in the final TSD.

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 [55] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPR TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed consumer clothes dryers 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 consumer clothes dryers (real) price is projected to drop 15 percent relative to 2020. DOE's projection of product prices is described in appendix 10C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for consumer clothes dryers. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a high price decline case based on the combined price index from 1980 to 2020 and (2) a low price decline case based on the same series from 1948 to 1979.[56] The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the NOPR TSD.

The energy cost savings are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE used the projection of annual national-average residential energy price changes in the Reference case from *AEO2021,* which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2040 through 2050. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2021* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10D of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[57] The discount rates

[55] 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 November 8, 2021).

[56] DOE combined PPI data of ''household laundry equipment'' from 1948 to 2016 and PPI data of ''major household appliance: primary products'' from 2016 to 2020 into one time series price index to project future price for consumer clothes washers.

[57] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed November 8, 2021).

for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this NOPR, DOE analyzed the impacts of the considered standard levels on two subgroups: (1) low-income households and (2) senior-only households. The analysis used subsets of the *2015 RECS* sample composed of households that meet the criteria for the two subgroups. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

Whirlpool requested that DOE examine the impact of amended standards on the increased purchase cost of dryers, particularly for low-income consumers. According to Whirlpool, the purchase cost of a dryer plays a significant, and often the leading, factor in a low-income consumer's purchase decision. Additionally, Whirlpool states that for many low-income consumers, appliance purchases are generally not planned and happen when their current appliance breaks down or is too costly or old to fix. With a high purchase cost, low-income consumers may ultimately decide to keep the old unit and repair it or purchase a used appliance, both of which would keep old, inefficient appliances on the grid, counter to DOE's mission to save energy. (Whirlpool, No. 27 at pp. 6–8) AHAM requested that DOE take special care to protect low-income consumers and to ensure energy conservation standards do not have a disproportionate impact on those consumers, stating that any proposed standard level not require product design options that price consumers, particularly low-income consumers, out of the clothes dryer market by eliminating technology options that allow manufacturers to produce ''entry level'' models. (AHAM, No. 23 at p. 5)

DOE considers the impact of increase in purchase price as well as efficiency in estimating the shipments through the use of a price elasticity. This integrated elasticity accounts for the choice of repair versus replace, which is ultimately reflected in the resulting shipments. Additionally, the impacts from design options on low-income consumers are already accounted for by definition in the screening, engineering, LCC subgroup, and manufacturer impact analyses. See chapter 9 of the NOPR TSD for details on price elasticity and chapter 11 for details on low-income consumers impacts.

J. Manufacturer Impact Analysis

1. Overview

DOE performed a MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of consumer clothes dryers and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing capacity and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various TSLs. To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the consumer clothes dryer industry based on publicly available data and information from its market and technology assessment and engineering analysis. This included a top-down analysis of consumer clothes dryer 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 other public sources of information to further calibrate its initial characterization of the consumer clothes dryer manufacturing industry, including company filings of form 10–K from the U.S. Securities and Exchange Commission (''SEC''),[58] corporate annual reports, and the U.S. Census Bureau's *Economic Census,*[59] as well as subscription-based market research tools *(e.g.,* reports from Dun & Bradstreet[60]).

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

[58] U.S. Securities and Exchange Commission. Company Filings. Available at *https://www.sec.gov/edgar/searchedgar/companysearch.html.*

[59] The U.S. Census Bureau. *Quarterly Survey of Plant Capacity Utilization.* Available at *www.census.gov/programs-surveys/qpc/data/tables.html.*

[60] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com.*

expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of consumer clothes dryers in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. *See* section IV.J.3 of this document for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, ''Review under the Regulatory Flexibility Act'' and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2022 (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 consumer clothes dryers, DOE used a real discount rate of 7.5 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, projections from the shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. DOE models the relationship between efficiency and MPCs as a part of its engineering analysis. For a complete description of the MPCs, see chapter 5 of the NOPR TSD or section IV.C of this document.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level and by product class. 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 2022 (the base year) to 2056 (the end year of the analysis period). *See* chapter 9 of the NOPR TSD for additional details or section IV.G of this document.

c. Product and Capital Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) 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 amended energy conservation standards.

DOE relied on manufacturer feedback to evaluate the level of capital and product conversion costs manufacturers would likely incur at the various TSLs. During confidential interviews, DOE asked manufacturers to estimate the capital conversion costs (*e.g.,* changes in production processes, equipment, and tooling) to meet the various efficiency levels. DOE also asked manufacturers to estimate the redesign effort and engineering resources required at various efficiency levels to quantify the product conversion costs. Based on manufacturer feedback, DOE also estimated ''re-flooring'' costs associated with replacing obsolete display models in big-box stores (*e.g.,* Lowe's, Home Depot, Best Buy) due to higher standards. Some manufacturers stated that with a new product release, big-box 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 reviewed the DOE CCMS [61] database, U.S. market share estimates, and company characteristics to scale the company-specific conversion cost estimates to levels that represent the overall industry. First, DOE used its

[61] U.S. Department of Energy's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data* (last accessed October 8, 2021).

CCMS database to identify original equipment manufacturers (''OEMs'') of the covered products. Next, DOE assessed each OEM's U.S. market share and product profile (*e.g.,* estimated sales by product class and efficiency) for consumer clothes dryers. Finally, DOE estimated industry-level conversion cost estimates by scaling feedback from OEMs based on a combination of product offerings and U.S. market share estimates.

DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the NOPR TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case manufacturer markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) a preservation of gross margin percentage scenario; and (2) a preservation of operating profit scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within a product class. As manufacturer production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. DOE assumed a gross margin percentage of 21 percent for all product classes.[62]

[62] The gross margin percentage of 21 percent is based on a manufacturer markup of 1.26.

Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross margin percentage as their production costs increase, particularly for minimally efficient products. Therefore, this scenario represents a high bound to industry profitability under an amended energy conservation standard.

In the preservation of operating profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their manufacturer markups to a level that maintains base-case operating profit. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case in the year after the compliance date of the amended standards. The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard. A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 55 percent of domestic consumer clothes dryer industry shipments. Participants included domestic-based and foreign-based OEMs with a range of different product offerings and market shares.

In interviews, DOE asked manufacturers to describe their major concerns regarding potential increases in energy conservation standards for consumer clothes dryers. The following section highlights manufacturer concerns that helped inform the projected potential impacts of an amended standard on the industry. Manufacturer interviews are conducted under non-disclosure agreements (''NDAs''), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and in DOE's responses throughout the rest of this document.

a. Heat Pump Technology

Some manufacturers expressed concerns about potential adverse impacts of a standard that could only be met using heat pump technology on product affordability, consumer satisfaction, profitability, and manufacturing capacity. Heat pump dryers currently cost more to produce than other electric dryers. In interviews, some manufacturers stated that a portion of consumers cannot afford the increased upfront cost and may forgo purchasing a new dryer or rely on alternatives such as laundromats or dryer rentals if the standard were to increase to a level that required the use of heat pump technology. Some manufacturers asserted, based on their market research and customer reviews of existing heat pump dryers, that consumers would be dissatisfied with a standard that could be achieved only by a heat pump dryer. These manufacturers cited instances of customer complaints about drying performance and longer cycle times that have been associated with certain implementations of heat pump technology.

In interviews, several manufacturers also stated that heat pump technology represents a significant departure from vented electric dryers and would require new manufacturing plants or a total renovation of existing production facilities. Those manufacturers pointed out that heat pump dryers make up less than one percent of the consumer clothes dryer sales in the United States. The same manufacturers expressed concern about a potential shortage of products given the scale of investment, redesign efforts, and time constraints.

Although some manufacturers expressed concerns about a standard that could only be met using heat pump technology, several manufacturers emphasized the benefits of heat pump technology. These manufacturers stated that heat pump dryers provide more energy savings and improved fabric care compared to conventional clothes dryers due to the lower drying temperatures associated with heat pump technology. Several manufacturers noted recent increases in domestic heat pump dryer sales and predicted that the trend would continue. These manufacturers also emphasized the increasing popularity of heat pump dryers in the European market, which they attributed to the proliferation of cost-competitive offerings, improved payback period, and shifting consumer preferences in that market.

Although heat pump technology is still in the early stages of adoption in the United States, heat pump technology is commercially available on the market and can be incorporated into standard-size electric clothes dryers without the need to increase overall product size. As discussed in the engineering analysis, recent advances have resulted in heat pump products that do not require sacrifices in either dryness level or cycle time. DOE expects that that the U.S. market will continue to benefit from further advances in heat pump technology in the European

market, as manufacturers adapt those advances to products designed for the U.S. consumer. In addition, voluntary programs such as ENERGY STAR and various State incentive programs have the potential to significantly grow the market share of heat pump models. As discussed in the life-cycle cost analysis, as heat pump technology continues to gain market share over time, DOE expects that learning and experience by manufacturers will likely contribute to downward costs over time.

b. Preservation of Electromechanical Controls

Some manufacturers expressed concern that higher energy conservation standards or requiring the use of the Appendix D2 test procedure would threaten the viability of dryers with electromechanical controls. In interviews, these manufacturers noted that some consumers prefer the simplicity of electromechanical control knobs and the lower price point associated with the lower production cost. Manufacturers also noted that eliminating electromechanical control dryers may raise the cost of baseline dryers, which would disproportionately impact low-income consumers since they typically purchase low-cost dryers with electromechanical controls.

c. Cost Increases and Component Shortages

Some manufacturers noted that increases in raw material prices, escalating shipping and transportation costs, and limited component availability over the last two years all affect manufacturer production costs. As a result, cost estimates based on historic 5-year averages would underestimate current production costs.

4. Discussion of MIA Comments

In response to the preliminary analysis, AHAM commented on DOE's approach to analyzing cumulative regulatory burden. AHAM stated that the cumulative regulatory burden analysis should incorporate and quantify the costs to manufacturers associated with responding to and monitoring proposed test procedures and energy conservation standards. Additionally, AHAM urged DOE to incorporate the financial results of the cumulative regulatory burden analysis into the MIA, stating that this could be done by adding the combined cost of complying with multiple regulations into the product conversion costs in the GRIM. AHAM suggests performing a consolidated analysis of multiple regulations and notes that this approach is particularly important for related products like clothes washers and clothes dryers that are often designed, invested in, and sold together. In addition, AHAM noted other regulations impact consumer clothes dryer manufacturers such as commercial clothes washers, consumer refrigerator/freezers, dishwashers, room air conditioners, dehumidifiers, and portable air conditioners rulemakings. (AHAM, No. 23 at pp. 7–8)

AHAM requested that DOE include the cost of monitoring test procedure and energy conservation standard rulemakings in its rulemaking analyses. (AHAM, No. 23 at p. 8) DOE requests AHAM provide the costs of monitoring, which would be independent from the conversion costs required to adapt product designs and manufacturing facilities to an amended standard, for DOE to determine whether these costs would materially affect the analysis. In particular, a summary of the job titles and annual hours per job title at a prototypical company would allow DOE to construct a detailed analysis of AHAM's monitoring costs.

Additionally, AHAM encouraged DOE to incorporate product conversion costs from multiple rulemakings in the GRIM. (AHAM, No. 23 at p. 8) If DOE were to combine the conversion costs from multiple regulations, as requested, it would be appropriate to match the combined conversion costs against combined revenues of the regulated products. DOE is concerned that combined results would likely make it more difficult to discern the direct impact of the amended standard on manufacturers, particularly for rulemakings where there is only partial overlap of manufacturers. Conversion costs would be spread over a larger revenue base and result in less severe INPV impacts, when evaluated on a percent change basis.

Regarding the specific case of consumer clothes washers and clothes dryers, DOE understands that these products are often designed as sets and sold together. Additionally, DOE has received feedback from industry that aligning the compliance data for potential amended standards across the two rulemakings would reduce overall compliance costs. DOE will investigate harmonizing the timing of the two rulemakings but must work within the constraints of EPCA, which determines both the timing of when rulemakings are initiated and the selection of compliance dates when an amended standard is adopted.

Regarding the other ongoing rulemakings mentioned, DOE has not proposed amended energy conservation standards or compliance dates for most of the products identified. Table V.31 details the rulemakings and expected conversion expenses of Federal energy conservation standards, such as room air conditioners and portable air conditioners, affecting consumer clothes dryer OEMs. DOE will reassess and consider all relevant final rules contributing to cumulative regulatory burden in any subsequent analysis.

In written comment, Whirlpool asserted that requiring the use of the appendix D2 test procedure would effectively eliminate electromechanical controlled dryers since electronic controls would very likely be needed to deliver accurate sensing and end-of-cycle detection. Whirlpool expressed a variety of concerns regarding the potential phase out of electromechanical controls. First, Whirlpool stated that phasing out electromechanical control dryers will disproportionately harm manufacturers, such as Whirlpool, with significant sales of electromechanical control dryers. Whirlpool noted that a transition from electromechanical to electronic controls would require a significant amount of engineering resources and capital investment to upgrade manufacturing facilities and production lines. Second, Whirlpool noted that electromechanical control dryers are often purchased by price-sensitive customers as these dryers are typically entry-level and low-cost. Whirlpool stated that they may be forced to make significant product changes and add product costs, which would subsequently increase the upfront cost for the consumer. Third, Whirlpool expressed concerns about manufacturers' ability to move to electronic controls considering the global supply chain shortage of semiconductors. Lastly, Whirlpool requested DOE consider the negative financial impact of potential standards on timer component suppliers. Demand for timer components is largely driven by dryers, so phasing out electromechanical controls might represent a significant business risk to these companies. Whirlpool stated at least one of these suppliers is a ''small U.S.-based company.'' (Whirlpool, No. 27 at pp. 4–6)

DOE test data shows that requiring the use of the appendix D2 test procedure will not preclude the use of electromechanical controls. As discussed in section IV.C.1 of this document, DOE tested baseline models with electromechanical controls under appendix D2. The baseline efficiency levels in this NOPR represent a minimally compliant, basic-construction consumer clothes dryer on the market, such as a dryer with

electromechanical controls. If tested under appendix D2, DOE does not expect dryers currently on the market to achieve a CEF_{D2} rating below the baseline efficiency levels detailed in this NOPR.

As for Whirlpool's broader concerns regarding the shift to electronic controls, DOE acknowledges that the GRIM is intended to represent the consumer clothes dryer industry as a whole. The impacts on individual manufacturers may vary from the industry average. DOE also recognizes that manufacturers with significant sales volumes of baseline efficiency dryers may experience differential impacts from amended standards relative to manufacturers specializing in high-efficiency dryers. However, as many of the GRIM inputs (*e.g.,* conversion costs, industry financials) account for U.S. market share weights, the GRIM is most reflective of large manufacturers like Whirlpool. Where possible, DOE suggests manufacturers provide company-specific information about their consumer clothes dryer business so DOE can more accurately incorporate it into its modeling of the overall industry.

Regarding the other concerns identified, DOE's analysis of conversion cost estimates is published in Table V.29 and the consumer sub-group analysis can be found in section V.B.1.b of this document. DOE appreciates the information about potential impacts to sub-component suppliers, however, analyzing the impacts of proposed standards on a timer component supplier is outside the scope of this analysis.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the NOPR TSD. The analysis presented in this notice uses projections from *AEO2021.*

Power sector emissions of CH_4 and N_2O are estimated using Emission Factors for Greenhouse Gas Inventories published by the EPA.[63]

The on-site operation of gas consumer clothes dryers requires combustion of fossil fuel 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.[64]

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in chapter 15 of the NOPR TSD.

The emissions intensity factors are expressed in terms of physical units per megawatt-hours (''MWh'') or million British thermal units (''MMBtu'') of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the 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. *AEO2021* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO 2021,* including the emissions control programs discussed in the following paragraphs.[65]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (''DC''). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015.[66] *AEO2021* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of implementation the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (''HAP''), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *I*n order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce

[63] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

[64] U.S. Environmental Protection Agency. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors.* AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1. Available at *www.epa.gov/ttn/chief/ap42/index.html* (last accessed July 12, 2021).

[65] For further information, see the Assumptions to *AEO2021* 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 November 8, 2021).

[66] 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).

acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2021.*

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NOx emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO2021* data to derive NO_X emissions factors for the group of States not covered by CSAPR. DOE used *AEO2021* 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 *AEO2021,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values used for this NOPR.

On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law. DOE requests comment on how to address the climate benefits of the proposal.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the SC of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive Orders, and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions (*i.e.,* SC–GHGs) using the estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990 published in February 2021 by the IWG.[67] The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, the DOE agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC–GHGs estimates presented here were developed over many years, using transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, that included the DOE and other executive branch agencies and offices was established to ensure that agencies were using the best available science and to promote consistency in the social cost of carbon (SC–CO_2) values used across agencies. The IWG published SC–CO_2 estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (''IAMs'')

[67] See Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021 (Available at: *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf*) (Last accessed Jan. 18, 2022).

that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO_2 emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO_2 concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016 the IWG published estimates of the SC–CH_4 and SC–N_2O using methodologies that are consistent with the methodology underlying the SC–CO_2 estimates. The modeling approach that extends the IWG SC–CO_2 methodology to non-CO_2 GHGs has undergone multiple stages of peer review. The SC–CH_4 and SC–N_2O estimates were developed by Marten *et al.*[68] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies, 2017).[69] Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (E.O. 13783, Section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature.

The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways. First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of effects omitted from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the U.S. and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the U.S. because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC–GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context (IWG 2010, 2013, 2016a,

[68] Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH4 and N2O mitigation benefits consistent with the US Government's SC–CO2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[69] National Academies of Sciences, Engineering, and Medicine. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide.* 2017. The National Academies Press: Washington, DC.

2016b),[70] and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3 percent and 7 percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits . . . at a lower rate than for intragenerational analysis.'' In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that ''Circular A–4 is a living document'' and ''the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A–4 itself.'' Thus, DOE concludes that a 7-percent discount rate is not appropriate to apply to value the social cost of greenhouse gases in the analysis presented herein. In this analysis, to calculate the present and annualized values of climate benefits, DOE uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 TSD recommends ''to ensure internal consistency—*i.e.,* future damages from climate change using the SC–GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5-percent rate.'' DOE has also consulted the National Academies' 2017 recommendations on how SC–GHG estimates can ''be combined in RIAs with other cost and benefits estimates that may use different discount rates.'' The National Academies reviewed ''several options,'' including ''presenting all discount rate combinations of other costs and benefits with [SC–GHG] estimates.''

As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue.

While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[71] Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO_2 estimates. However, as discussed in the February 2021 TSD, the IWG has concluded that, taken together,

[70] Interagency Working Group on Social Cost of Carbon. Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866. 2010. United States Government. (Available at: *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf*) (Last accessed April 15, 2022.); Interagency Working Group on Social Cost of Carbon. Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866. 2013. (Available at: *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact*) (Last accessed April 15, 2022.); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016. (Available at: *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf*) (Last accessed January 18, 2022.); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. (Available at: *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf*) (Last accessed January 18, 2022.).

[71] Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government. (Available at: *www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/*) (Last accessed Jan. 18, 2022).

the limitations suggest that the interim SC–GHG estimates used in this proposed rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–GHG (*i.e.,* SC–CO_2, SC–N_2O, and SC–CH_4) values used for this NOPR are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these pollutants are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this NOPR were based on the values presented in the 2021 update from the IWG's February 2021 TSD. Table IV.34 shows the updated sets of SC–CO_2 estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the NOPR TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CO_2 values, as recommended by the IWG.[72]

TABLE IV.34—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050 (2020$ PER METRIC TON CO_2)

Year	Discount rate			
	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

In calculating the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2021 interagency report, adjusted to 2020$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. For 2051 to 2070, DOE used estimates published by EPA, adjusted to 2020$. These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG. DOE expects additional climate benefits to accrue for any longer-life consumer clothes dryers post 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. If further analysis of monetized climate benefits beyond 2070 becomes available prior to the publication of the final rule, DOE will include that analysis in the final rule.

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. 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. See chapter 13 for the annual emissions reduction. See appendix 14A for the annual SC–CO_2 values.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this NOPR were generated using the values presented in the 2021 update from the IWG.[73] Table IV.35 shows the updated sets of SC–CH_4 and SC–N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the NOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG. DOE used the same approach described above for the SC–CO_2 for values after 2050.

TABLE IV.35—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

[72] For example, the February 2021 TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

[73] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC (February 2021) (Available at: *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf*) (Last accessed Jan. 18, 2022).

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case. See chapter 13 for the annual emissions reduction. See appendix 14A for the annual SC–CH_4 and SC–N_2O values.

2. Monetization of Other Air Pollutants

DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using the latest benefit-per-ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[74] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025, 2030, 2035 and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040 the values are held constant. DOE derived values specific to the sector for consumer clothes dryers using a method described in appendix 14A of the NOPR TSD.

DOE also estimated the monetized value of NO_X and SO_2 emissions reductions from site use of natural gas in consumer clothes dryers 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.[75] The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.[76] 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 several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO2021.* 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 *AEO2020* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of production and non-production employees of manufacturers of the products subject to standards.[77] 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 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.[78] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy

[74] U.S. Environmental Protection Agency, *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors.* Available at: *www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

[75] ''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.

[76] ''Area sources'' are a category in the 2018 document from EPA, but are not used in the 2021 document cited above. Available at: *www.epa.gov/sites/default/files/2018-02/documents/sourceapportionmentbpttsd_2018.pdf.*

[77] As defined in the U.S. Census Bureau's 2016 *Annual Survey of Manufactures,* production workers include ''Workers (up through the line-supervisor level) engaged in fabricating, processing, assembling, inspecting, receiving, packing, warehousing, shipping (but not delivering), maintenance, repair, janitorial, guard services, product development, auxiliary production for plant's own use (*e.g.,* power plant), record keeping, and other closely associated services (including truck drivers delivering ready-mixed concrete)'' Non-production workers are defined as ''Supervision above line-supervisor level, sales (including a driver salesperson), sales delivery (truck drivers and helpers), advertising, credit, collection, installation, and servicing of own products, clerical and routine office functions, executive, purchasing, finance, legal, personnel (including cafeteria, *etc.*), professional and technical.''

[78] *See* U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1997. U.S. Government Printing Office: Washington, DC. Available at *www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf* (last accessed November 9, 2021).

Technologies version 4 (''ImSET'').[79] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2027–2033), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for consumer clothes dryers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for consumer clothes dryers, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment at the product class level and by grouping select individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the equipment classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set. In addition, the use of TSLs allows DOE to account for shifts in manufacturing practices, such as consolidation or expansion of manufacturing lines that may occur as a result of differential efficiency levels set for different product classes. In the case of consumer clothes dryers, DOE did not find any cross elasticities in the marketplace and DOE does not believe consumers would modify their purchasing decisions to change to different categories of consumer clothes dryers due to the imposition of standards. DOE also believes that manufacturers will continue producing compact and standard size clothes dryers on different product lines due to their significantly different platforms and production quantities. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD. Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for consumer clothes dryers. TSL 6 represents the maximum technologically feasible (''max-tech'') energy efficiency for all product classes. TSL 5 represents the maximum national energy savings with positive NPV. TSL 4 represents the maximum national energy savings with simple PBP less than 4 years. TSL 3 represents the intermediate efficiency level between TSL 2 and TSL 4. TSL 2 corresponds to efficiency level with automatic termination control system for product class (''PC'')1 to PC6 and high-speed spin for PC7. TSL 1 corresponds to efficiency level with electronic controls for all product classes. DOE constructed the TSLs for this NOPR to include ELs representative of ELs with similar characteristics (*i.e.,* using similar technologies and/or efficiencies, and having roughly comparable equipment availability). The use of representative ELs provided for greater distinction between the TSLs. While representative ELs were included in the TSLs, DOE considered all efficiency levels as part of its analysis but did not include all efficiency levels in the TSLs.[80]

TABLE V.1—TRIAL STANDARD LEVELS FOR CONSUMER CLOTHES DRYER

Product class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
	Efficiency level and representative CEF_{D2} (lb/kWh)					
Electric Standard	1 (2.68)	3 (3.27)	4 (3.93)	5 (4.21)	7 (7.39)	7 (7.39)
Electric Compact (120V)	1 (3.15)	3 (4.28)	4 (4.33)	4 (4.33)	5 (4.63)	6 (6.37)
Vented Electric Compact (240V)	1 (2.44)	3 (3.30)	4 (3.57)	4 (3.57)	5 (3.82)	6 (3.91)
Vented Gas Standard	1 (2.44)	2 (3.00)	3 (3.48)	3 (3.48)	3 (3.48)	4 (3.83)
Vented Gas Compact	1 (2.02)	2 (2.49)	1 (2.02)	Baseline (1.66)	3 (2.89)	4 (3.17)
Ventless Electric Compact (240V)	Baseline (2.03)	1 (2.68)	1 (2.68)	1 (2.68)	1 (2.68)	2 (6.80)
Ventless Electric Combination Washer-Dryer.	Baseline (2.27)	1 (2.33)	1 (2.33)	1 (2.33)	1 (2.33)	2 (4.01)

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on consumers of consumer clothes dryers by looking at the effects that potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime

[79] Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

[80] Efficiency levels that were analyzed for this NOPR are discussed in section IV.C.3 of this document. Results by efficiency level are presented in the NOPR TSD chapters 8 and 12.

and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.15 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC STANDARD CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Average costs (2020$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	2.20	Baseline	$607	$147	$1,567	$2,174	.....	14.0
1	2.68	1	625	122	1,301	1,926	0.7	14.0
2	3.27	3	634	101	1,085	1,719	0.6	14.0
3	3.93	4	641	85.3	919	1,560	0.6	14.0
4	4.21	5	721	80.3	865	1,587	1.7	14.0
5, 6	7.39	7	996	50.0	537	1,533	4.0	14.0

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC STANDARD CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
1	2.68	1	$252	0.32
2	3.27	3	439	0.16
3	3.93	4	578	0.11
4	4.21	5	182	53.5
5, 6	7.39	7	230	53.1

* The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC COMPACT (120V) CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Average costs (2020$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	2.36	Baseline	$635	$54.1	$383	$1,206	.....	14.0
1	3.15	1	657	41.0	297	1,090	1. 7	14.0
2	4.28	3	670	30.7	228	995	1.5	14.0
3, 4	4.33	4	678	30.4	226	999	1.8	14.0
5	4.63	5	770	28.6	215	1,073	5.3	14.0
6	6.37	6	993	21.6	169	1,222	11.0	14.0

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC COMPACT (120V) CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
1	3.15	1	$115	5.66
2	4.28	3	194	4.46
3, 4	4.33	4	160	21.6
5	4.63	5	86.3	53.0

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC COMPACT (120V) CONSUMER CLOTHES DRYERS—Continued

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
6	6.37	6	(62.6)	76.3

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.6—AVERAGE LCC AND PBP RESULTS FOR VENTED ELECTRIC COMPACT (240V) CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Average costs (2020$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	2.00	Baseline	$636	$64.4	$682	$1,318	.....	14.0
1	2.44	1	659	53.3	565	1,223	2.0	14.0
2	3.30	3	672	40.2	426	1,098	1.5	14.0
3, 4	3.57	4	680	37.4	396	1,076	1.6	14.0
5	3.82	5	772	35.2	373	1,145	4.7	14.0
6	3.91	6	995	34.8	368	1,363	12.1	14.0

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR VENTED ELECTRIC COMPACT (240V) CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
1	2.44	1	$94.1	8.63
2	3.30	3	201	4.35
3, 4	3.57	4	192	8.37
5	3.82	5	123	47.0
6	3.91	6	(94.8)	79.6

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.8—AVERAGE LCC AND PBP RESULTS FOR VENTED GAS STANDARD CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Average costs (2020$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	2.00	Baseline	$740	$60.0	$689	$1,429	—	14.0
1	2.44	1	763	51.5	586	1,350	2.8	14.0
2	3.00	2	768	42.1	478	1,246	1.6	14.0
3, 4, 5	3.48	3	783	37.7	426	1,209	1.9	14.0
6	3.83	4	863	37.5	421	1,284	5.5	14.0

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR VENTED GAS STANDARD CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
1	2.44	1	$77.7	6.04
2	3.00	2	174	1.66
3, 4, 5	3.48	3	198	3.74

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR VENTED GAS STANDARD CONSUMER CLOTHES DRYERS—Continued

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
6	3.83	4	43.0	59.3

* The savings represent the average LCC for affected consumers.

TABLE V.10—AVERAGE LCC AND PBP RESULTS FOR VENTED GAS COMPACT CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Average costs (2020$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	1.66	Baseline	$790	$27.4	$308	$1,098	.....	14.0
1, 3	2.02	1	810	23.4	263	1,073	5.1	14.0
2	2.49	2	817	23.2	258	1,075	6.4	14.0
4	1.66	Baseline	790	27.4	308	1,098	.....	14.0
5	2.89	3	834	21.2	235	1,069	7.1	14.0
6	3.17	4	926	19.0	211	1,137	16.3	14.0

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR VENTED GAS COMPACT CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
1, 3	2.02	1	$25.2	32.7
2	2.49	2	23.5	50.2
4	1.66	Baseline	.....	.....
5	2.89	3	29.4	51.9
6	3.17	4	(38.8)	78.8

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.12—AVERAGE LCC AND PBP RESULTS FOR VENTLESS ELECTRIC STANDARD (240V) CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Average costs (2020$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	2.03	Baseline	$1,020	$53.8	$567	$1,588	.....	14.0
1	2.03	Baseline	1,020	53.8	567	1,588	.....	14.0
2, 3, 4, 5	2.68	1	1,025	38.8	412	1,438	0.3	14.0
6	6.80	2	1,319	11.7	123	1,442	7.1	14.0

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.13—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR VENTLESS ELECTRIC STANDARD (240V) CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
1	2.03	Baseline	.....	.....
2, 3, 4, 5	2.68	1	$145	0.0
6	6.80	2	11.0	66.4

* The savings represent the average LCC for affected consumers.

TABLE V.14—AVERAGE LCC AND PBP RESULTS FOR VENTLESS ELECTRIC COMBINATION WASHER-DRYER CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Average costs (2020$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	2.27	Baseline	$1,342	$48.3	$513	$1,855	.....	14.0
1	2.27	Baseline	1,342	48.3	513	1,855	.....	14.0
2, 3, 4, 5	2.33	1	1,342	46.9	498	1,840	0.0	14.0
6	4.01	2	1,965	25.7	272	2,237	27.5	14.0

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.15—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR VENTLESS ELECTRIC COMBINATION WASHER-DRYER CONSUMER CLOTHES DRYERS

TSL	CEF_{D2} (lb/kWh)	Efficiency level	Life-cycle cost savings	
			Average LCC savings* (2020$)	Percent of consumers that experience net cost (%)
1	2.27	Baseline	.....	.....
2, 3, 4, 5	2.33	1	15.1	0.0
6	4.01	2	(387)	89.8

*The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households and senior-only households for product classes with a sufficient sample size in *RECS* to perform a Monte Carlo analysis. DOE was unable to conduct a consumer subgroup analysis for product class—vented gas compact for either low-income households or senior-only households due to insufficient sample size and therefore does not report results for that product class. Table V.16 through Table V.27 compare the average LCC savings, PBP, percent of consumers negatively impacted, and percent of consumers positively impacted at each efficiency level for the consumer subgroups, along with corresponding values for the entire residential consumer sample for product classes with a sufficient sample size. In most cases, the values for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.16—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: ELECTRIC STANDARD CONSUMER CLOTHES DRYERS

EL	TSL	Average life-cycle cost savings* (2020$)			Simple payback period (years)		
		Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	1	$246	$172	$252	0.6	1.0	0.7
3	2	430	302	439	0.5	0.8	0.6
4	3	566	398	578	0.4	0.8	0.6
5	4	196	101	182	1.4	2.4	1.7
7	5, 6	306	57.7	230	3.2	5.5	4.00

*The savings represent the average LCC for affected consumers.

TABLE V.17—COMPARISON OF PERCENT OF IMPACTED CONSUMERS* FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: ELECTRIC STANDARD CONSUMER CLOTHES DRYERS

EL	TSL	Low-income households (%)	Senior-only households (%)	All households (%)
1	1	0.27	0.45	0.32
3	2	0.17	0.25	0.16
4	3	0.15	0.22	0.11
5	4	43.7	60.0	53.5
7	5, 6	42.7	65.2	53.1

*Percent of impacted consumers indicates households with net cost.

TABLE V.18—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: ELECTRIC COMPACT (120V) CONSUMER CLOTHES DRYERS

EL	TSL	Average life-cycle cost savings* (2020$)			Simple payback period (years)		
		Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	1	$139	$86.8	$115	1.1	2.1	1. 7
3	2	232	147	194	1.0	1.9	1.5
4	3, 4	195	119	160	1.2	2.3	1.8
5	5	151	41.9	86.3	3.6	6.6	5.3
6	6	77.4	(123)	(62.6)	7.6	13.8	11.0

*The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.19—COMPARISON OF PERCENT OF IMPACTED CONSUMERS* FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: ELECTRIC COMPACT (120V) CONSUMER CLOTHES DRYERS

EL	TSL	Low-income households (%)	Senior-only households (%)	All households (%)
1	1	2.43	7.56	5.66
3	2	1.92	6.15	4.46
4	3, 4	14.3	24.6	21.6
5	5	35.5	59.4	53.0
6	6	53.0	81.5	76.3

*Percent of impacted consumers indicates households with net cost.

TABLE V.20—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: VENTED ELECTRIC COMPACT (240V) CONSUMER CLOTHES DRYERS

EL	TSL	Average life-cycle cost savings* (2020$)			Simple payback period (years)		
		Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	1	$116	$70.0	$94.1	1.4	2.6	2.0
3	2	241	153	201	1.0	1.9	1.5
4	3, 4	232	145	192	1.1	2.0	1.6
5	5	193	70.8	123	3.2	5.9	4.7
6	6	41.2	(148)	(94.8)	8.3	15.3	12.1

*The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.21—COMPARISON OF PERCENT OF IMPACTED CONSUMERS* FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: VENTED ELECTRIC COMPACT (240V) CONSUMER CLOTHES DRYERS

EL	TSL	Low-income households (%)	Senior-only households (%)	All households (%)
1	1	3.71	11.2	8.63
3	2	1.89	5.96	4.35
4	3, 4	3.79	11.7	8.37
5	5	29.0	53.2	47.0
6	6	57.0	84.5	79.6

*Percent of impacted consumers indicates households with net cost.

TABLE V.22—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: VENTED GAS STANDARD CONSUMER CLOTHES DRYERS

EL	TSL	Average life-cycle cost savings* (2020$)			Simple payback period (years)		
		Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	1	$85.1	$52.5	$77.7	2.2	3.6	2.8
2	2	$182	122	174	1.3	2.1	1.6
3	3, 4, 5	209	137	198	1.5	2.6	1.9
4	6	66.5	6.97	43.0	4.4	7.3	5.5

*The savings represent the average LCC for affected consumers.

TABLE V.23—COMPARISON OF PERCENT OF IMPACTED CONSUMERS * FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: VENTED GAS STANDARD CONSUMER CLOTHES DRYERS

EL	TSL	Low-income households (%)	Senior-only households (%)	All households (%)
1	1	3.97	9.45	6.04
2	2	0.94	2.70	1.66
3	3, 4, 5	2.16	5.71	3.74
4	6	52.2	67.7	59.3

* Percent of impacted consumers indicates households with net cost.

TABLE V.24—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: VENTLESS ELECTRIC STANDARD (240V) CONSUMER CLOTHES DRYERS

EL	TSL	Average life-cycle cost savings * (2020$)			Simple payback period (years)		
		Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
0	1						
1	2, 3, 4, 5	$174	$116	$145	0.2	0.4	0.3
2	6	136	(53.1)	11.0	4.9	8.9	7.1

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.25—COMPARISON OF PERCENT OF IMPACTED CONSUMERS * FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: VENTLESS ELECTRIC STANDARD (240V) CONSUMER CLOTHES DRYERS

EL	TSL	Low-income households (%)	Senior-only households (%)	All households (%)
0	1			
1	2, 3, 4, 5	0.0	0.01	0.0
2	6	43.3	72.5	66.4

* Percent of impacted consumers indicates households with net cost.

TABLE V.26—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: VENTLESS ELECTRIC COMBINATION WASHER-DRYER CONSUMER CLOTHES DRYERS

EL	TSL	Average life-cycle cost savings * (2020$)			Simple payback period (years)		
		Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
0	1						
1	2, 3, 4, 5	$17.2	$12.0	$15.1	0.0	0.0	0.0
2	6	(174)	(435)	(387)	18.8	34.9	27.5

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.27—COMPARISON OF PERCENT OF IMPACTED CONSUMERS * FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS: VENTLESS ELECTRIC COMBINATION WASHER-DRYER CONSUMER CLOTHES DRYERS

EL	TSL	Low-income households (%)	Senior-only households (%)	All households (%)
0	1			
1	2, 3, 4, 5	0.0	0.0	0.0
2	6	71.5	92.8	89.8

* Percent of impacted consumers indicates households with net cost.

c. Rebuttable Presumption Payback

As discussed in section II.A of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii)) In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for consumer clothes dryers. 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.28 presents the rebuttable-presumption payback periods for the considered TSLs for consumer clothes dryers. The results show that the estimated rebuttable payback period ranges broadly between the product classes. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.28—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Product class	Trial standard level					
	1	2	3	4	5	6
	(Years)					
Electric Standard	0.67	0.56	0.52	1.62	3.75	3.75
Electric Compact (120 V)	1.78	1.59	1.93	1.93	5.64	11.7
Vented Electric Compact (240 V)	2.18	1.57	1.72	1.72	4.93	12.7
Vented Gas Standard	4.28	2.80	3.26	3.26	3.26	8.29
Vented Gas Compact	8.48	6.15	8.48	.....	7.35	20.5
Ventless Electric Compact (240 V)	.....	0.35	0.35	0.35	0.35	7.52
Ventless Electric Combination Washer-Dryer	.....	0.00	0.00	0.00	0.00	28.3

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of consumer clothes dryers. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. Table V.29 illustrates the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of consumer clothes dryers, as well as the conversion costs that DOE estimates manufacturers of consumer clothes dryers would incur at each TSL.

The impact of potential amended energy conservation standards were analyzed under two scenarios: (1) the preservation of gross margin percentage; and (2) the preservation of operating profit, as discussed in section IV.J.2.d of this document. In the preservation of gross margin percentage scenario, DOE applied a gross margin percentage of 21 percent for all product classes and all efficiency levels in the standards case. This scenario assumes that a manufacturer's per-unit dollar profit would increase as MPCs increase in the standards cases. DOE understand this scenario to be an upper bound to industry profitability under an energy conservation standard.

In the preservation of operating profit scenario manufacturers do not earn additional operating profit when compared to the no-standards case scenario. While manufacturers make the necessary upfront investments required to produce compliant products, per-unit operating profit does not change in absolute dollars. The preservation of operating profit scenario results in the lower (or more severe) 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 base year through the end of the analysis period (2022–2056). 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 final rule and the year by which manufacturers must comply with the new standard. The conversion costs can have a significant impact on the short-term cash flow on the industry and generally result in lower free cash flow in the period between the publication of the final rule and the compliance date of potential amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

TABLE V.29—MANUFACTURER IMPACT ANALYSIS RESULTS FOR CONSUMER CLOTHES DRYERS

	Units	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
INPV	*2020$ millions.*	1,810.1	1,785.0 to 1,798.5.	1,766.8 to 1,789.8.	1,694.5 to 1,728.5.	1,368.8 to 1,582.5.	830.1 to 1,675.5.	732.4 to 1,632.0.
Change in INPV *	%	.....	(1.4) to (0.6)	(2.4) to (1.1)	(6.4) to (4.5)	(24.4) to (12.6)	(54.1) to (7.4).	(59.5) to (9.8).
Free Cash Flow (2026) *	*2020$ millions.*	120.5	107.2	98.8	57.7	(124.1)	(392.3)	(443.3).

TABLE V.29—MANUFACTURER IMPACT ANALYSIS RESULTS FOR CONSUMER CLOTHES DRYERS—Continued

	Units	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Change in Free Cash Flow (2026) *.	%		(11.0)	(18.0)	(52.1)	(203.0)	(425.7)	(468.0).
Conversion Costs	*2020$ millions.*		34.1	55.3	149.7	561.7	1,164.2	1,280.0.

* Parentheses denote negative values.

The cash flow results discussion below refers to product classes as defined in Table IV.2 in section IV.A.1 of this proposed rule. It also refers to the efficiency levels (''ELs'') and associated design options designated in the Table IV.16 through Table IV.21 in section IV.C.1.b of this document.

At TSL 1, the standard reflects efficiency levels with electronic controls for all product classes. The change in INPV is expected to range from −1.4 to −0.6 percent. At this level, free cash flow is estimated to decrease by 11.0 percent compared to the no-new-standards case value of $120.5 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 61 percent of current shipments meet this level.

The design options DOE analyzed for Product Classes 1 through 5 include implementing electronic controls. For Product Classes 1 through 5, TSL 1 corresponds to EL 1. For Product Classes 6 and 7, TSL 1 corresponds to the baseline CEF_{D2}. Capital conversion costs may be necessary for additional tooling for timers and electronics. Product conversion costs may be necessary for developing, sourcing, and testing electronics (*e.g.,* safety, performance, and durability tests). DOE does not expect industry to incur re-flooring costs at this level since the necessary enhancements could be done ''behind the hinge,'' incorporating the design changes in a manner that does not impact product appearance. DOE does not expect industry to incur conversion costs related to Product Classes 6 and 7, as the efficiency levels would remain at baseline. DOE estimates capital conversion costs of $15.7 million and product conversion of costs of $18.4 million. Conversion costs total $34.1 million.

At TSL 1, the shipment-weighted average MPC for all consumer clothes dryers is expected to increase by 1 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer clothes dryers in 2027. Given this relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the slight increase in MSP is outweighed by the $34.1 million in conversion costs, causing a slightly negative change in INPV at TSL 1 under this scenario. Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $34.1 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit scenario.

At TSL 2, the standard reflects efficiency levels with more advanced automatic termination controls for Product Classes 1 through 6, and high-speed spin for product class 7. The change in INPV is expected to range from −2.4 to −1.1 percent. At this level, free cash flow is estimated to decrease 18.0 percent compared to the no-new-standards case value of $120.5 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 60 percent of current shipments meet this level.

The design options for Product Classes 1 through 6 include implementing electronic controls, optimized heating systems, and more advanced automatic termination controls. For Product Class 7, the design option analyzed includes high-speed spin cycles. For Product Classes 1 through 3, TSL 2 corresponds to EL 3. For Product Classes 4 and 5, TSL 2 corresponds to EL 2. For Product Classes 6 and 7, TSL 2 corresponds to EL 1. Capital conversion costs may be necessary for incremental updates in tooling. Product conversion costs may be necessary for software optimization, prototyping, and testing. DOE expects industry to incur some re-flooring costs as manufacturers redesign product lines to meet the efficiency levels required by TSL 2. DOE estimates capital conversion costs of $26.9 million and product conversion of costs of $28.4 million. Conversion costs total $55.3 million.

At TSL 2, the shipment-weighted average MPC for all consumer clothes dryers is expected to increase by 2 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer clothes dryers in 2027. Given the relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the slight increase in MSP is outweighed by the $55.3 million in conversion costs, causing a slightly negative change in INPV at TSL 2 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $55.3 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 2 under the preservation of operating profit scenario.

At TSL 3, the standard reflects a set of efficiency levels between the levels designated in TSL 2 and TSL 4 and corresponds to the current ENERGY STAR efficiency level for vented electric standard dryers, which represent over 80 percent of the market. The change in INPV is expected to range from −6.4 to −4.5 percent. At this level, free cash flow is estimated to decrease 52.1 percent compared to the no-new-standards case value of $120.5 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 59 percent of current shipments meet this level.

The design options analyzed for Product Classes 1 through 4 include implementing electronic controls, optimized heating systems, more advanced automatic termination controls, and modulating heat. The design option for Product Class 5 includes implementing electronic controls. For Product Classes 6 and 7, the design options analyzed are the same as with TSL 2. For Product Classes

1 through 3, TSL 3 corresponds to EL 4. For Product Class 4, TSL 3 corresponds to EL 3. For Product Classes 5 through 7, TSL 3 corresponds to EL 1. The incremental increase in industry conversion costs from the prior TSL are due to the higher efficiency level requirements for Product Classes 1 through 4. Capital conversion costs may be necessary as manufacturers increase tooling for two-stage heating systems. Product conversion costs may be necessary for prototyping and testing. DOE expects industry to incur similar re-flooring costs as with TSL 2. DOE estimates capital conversion costs of $108.8 million and product conversion of costs of $40.9 million. Conversion costs total $149.7 million.

At TSL 3, the shipment-weighted average MPC for all consumer clothes dryers is expected to increase by 3 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer clothes dryers in 2027. Given the relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the increase in MSP is outweighed by the $149.7 million in conversion costs, causing a negative change in INPV at TSL 3 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $149.7 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 3 under the preservation of operating profit scenario.

At TSL 4, the standard reflects the maximum national energy savings with simple PBP of less than 4 years. The change in INPV is expected to range from −24.4 to −12.6 percent. At this level, free cash flow is estimated to decrease by 203.0 percent compared to the no-new-standards case value of $120.5 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 11 percent of current shipments meet this level.

The design options analyzed for Product Class 1 include implementing electronic controls, optimized heating systems, more advanced automatic termination controls, modulating heat, and inlet air preheat. For Product Classes 2 through 7, the efficiency levels required for TSL 4 are the same as the efficiency levels required by TSL 3, except for Product Class 5, which corresponds to the baseline CEF_{D2}. The incremental increase in industry conversion costs from the prior TSL are due to the efficiency level requirements for Product Class 1. There is very little industry experience with inlet air preheat designs. Currently, DOE is not aware of any consumer clothes dryers on the market utilizing this design option. Electric standard dryers (Product Class 1) account for an estimated 81 percent of domestic consumer clothes dryer shipments. Of these standard electric dryer shipments, DOE estimates only 4 percent meet or exceed the efficiency level required by TSL 4. Implementing inlet air preheat represents a major overhaul of existing product lines and manufacturing facilities. For capital conversion costs, this change might necessitate significant new equipment and tooling. Product conversion costs may be necessary for designing, prototyping, and testing new or updated platforms. DOE expects industry to incur more re-flooring costs compared to prior TSLs as more display units would need to be replaced with high-efficiency models. DOE estimates capital conversion costs of $489.2 million and product conversion of costs of $72.5 million. Conversion costs total $561.7 million.

At TSL 4, the large conversion costs result in a free cash flow dropping below zero in the years before the standards year. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

At this level, the shipment-weighted average MPC for all consumer clothes dryers is expected to increase by 17 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer clothes dryers in 2027. Given the projected increase in production costs, DOE expects an estimated 1 percent drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the increase in MSP is outweighed by the $561.7 million in conversion costs, causing a negative change in INPV at TSL 4 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $561.7 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 4 under the preservation of operating profit scenario.

At TSL 5, the standard reflects the maximum national energy savings with positive NPV. The change in INPV is expected to range from –54.1 to –7.4 percent. At this level, free cash flow is estimated to decrease by 425.7 percent compared to the no-new-standards case value of $120.5 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 9 percent of current shipments meet this level.

The design option analyzed for Product Class 1 includes implementing heat pump technology. The design options analyzed for Product Classes 2 and 3 include implementing electronic controls, optimized heating systems, more advanced automatic termination controls, modulating heat, and inlet air preheat. For Product Classes 4, 6, and 7, the design options analyzed are the same as prior TSL. At TSL 5, the design option for Product Class 5 includes implementing electronic controls, optimized heating systems, more advanced automatic termination controls, and modulating heat. For Product Class 1, TSL 5 corresponds to EL 7. For Product Class 2 and 3, TSL 5 corresponds to EL 5. For Product Class 4 and 5, TSL 5 corresponds to EL 3. For Product Class 6 and 7, TSL 5 corresponds to EL 1.

At TSL 5, conversion costs are largely driven by the max-tech efficiency level required for Product Class 1. As previously discussed, electric standard dryers account for 81 percent of domestic consumer clothes dryer shipments. Currently, there are few electric standard models on the U.S. market that meet the max-tech efficiency level required by TSL 5. Of the 15 OEMs identified, seven OEMs do not offer any U.S. dryers utilizing heat pump technology. Of the eight OEMs with heat pump dryers, only three have electric standard dryers that meet max-tech efficiencies. Most manufacturers would need to significantly update facilities to meet a heat pump efficiency level for Product Class 1. Mandating a heat pump efficiency level for Product Class 1 would require many manufacturers to design completely new clothes dryer platforms or adapt heat pump designs from other markets (*i.e.,* redesign European heat pump models to adhere to U.S. safety standards and consumer preferences). DOE expects industry to incur more re-flooring costs compared to prior TSLs as nearly all display units would need to be replaced with high-efficiency models. DOE estimates capital conversion costs of $1,066.0 million and product conversion of costs of $98.2 million. Conversion costs total $1,164.2 million.

As with TSL 4, the large conversion costs result in a free cash flow dropping below zero in the years before the standard year. The negative free cash flow calculation indicates

manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

At this level, the shipment-weighted average MPC for all consumer clothes dryers is expected to increase by 64 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer clothes dryers in 2027. Given the projected increase in production costs, DOE expects an estimated 12 percent drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the increase in MSP is outweighed by the $1,164.2 million in conversion costs and the drop in annual shipments, causing a negative change in INPV at TSL 5 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This large reduction in manufacturer markup, the $1,164.2 million in conversion costs incurred by manufacturers, and the drop in annual shipments cause a significantly negative change in INPV at TSL 5 under the preservation of operating profit scenario.

At TSL 6, the standard reflects max-tech efficiency for all product classes. The change in INPV is expected to range from –59.5 to –9.8 percent. At this level, free cash flow is estimated to decrease by 468.0 percent compared to the no-new-standards case value of $120.5 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 1 percent of current shipments meet this level.

The design option analyzed for TSL 6 incorporates heat pump technology for Product Classes 1, 2, 3, 6, and 7. For Product Classes 4 and 5, the design options analyzed include implementing electronic controls, optimized heating systems, more advanced automatic termination controls, modulating heat, and inlet air preheat. Seven out of 15 manufacturers identified do not offer any models for the domestic market that utilize heat pump technology. Of the eight OEMs that offer domestic heat pump models, only four of them offer an electric dryer at or above the efficiencies required by TSL 6. A standard that could only be met using heat pump technology could require a total renovation of existing facilities and completely new clothes dryer platforms for manufacturers that do not offer heat pump clothes dryers today. In interviews, two OEMs with significant market shares stated that they would require additional facilities to handle dryer manufacturing under a standard that could only be met using heat pump technology. As previously discussed, implementing inlet air preheat also represents a major overhaul of existing vented gas product lines. DOE expects industry to incur slightly more re-flooring costs compared to TSL 5 as all display models below max-tech efficiency would need to be replaced due to the higher standard. At TSL 6, reaching max-tech efficiency levels is a billion-dollar investment for industry. DOE estimates capital conversion costs of $1,172.0 million and product conversion of costs of $108.0 million. Conversion costs total $1,280.0 million.

As with TSLs 4 and 5, the large conversion costs result in a free cash flow dropping below zero in the years before the standard year. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

At this level, the shipment-weighted average MPC for all consumer clothes dryers is expected to increase by 69 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer clothes dryers in 2027. Given the projected increase in production costs, DOE expects an estimated 13 percent drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the large increase in MSP is still outweighed by the $1,280.0 million in conversion costs and drop in annual shipments, causing a moderately negative change in INPV at TSL 6 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This large reduction in manufacturer markup, the $1,280.0 million in conversion costs incurred by manufacturers, and the drop in annual shipments cause a significantly negative change in INPV at TSL 6 under the preservation of operating profit scenario.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the consumer clothes dryer industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. DOE calculated these values using statistical data from the U.S. Census Bureau's 2020 Annual Survey of Manufactures (''ASM''),[81] the U.S. Bureau of Labor Statistics' employee compensation data,[82] 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 number of production employees is then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered product. This value is derived from manufacturer interviews, product database analysis, and publicly available information. DOE estimates that 58 percent of consumer clothes dryers 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 equipment covered by this proposed rulemaking.

[81] U.S. Census Bureau, *Annual Survey of Manufacturers: Summary Statistics for Industry Groups and Industries in the U.S.: 2018–2020.* Available at *www.census.gov/data/tables/time-series/econ/asm/2018-2020-asm.html* (Last Accessed December 10, 2021).

[82] U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation.* June 17, 2021. Available at: *www.bls.gov/news.release/pdf/ecec.pdf.*

Non-production workers account for the remainder of the direct employment figure. The non-production employees estimate covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, and management. Using the amount of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-standards case and standards cases.

Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 2,460 domestic workers for consumer clothes dryers in 2027. Table V.30 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the consumer clothes dryer industry. The following discussion provides a qualitative evaluation of the range of potential impacts presented in Table V.30.

TABLE V.30—DOMESTIC DIRECT EMPLOYMENT IMPACTS FOR CONSUMER CLOTHES DRYER MANUFACTURERS IN 2027

	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Direct Employment in 2027 (Production Workers + Non-Production Workers).	2,460	2,468	2,489	2,495	2,809	5,101	5,209.
Potential Changes in Direct Employment Workers in 2027 *.		(2,166) to 8	(2,166) to 29	(2,166) to 35	(2,166) to 349	(2,166) to 2,641	(2,166) to 2,749.

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

The direct employment impacts shown in Table V.30 represent the potential domestic employment changes that could result following the compliance date for the consumer clothes dryer product classes in this proposal. The upper bound estimate corresponds to an increase in the number of domestic workers that would result from amended energy conservation standards if manufacturers continue to produce the same scope of covered equipment within the United States after compliance takes effect. The lower bound estimate represents the maximum decrease in production workers if manufacturing moved to lower labor-cost countries. Most manufacturers currently produce at least a portion of their consumer clothes dryers in countries with lower labor costs, and an amended standard that necessitates large increases in labor content or large expenditures to re-tool facilities could cause manufacturers to re-evaluate domestic production siting options.

Additional detail on the analysis of direct employment can be found in chapter 12 of the NOPR TSD. Additionally, the employment impacts discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

As discussed in section V.B.2.a of this document, implementing the different design options analyzed for this NOPR would require varying levels of resources and investment. A standard level that would require the use of heat pump technology for electric dryers and combination washer-dryers would represent the biggest shift in technology for clothes dryer manufacturing among all the design options considered for this analysis. Adopting efficiency levels that require heat pump technology would necessitate very large investments to both redesign products and update production facilities. Currently, DOE estimates that approximately 1 percent of consumer clothes dryer shipments meet heat pump efficiency levels. In interviews, several manufacturers expressed concerns that the 3-year time period between the announcement of the final rule and the compliance date of the amended energy conservation standard might be insufficient to design, test, and manufacture the necessary number of products to meet demand.

In interviews, some manufacturers raised concerns about implementing inlet air preheat designs. Unlike the discussions about heat pump technology, there is very little industry experience with inlet air preheat designs. Currently, no models on the U.S. market incorporate this design option. Several manufacturers speculated that implementing inlet air preheat would require a major overhaul of existing production facilities and a significant amount of engineering time.

For the remaining dryer design options associated with lower efficiency levels (*e.g.,* implementing electronic controls, optimized heating systems, more advanced automatic termination controls, and modulating heat), manufacturers could likely maintain manufacturing capacity levels and continue to meet market demand under amended energy conservation standards. A significant portion of consumer clothes dryers already incorporate these design options. For instance, approximately 64 percent of standard electric dryer shipments meet or exceed the efficiencies associated with implementing modulating heat (EL 4). However, industry did note concerns about the ongoing supply constraints related to the COVID–19 pandemic, particularly around sourcing microprocessors and electronics. Any shift away from electromechanical controls would require that industry source more electronic components, which are already difficult to secure. If these supply constraints continue through the end of the conversion period, industry could face production capacity constraints.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop industry cash-flow estimates may not capture the differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs substantially from the industry average could be affected disproportionately. DOE investigated small businesses as a manufacturer subgroup that could be disproportionally impacted by energy conservation standards and could merit additional analysis. DOE did not identify any other adversely impacted manufacturer subgroups for this rulemaking based on the results of the industry characterization.

DOE analyzes the impacts on small businesses in a separate analysis in section VI.B of this document as part of the Regulatory Flexibility Analysis. For a discussion of the impacts on the small business manufacturer subgroup, see the Regulatory Flexibility Analysis in

section VI.B of this document and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE examines Federal, product-specific regulations that could affect consumer clothes dryer manufacturers that take effect approximately three years before or after the 2027 compliance date.

TABLE V.31—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING CONSUMER CLOTHES DRYER ORIGINAL EQUIPMENT MANUFACTURERS

Federal energy conservation standard	Number of OEMs *	Number of OEMs affected from today's rule **	Approx. standards year	Industry conversion costs (millions $)	Industry conversion costs/product revenue *** (%)
Portable Air Conditioners 85 FR 1378 (January 10, 2020)	11	2	2025	$320.9 (2015$)	6.7
Room Air Conditioners † 87 FR 20608 (April 7, 2022)	8	4	2026	22.8 (2020$)	0.5
Commercial Water Heating Equipment † 87 FR 30610 (May 19, 2022)	15	1	2026	34.6 (2020$)	4.7
Consumer Furnaces † 87 FR 40590 (July 7, 2022)	15	1	2029	150.6 (2020$)	1.4

* This column presents the total number of OEMs identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of OEMs producing consumer clothes dryers that are also listed as OEMs in the identified energy conservation standard contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of product revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the final rule. The conversion period typically ranges from 3 to 5 years, depending on the energy conservation standard.

† The Room Air Conditioners, Consumer Furnaces, and Commercial Water Heating Equipment rulemakings are in the NOPR stage and all values are subject to change until finalized.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for consumer clothes dryers, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V.32 presents DOE's projections of the national energy savings for each TSL considered for consumer clothes dryers. The savings were calculated using the approach described in section IV.H.2 of this document.

TABLE V.32—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER CLOTHES DRYERS; 30 YEARS OF SHIPMENTS

[2027–2056]

	Trial standard level					
	1	2	3	4	5	6
	(quads)					
Primary energy	0.97	1.98	2.97	3.90	9.59	9.68
FFC energy	1.01	2.07	3.11	4.06	9.97	10.1

OMB Circular A–4 [83] 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

[83] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed December 16, 2021).

using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[84] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to consumer clothes dryers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.33. The impacts are counted over the lifetime of consumer clothes dryers purchased in 2027–2035.

TABLE V.33—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER CLOTHES DRYERS; 9 YEARS OF SHIPMENTS

[2027–2035]

	Trial standard level					
	1	2	3	4	5	6
	(quads)					
Primary energy	0.41	0.78	1.09	1.35	2.92	2.95
FFC energy	0.43	0.82	1.14	1.41	3.04	3.07

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for consumer clothes dryers. In accordance with OMB's guidelines on regulatory analysis,[85] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.34 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2027–2056.

TABLE V.34—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER CLOTHES DRYERS; 30 YEARS OF SHIPMENTS

[2027–2056]

Discount rate	Trial standard level					
	1	2	3	4	5	6
	(billion 2020$)					
3 percent	6.90	14.1	20.8	18.4	27.8	25.7
7 percent	3.10	6.28	9.07	7.13	7.76	6.60

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.35. The impacts are counted over the lifetime of products purchased in 2027–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.35—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER CLOTHES DRYERS; 9 YEARS OF SHIPMENTS

[2027–2035]

Discount rate	Trial standard level					
	1	2	3	4	5	6
	(billion 2020$)					
3 percent	3.61	7.02	9.78	8.90	12.8	11.9
7 percent	1.96	3.84	5.34	4.38	4.91	4.27

The previous results in Table V.34 reflect the use of a default trend to estimate the change in price for consumer clothes dryers 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

[84] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[85] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed December 16, 2021).

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 NOPR 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

It is estimated that that amended energy conservation standards for consumer clothes dryers would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2027–2033), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section III.E.1.d of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of the consumer clothes dryers under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.e of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the NOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for consumer clothes dryers is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.36 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this proposed rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.36—CUMULATIVE EMISSIONS REDUCTION FOR CONSUMER CLOTHES DRYERS SHIPPED IN 2027–2056

	Trial standard level					
	1	2	3	4	5	6
Power Sector Emissions						
CO_2 (million metric tons)	35.1	71.5	107	138	329	334
SO_2 (thousand tons)	13.7	27.9	42.1	56.5	145	145
NO_X (thousand tons)	17.2	35.1	52.1	65.0	144	149
Hg (tons)	0.08	0.17	0.25	0.34	0.88	0.88
CH_4 (thousand tons)	2.48	5.05	7.58	10.0	25.2	25.3
N_2O (thousand tons)	0.34	0.70	1.05	1.39	3.51	3.52
Upstream Emissions						
CO_2 (million metric tons)	2.82	5.77	8.60	10.9	25.0	25.6
SO_2 (thousand tons)	0.16	0.33	0.49	0.66	1.67	1.67
NO_X (thousand tons)	42.1	86.3	129	163	372	382
Hg (tons)	0.000	0.001	0.001	0.001	0.003	0.003
CH_4 (thousand tons)	287	587	875	1,101	2,494	2,567
N_2O (thousand tons)	0.01	0.03	0.04	0.05	0.12	0.12
Total FFC Emissions						
CO_2 (million metric tons)	37.9	77.3	116	149	354	360
SO_2 (thousand tons)	13.9	28.3	42.6	57.2	147	147
NO_X (thousand tons)	59.4	121	181	228	516	531
Hg (tons)	0.08	0.17	0.26	0.34	0.88	0.88

TABLE V.36—CUMULATIVE EMISSIONS REDUCTION FOR CONSUMER CLOTHES DRYERS SHIPPED IN 2027–2056—Continued

	Trial standard level					
	1	2	3	4	5	6
CH_4 (thousand tons)	289	592	883	1,111	2,519	2,592
N_2O (thousand tons)	0.36	0.72	1.09	1.44	3.64	3.64

As part of the analysis for this rulemaking, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for consumer clothes dryers. Section IV.L.1.a of this document discusses the SC–CO_2 values used. Table V.37 presents the present value of the CO_2 emissions reduction at each TSL.

TABLE V.37—POTENTIAL STANDARDS: PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR CONSUMER CLOTHES DRYERS SHIPPED IN 2027–2056

TSL	SC–CO_2 case discount rate and statistics			
	5%, Average	3%, Average	2.5%, Average	3%, 95th percentile
	(million 2020$)			
1	337	1,459	2,284	4,445
2	677	2,945	4,617	8,963
3	993	4,351	6,834	13,236
4	1,263	5,558	8,742	16,899
5	2,918	12,977	20,475	39,423
6	2,966	13,187	20,807	40,061

As discussed in section IV.L.1.b of this document, DOE estimated monetary benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for consumer clothes dryers. Table V.38 presents the value of the CH_4 emissions reduction at each TSL, and Table V.39 presents the value of the N_2O emissions reduction at each TSL.

TABLE V.38—POTENTIAL STANDARDS: PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR CONSUMER CLOTHES DRYERS SHIPPED IN 2027–2056

TSL	SC–CH_4 case discount rate and statistics			
	5%, Average	3%, Average	2.5%, Average	3%, 95th percentile
	(million 2020$)			
1	118	350	489	929
2	237	711	994	1,886
3	348	1,052	1,474	2,789
4	432	1,317	1,848	3,489
5	955	2,949	4,151	7,805
6	983	3,035	4,272	8,032

TABLE V.39—POTENTIAL STANDARDS: PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR CONSUMER CLOTHES DRYERS SHIPPED IN 2027–2056

TSL	SC–N_2O case discount rate and statistics			
	5%, Average	3%, Average	2.5%, Average	3%, 95th percentile
	(million 2020$)			
1	1.20	4.81	7.47	12.8
2	2.40	9.71	15.1	25.9
3	3.54	14.4	22.5	38.4
4	4.64	19.0	29.7	50.6
5	11.4	47.2	73.8	126
6	11.4	47.3	74.0	126

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 world economy continues to evolve rapidly. Thus, any value placed on reduced GHG emissions in this rulemaking is subject to change. That said, because of omitted damages, DOE agrees with the IWG that these estimates most likely underestimate the climate benefits of greenhouse gas reductions. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic impacts associated with changes in SO_2 emissions anticipated to result from the considered TSLs for consumer clothes dryers. The dollar-per-ton values that DOE used are discussed in section IV.L.2 of this document. Table V.40 presents the present value SO_2 emission changes for each TSL calculated using 7-percent and 3-percent discount rates. This table presents results that use the low benefit-per-ton values, which reflect DOE's primary estimate.

TABLE V.40—POTENTIAL STANDARDS: PRESENT VALUE OF SO_2 EMISSION REDUCTION FOR CONSUMER CLOTHES DRYERS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2020$)	
1	773	318
2	1,552	628
3	2,298	911
4	3,039	1,184
5	7,592	2,850
6	7,581	2,845

As part of the analysis for this rulemaking, DOE also estimated the monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for consumer clothes dryers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.41 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates. The results in this table reflect application of the low dollar-per-ton values, which DOE used to be conservative. Results that reflect high dollar-per-ton values are presented in chapter 14 of the NOPR TSD.

TABLE V.41—POTENTIAL STANDARDS: PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR CONSUMER CLOTHES DRYERS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2020$)	
1	2,317	943
2	4,656	1,858
3	6,842	2,678
4	8,640	3,335
5	19,688	7,339
6	20,094	7,490

Note: Results are based on the low benefit-per-ton values.

The benefits of reduced CO_2, CH_4, and N_2O emissions are collectively referred to as climate benefits. The benefits of reduced SO_2 and NO_X emissions changes are collectively referred to as health benefits. For the time series of estimated monetary values of reduced emissions, see chapter 14 of the NOPR TSD.

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.42 presents the NPV values that result from adding the estimates of the potential monetized estimates of the potential economic, climate, and health benefits resulting from reduced GHG, NO_X, and SO_2 emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered consumer clothes dryers and are measured for the lifetime of products shipped in 2027–2056. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits and are also calculated based on the lifetime of consumer clothes dryers shipped in 2027–2056. The climate benefits associated with four SC–GHG estimates are shown. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

TABLE V.42—POTENTIAL STANDARDS: NPV OF CONSUMER BENEFITS COMBINED WITH MONETIZED CLIMATE AND HEALTH BENEFITS FROM EMISSIONS REDUCTIONS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
3% discount rate for NPV of Consumer and Health Benefits (billion 2020$)						
5% d.r., Average SC–GHG case	10.4	21.3	31.3	31.8	59.0	57.3
3% d.r., Average SC–GHG case	11.8	24.0	35.4	37.0	71.1	69.7
2.5% d.r., Average SC–GHG case	12.8	26.0	38.3	40.7	79.8	78.5
3% d.r., 95th percentile SC–GHG case	15.4	31.2	46.0	50.5	102	102
7% discount rate for NPV of Consumer and Health Benefits (billion 2020$)						
5% d.r., Average SC–GHG case	4.82	9.68	14.0	13.3	21.8	20.9
3% d.r., Average SC–GHG case	6.18	12.4	18.1	18.5	33.9	33.2
2.5% d.r., Average SC–GHG case	7.14	14.4	21.0	22.3	42.7	42.1
3% d.r., 95th percentile SC–GHG case	9.75	19.6	28.7	32.1	65.3	65.2

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

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

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

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

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forgo the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[86]

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.[87] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Consumer Clothes Dryers Standards

Table V.43 and Table V.44 summarize the quantitative impacts estimated for each TSL for consumer clothes dryers.

[86] 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.*

[87] 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 November 12, 2021).

The national impacts are measured over the lifetime of consumer clothes dryers 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 efficiency levels contained in each TSL are described in section V.A of this document. In addition, as DOE noted in section V.A of this document, DOE is evaluating proposed energy conservation standards by looking at the maximum improvement that is technologically feasible and cost justified under bundled policy scenarios referred to as TSLs. Since there are not cross elasticities modeled in this proposed rulemaking for consumer clothes dryers, the cost analysis and associated justification would be the same if DOE evaluated at the individual product class level.

TABLE V.43—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER CLOTHES DRYERS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Cumulative FFC National Energy Savings (quads)						
Quads	1.01	2.07	3.11	4.06	9.97	10.1
Cumulative FFC Emissions Reduction (Total FFC Emissions)						
CO_2 (million metric tons)	37.9	77.3	116	149	354	360
SO_2 (thousand tons)	13.9	28.3	42.6	57.2	147	147
NO_X (thousand tons)	59.4	121	181	228	516	531
Hg (tons)	0.08	0.17	0.26	0.34	0.88	0.88
CH_4 (thousand tons)	289	592	883	1,111	2,519	2,592
N_2O (thousand tons)	0.36	0.72	1.09	1.44	3.64	3.64
Present Value of Monetized Benefits and Costs (3% discount rate, billion 2020$)						
Consumer Operating Cost Savings	7.50	15.1	22.2	28.8	69.5	69.8
Climate Benefits *	1.81	3.67	5.42	6.89	16.0	16.3
Health Benefits **	3.09	6.21	9.14	11.7	27.3	27.7
Total Benefits †	12.4	24.9	36.8	47.4	113	114
Consumer Incremental Product Costs ‡	0.61	0.92	1.36	10.4	41.7	44.1
Consumer Net Benefits	6.90	14.1	20.8	18.4	27.8	25.7
Total Net Benefits	11.8	24.0	35.4	37.0	71.1	69.7
Present Value of Monetized Benefits and Costs (7% discount rate, billions 2020$)						
Consumer Operating Cost Savings	3.45	6.80	9.83	12.6	29.2	29.3
Climate Benefits *	1.81	3.67	5.42	6.89	16.0	16.3
Health Benefits **	1.26	2.49	3.59	4.52	10.2	10.3
Total Benefits †	6.53	13.0	18.8	24.0	55.4	55.9
Consumer Incremental Product Costs ‡	0.35	0.52	0.76	5.42	21.4	44.1
Consumer Net Benefits	3.10	6.28	9.07	7.13	7.76	6.60
Total Net Benefits	6.18	12.4	18.1	18.5	33.9	33.2

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

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO_2), methane (SC–CH_4), and nitrous oxide (SC–N_2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). Together these represent the global social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. See section. IV.L of this document for more details. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

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

† Total and net benefits include those consumer, climate, and health benefits that can be 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 the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

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

TABLE V.44—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER CLOTHES DRYERS TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*	TSL 5*	TSL 6*
Manufacturer Impacts						
Industry NPV (million 2020$) (No-new-standards case INPV = 1,810.1).	1,785.0 to 1,798.5.	1,766.8 to 1,789.8.	1,694.5 to 1,728.5.	1,368.8 to 1,582.5.	830.1 to 1,675.5	732.4 to 1,632.0.
Industry NPV (% change)	(1.4) to (0.6)	(2.4) to (1.1)	(6.4) to (4.5)	(24.4) to (12.6)	(54.1) to (7.4)	(59.5) to (9.8).
Consumer Average LCC Savings (2020$)						
Electric Standard	$252	$439	$578	$182	$230	$230.
Electric Compact (120 V)	$115	$194	$160	$160	$86.3	($62.6).
Vented Electric Compact (240 V).	$94.1	$201	$192	$192	$123	($94.8).
Vented Gas Standard	$77.7	$174	$198	$198	$198	$43.0.
Vented Gas Compact	$25.2	$23.5	$25.2		$29.4	($38.8).
Ventless Electric Compact (240 V).		$145	$145	$145	$145	$11.0.
Ventless Electric Combination Washer/Dryer.		$15.1	$15.1	$15.1	$15.1	($387).
Shipment-Weighted Average*	$219	$390	$507	$184	$222	$191.
Consumer Simple PBP (years)						
Electric Standard	0.7	0.6	0.6	1.7	4.0	4.0.
Electric Compact (120 V)	1.7	1.5	1.8	1.8	5.3	11.0.
Vented Electric Compact (240 V).	2.0	1.5	1.6	1.6	4.7	12.1.
Vented Gas Standard	2.8	1.6	1.9	1.9	1.9	5.5.
Vented Gas Compact	5.1	6.4	5.1	0.0	7.1	16.3.
Ventless Electric Compact (240 V).		0.3	0.3	0.3	0.3	7.1.
Ventless Electric Combination Washer-Dryer.		0	0	0	0	27.5.
Shipment-Weighted Average*	1.0	0.8	0.8	1.7	3.6	4.5.
Percent of Consumers that Experience a Net Cost						
Electric Standard	0.32%	0.16%	0.11%	53.5%	53.1%	53.1%.
Electric Compact (120 V)	5.66%	4.46%	21.6%	21.6%	53.0%	76.3%.
Vented Electric Compact (240 V).	8.63%	4.35%	8.37%	8.37%	47.0%	79.6%.
Vented Gas Standard	6.04%	1.66%	3.74%	3.74%	3.74%	59.3%.
Vented Gas Compact	32.7%	50.2%	32.7%		51.9%	78.8%.
Ventless Electric Compact (240 V).		0%	0%	0%	0%	66.4%.
Ventless Electric Combination Washer-Dryer.		0%	0%	0%	0%	89.8%.
Shipment-Weighted Average*	1.33%	0.45%	0.81%	44.4%	44.5%	54.7%.

Parentheses indicate negative (−) values.
*Weighted by shares of each product class in total projected shipments in 2027.

DOE first considered TSL 6, which represents the max-tech efficiency levels, which includes the design parameters of the most efficient products available on the market or in working prototypes for all product classes. The max-tech design options include heat pump technology for electric consumer clothes dryers and inlet air preheat technology for gas consumer clothes dryers. DOE's shipments analysis estimates approximately 1 percent of annual consumer clothes dryer shipments currently meet this level. TSL 6 would save an estimated 10.1 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be $6.60 billion using a discount rate of 7 percent, and $25.7 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 360 Mt of CO_2, 147 thousand tons of SO_2, 531 thousand tons of NO_X, 0.88 ton of Hg, 2,592 thousand tons of CH_4, and 3.64 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 6 is $16.3 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 6 is $10.3 billion using a 7-percent discount rate and $27.7 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 6 is $33.2 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 6 is $69.7 billion.

At TSL 6, the average LCC impact on affected consumers is a savings of $230 for electric standard (PC1), ($62.6) for electric compact (120V) (PC2), ($94.8) for vented electric compact (240V) (PC3), $43.0 for vented gas standard (PC4), ($38.8) for vented gas compact (PC5), $11.0 for ventless electric compact (240V) (PC6), and ($387) for ventless electric combination washer-dryer (PC7). The simple payback period is 4.0 years for PC1, 11.0 years for PC2, 12.1 years for PC3, 5.5 years for PC4, 16.3 years for PC5, 7.1years for PC6, and 27.5 years for PC7. The fraction of consumers experiencing a net LCC cost is 53.1 percent for PC1, 76.3 percent for PC2, 79.6 percent for PC3, 59.3 percent for PC4, 78.8 percent for PC5, 66.4 percent for PC6, and 89.8 percent for PC7. Overall, across the product classes a majority of consumers will experience a net LCC cost, especially for senior households. DOE estimated that more 65 percent of senior consumers will experience a net LCC cost at TSL 6.

At TSL 6, the projected change in INPV ranges from a decrease of $1,077.6 million to a decrease of $178.0 million, which correspond to decreases of 59.5 percent and 9.8 percent, respectively. The loss in INPV is largely driven by industry conversion costs as manufacturer work to redesign their portfolio of model offerings and re-tool entire factories to comply with amended standards at this level. Industry conversion costs could reach $1,280.0 million at this TSL.

Conversion costs at TSL 6 are significant as nearly all existing consumer clothes dryer models would need to be redesigned to meet the max-tech efficiencies. For the electric clothes dryer product classes, manufacturers would need to implement the most efficient heat pump technology to meet max-tech levels. Of the eight OEMs that offer domestic heat pump models, four of them already offer models that meet the efficiencies required by TSL 6. These four OEMs specialize in high-efficiency clothes dryers, but currently produce low volumes of products for the U.S. market. For the other four manufacturers of heat pump models, which have the most domestic sales and account for an estimated 72 percent of total annual clothes dryer shipments, TSL 6 would require substantial additional investments to their current heat pump product lines to produce cost-optimized models at the max-tech efficiency level. Seven out of 15 OEMs identified do not offer any models for the domestic market that utilize heat pump technology. A standard that could only be met using heat pump technology would require a total renovation of existing production facilities and would require most manufacturers to design completely new clothes dryer platforms, as they would not be able to maintain the resistive heating designs that currently dominate the U.S. electric clothes dryer market. In interviews, several manufacturers expressed concern about a potential shortage of products given the required scale of investment, redesign efforts, and compliance timeline.

For gas clothes dryers, manufacturers would need to implement inlet air preheat technology along with other design options to meet the efficiency levels required by TSL 6. Thus far, dryers with this technology and performance have not been observed in clothes dryers available on the consumer market. Clothes dryers with inlet air preheat designs have been observed only in laboratory settings. In interviews, some manufacturers raised concerns about implementing a relatively untested technology for the consumer market. There is very little industry experience with inlet air preheat designs. Several manufacturers speculated that implementing inlet air preheat would require a major overhaul of existing production facilities and a significant amount of engineering time.

At this level, DOE estimated a 13-percent drop in shipments in the year the standard takes effect, as price-sensitive consumers may forgo purchasing a new clothes dryer or rely on alternatives such as laundromats or clothes dryer rentals due to the increased upfront cost of baseline models.

The Secretary tentatively concludes that at TSL 6 for consumer clothes dryers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers, especially senior consumers, as well as the impacts on manufacturers, including the potential for large conversion costs and reduction in INPV.

TSL 6, representing the most efficient heat pump technology on the market, would provide significant energy savings potential, as discussed.

Despite the current and potential future benefits of heat pump technology, at TSL 6, the analysis indicates that a significant fraction of electric and vented gas standard clothes dryer consumers, including low-income and senior consumers, would experience a net cost given the current relatively high incremental cost of electric and vented gas standard clothes dryers at the max-tech efficiency level. This is particularly pronounced for electric standard clothes dryers, where the incremental production cost at the max-tech efficiency level is comparable to the manufacturer production cost for the baseline efficiency level. Consumers with existing electric standard clothes dryers below EL 4 (about 34 percent) and consumers with existing vented gas standard clothes dryers below EL 3 (about 58 percent) are more likely to experience a net cost at TSL 6, given the relatively modest decrease in operating costs compared to the high incremental installed costs. Few products currently meet the efficiency levels required by TSL 6. DOE estimates that approximately 1 percent of current shipments meet the max-tech efficiencies. At max-tech, limited industry experience by certain manufacturers with the high-efficiency design options, the large conversion costs to update facilities and product designs, and expected drop in industry shipments would result in a reduction of INPV and a potential shortage of products given the required scale of investment, redesign efforts, and time constraints. Consequently, the Secretary has tentatively concluded that TSL 6 is not economically justified.

DOE then considered TSL 5, which represents the maximum energy savings with positive NPV. TSL 5 corresponds to the max-tech level, which represents heat pump technology, for the electric standard product class, and the ELs corresponding to inlet air preheat technology in the electric compact (120V) and vented electric compact (240V) product classes considered in this analysis. For gas consumer clothes dryer product classes, TSL 5 corresponds to EL 3, which represents modulating (2-stage) heating technology. TSL 5 would save an estimated 9.97 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $7.76 billion using a discount rate of 7 percent, and $27.8 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 354 Mt of CO_2, 147 thousand tons of SO_2, 516 thousand tons of NO_X, 0.88 ton of Hg, 2,519 thousand tons of CH_4, and 3.64 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 $16.0 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $ 10.2 billion using a 7-percent discount rate and $27.3 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 $33.9 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is $71.1 billion.

At TSL 5, the average LCC impact on affected consumers is a savings of $230 for electric standard (PC1), $86.3 for electric compact (120V) (PC2), $123 for vented electric compact (240V) (PC3), $198 for vented gas standard (PC4), $29.4 for vented gas compact (PC5), $145 for ventless electric compact (240V) (PC6), and $15.1 for ventless electric combination washer-dryer (PC7). The simple payback period is 4.0 years for PC1, 5.3 years for PC2, 4.7 years for PC3, 1.9 years for PC4, 7.1 years for PC5, 0.3 years for PC6, and 0 years for PC7. The fraction of consumers experiencing a net LCC cost is 53.1 percent for PC1, 53.0 percent for PC2, 47.0 percent for PC3, 3.74 percent for PC4, 51.9 percent for PC5, zero percent for PC6 and PC 7. Overall, across the product classes, more than 40 percent of the consumers will experience a net LCC cost, especially for senior households. DOE estimated that more 55 percent of senior consumers will experience a net LCC cost at TSL 5.

At TSL 5, the projected change in INPV ranges from a decrease of $980.0 million to a decrease of $134.5 million, which correspond to decreases of 54.1 percent and 7.4 percent, respectively. Industry conversion costs could reach $1,164.2 million at this TSL.

DOE's shipments analysis estimates approximately 9 percent of annual shipments currently meet this level. The efficiency level for electric standard dryers, which account for 81 percent of annual shipments, is the same as at max-tech, and would be associated with the same current and potential future benefits as the market share of clothes dryers with heat pump technology continues to grow over time. Nonetheless, requiring heat pump technology for electric standard dryers at this time would result in similar conversion costs, reduction in INPV, and drop in shipments as TSL 6. For the electric compact (120V) and vented electric compact (240V) dryers, the design options include implementing inlet air preheat. In its review of the compact electric models commercially available on the U.S. market at this time, DOE did not identify any that incorporate the inlet air preheat technology option.

For the vented gas product classes, which account for approximately 17 percent of total annual shipments, the design options include implementing modulating (2-stage) heating technology along with other features. DOE's shipments analysis estimates that approximately 43 percent of gas clothes dryer shipments currently meet the efficiencies required by TSL 5. All seven manufacturers of gas clothes dryers offer products that meet or exceed the efficiencies required at TSL 5. DOE does not believe that there are any substantive barriers to modulating (2-stage) heating technology. Capital conversion costs would be necessary as manufacturers increase tooling for 2-stage heating systems. Product conversion costs would be necessary for cost-optimizing and testing new designs for a market with amended standards.

At this level, DOE expects an estimated 12-percent drop in shipments in the year the standard takes effect, as price-sensitive consumers may forgo purchasing a new clothes dryer or rely on alternatives such as laundromats or clothes dryer rentals due to the increased upfront cost of baseline models.

The Secretary tentatively concludes that at TSL 5 for consumer clothes dryers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers, especially senior consumers, as well as the impacts on manufacturers, including the significant conversion costs and large potential reduction in INPV. A significant fraction of electric standard clothes dryer consumers, including low-income and senior consumers, would experience a net cost. This is due to the high incremental cost of electric standard clothes dryers at the max-tech efficiency level. Consumers with existing electric standard clothes dryers below EL 4 are more likely to experience a net cost at TSL 5, given the relatively modest decrease in operating costs compared to the high incremental installed costs. DOE estimates that approximately 9 percent of shipments currently meet the efficiencies required by this TSL. At TSL 5, the limited industry experience with the high-efficiency design options, particularly for electric standard dryers which account for 81 percent of total shipments, the substantial conversion costs required to update facilities and product designs, and expected drop in industry shipments would result in a reduction in INPV and a potential shortage of electric standard dryers given the scale of required investment, redesign efforts, and time constraints. Consequently, the Secretary has tentatively concluded that TSL 5 is not economically justified.

DOE then considered TSL 4, which represents the maximum national energy savings with simple PBP less than 4 years for each product class. TSL 4 corresponds to the EL that represents inlet air preheat technology for the electric standard product class considered in this analysis. For the electric compact (120V) and vented electric compact (240V) product classes, TSL 4 corresponds to EL 4, which represents modulating (2-stage) heating technology. For the vented gas standard product class, TSL 4 corresponds to EL 3 which also represents modulating (2-stage) heating technology. TSL 4 would save an estimated 4.06 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $7.13 billion using a discount rate of 7 percent, and $18.4 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 149 Mt of CO_2, 57.2 thousand tons of SO_2, 228 thousand tons of NO_X, 0.34 ton of Hg, 1,111 thousand tons of CH_4, and 1.44 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 $6.89 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $4.52 billion using a 7-percent discount rate and $11.7 million 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 $18.5 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $37.0 billion.

At TSL 4, the average LCC impact on affected consumers is a savings of $182 for electric standard (PC1), $160 for electric compact (120V) (PC2), $192 for vented electric compact (240V) (PC3), $198 for vented gas standard (PC4), $145 for ventless electric compact (PC6), and $15.1 for ventless electric combination washer-dryer (PC7). The simple payback period is 1.7 years for PC1, 1.8 years for PC2, 1.6 years for PC3, 1.9 years for PC4, 0.3 years for PC6, and 0 years for PC7. The fraction of consumers experiencing a net LCC cost is 53.5 percent for PC1, 21.6 percent for

PC2, 8.37 percent for PC3, 3.74 percent for PC4, zero percent for PC6 and PC 7.[88] Overall, across the product classes, more than 40 percent of the consumers will experience a net LCC cost, especially for senior households. DOE estimated that about 50 percent of senior consumers will experience a net LCC cost at TSL 4.

At TSL 4, the projected change in INPV ranges from a decrease of $441.3 million to a decrease of $227.6 million, which correspond to decreases of 24.4 percent and 12.6 percent, respectively. Industry conversion costs could reach $561.7 million at this TSL.

At TSL 4, the majority of consumer clothes dryer models would need to be redesigned to meet the efficiency levels required. DOE's shipments analysis estimates approximately 11 percent of current shipments meet this level. For electric standard dryers, the design options include implementing inlet air preheat and other features. As previously noted, electric standard dryers account for approximately 81 percent of total shipments. There is very little industry experience with inlet air preheat designs. Currently, DOE is not aware of any consumer clothes dryers on the market utilizing this design option. DOE's shipments analysis estimates that approximately 4 percent of electric standard shipments currently meet the efficiency required by TSL 4. Implementing inlet air preheat for electric standard dryers would represent a major overhaul of existing product lines and manufacturing facilities. This change would necessitate significant investments in new equipment and tooling. Product conversion costs would be necessary for designing, prototyping, and testing new or updated platforms.

For vented gas standard clothes dryers, the design options at TSL 4 are the same as at TSL 5. DOE does not believe that there are any substantive barriers to modulating (2-stage) heating technology. Capital conversion costs may be necessary as manufacturers increase tooling for 2-stage heating systems. Product conversion costs may be necessary for cost-optimizing and testing new designs for a market with amended standards.

At this level, DOE does not expect a notable drop in shipments in the year the standard takes effect.

The Secretary tentatively concludes that at TSL 4 for consumer clothes dryers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers, especially senior consumers, as well as the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. A significant fraction of electric standard clothes dryer consumers, including senior consumers, would experience a net cost. This is due to the high incremental cost of electric standard clothes dryers at the inlet air preheat technology efficiency level. Consumers with existing electric standard clothes dryers below EL 4 are more likely to experience a net cost at TSL 4, given the relatively modest decrease in operating costs compared to the high incremental installed costs. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents a set of intermediate efficiency levels between those designated in TSL 2 and TSL 4 and corresponds to the current ENERGY STAR efficiency level for vented electric standard dryers, which represent over 80 percent of the market. TSL 3 corresponds to the EL that represents modulating (2-stage) heating technology for the electric standard, electric compact (120V), and vented electric compact (240V) product classes. For the vented gas standard product class, TSL 3 corresponds to EL 3, which also represents modulating (2-stage) heating technology. For the vented gas compact product class, TSL 3 corresponds to EL 1, which represents a baseline model with electronic controls. For the ventless electric (240V) product class, TSL 3 corresponds to EL 1, which represents a baseline model with a more advanced automatic termination control system. For the ventless electric combination washer-dryer product class, TSL 3 corresponds to EL 1, which represents a baseline model with high-speed spin technology. TSL 3 would save an estimated 3.11 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $9.07 billion using a discount rate of 7 percent, and $20.8 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 116 Mt of CO_2, 42.6 thousand tons of SO_2, 181 thousand tons of NO_X, 0.26 ton of Hg, 883 thousand tons of CH_4, and 1.09 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 3 is $5.42 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is $3.59 billion using a 7-percent discount rate and $9.14 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is $18.1 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $35.4 billion.

At TSL 3, the average LCC impact on affected consumers is a savings of $578 for electric standard (PC1), $160 for electric compact (120V) (PC2), $192 for vented electric compact (240V) (PC3), $198 for vented gas standard (PC4), $25.2 for PC5, $145 for ventless electric compact (PC6), and $15.1 for ventless electric combination washer-dryer (PC7). The simple payback period is 0.6 years for the largest product class (PC1), 1.8 years for PC2, 1.6 years for PC3, 1.9 years for PC4, 5.1 years for PC5, 0.3 years for PC6, and 0 years for PC7. The fraction of consumers experiencing a net LCC cost is 0.11 percent for PC1, 21.6 percent for PC2, 8.37 percent for PC3, 3.74 percent for PC4, 32.7 percent for PC5, and zero percent for PC6 and PC7. Overall, across the product classes, less than 1 percent of the consumers, including low-income consumers, will experience a net LCC cost. For senior consumers, DOE estimated that 1 percent will experience a net LCC cost at TSL 3.

At TSL 3, the projected change in INPV ranges from a decrease of $115.6 million to a decrease of $81.6 million, which correspond to decreases of 6.4 percent and 4.5 percent, respectively. Industry conversion costs could reach $149.7 million at this TSL.

DOE expects that some existing consumer clothes dryer models would need to be redesigned to meet TSL 3 efficiencies, but there are a wide range of available models for vented electric standard dryers due to participation in the ENERGY STAR program. DOE's shipments analysis estimates approximately 59 percent of annual shipments currently meet this level. For electric standard, compact electric (120V), vented electric compact (240V), and vented gas standard clothes dryers, which account for over 98 percent of total annual shipments, the design options include implementing electronic controls, optimized heating systems, more advanced automatic termination controls, and modulating (2-stage) heat. Of the 15 electric dryer

[88] No economic impact values are reported for product class 5 under TSL4 because energy efficiency level for the product class is at baseline.

OEMs, 13 offer products at or above the efficiencies required for the electric dryer product classes at TSL 3. As previously noted, all seven OEMs of vented gas standard dryers offer products at or above the efficiency required at TSL 3. Capital conversion costs may be necessary as manufacturers increase tooling for 2-stage heating systems. Manufacturers may choose to further cost-optimize and test new designs as a result of the standards, but DOE believes some of this has already occurred in response to ENERGY STAR for vented electric standard dryers. DOE does not expect any drop in shipments in the year the standard takes effect.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that a standard set at TSL 3 for consumer clothes dryers would result in the maximum improvement in energy efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. At this TSL, the average LCC savings for all consumer clothes dryer product classes are positive. An estimated weighted average of less than 1 percent of consumer clothes dryer consumers would experience a net cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 3, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over 78 times higher than the maximum estimated manufacturers' loss in INPV. The positive LCC savings—a different way of quantifying consumer benefits—reinforces this conclusion. The standard levels at TSL 3 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $5.42 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $9.14 billion (using a 3-percent discount rate) or $3.59 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts a ''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, and would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the proposed energy conservation standards, DOE notes that as compared to TSL 6, TSL 5, and TSL 4—TSL 3 has higher average LCC savings, smaller percentages of consumer experiencing a net cost, a lower maximum decrease in INPV, and lower manufacturer conversion costs.

Accordingly, the Secretary has tentatively concluded that TSL 3 would offer the maximum improvement in efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. For electric standard and vented gas standard consumer clothes dryers, which account for approximately 98 percent of U.S. shipments, requiring efficiency levels above the levels required by TSL 3 result in a large percentage of consumers experiencing a net LCC cost, in addition to significant manufacturer impacts and reductions in INPV. Additionally, for consumer clothes dryers, nearly all manufacturers offer products that can meet TSL 3 across both electric and gas consumer clothes dryers. In addition, DOE is proposing to adopt TSL 3, which corresponds to the current ENERGY STAR levels for electric standard and ventless compact electric (240V), which have significant market share and manufacturer support due to their promotion over the past couple of years as a voluntary energy-efficiency program. The adoption of standards, if finalized as proposed, at this TSL may encourage ENERGY STAR to further consider more-efficient levels for dryers in the year leadings up to the compliance of date of the standard, which would in turn likely spur additional market introductions of consumer clothes dryers with heat pump technology, foster maturation of the technology and downward price trends, and further support differentiation within the dryer market for energy efficient products. For electric and vented gas standard consumer clothes dryers, TSL 3 is comprised of EL 4 and EL 3, respectively, resulting in higher LCC savings, a significant reduction in the number of consumers experiencing a net cost, a lower maximum decrease in INPV, and lower conversion costs to the point where DOE has tentatively concluded they are economically justified, as discussed for TSL 3 in the preceding paragraphs.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for consumer clothes dryers at TSL 3. The proposed amended energy conservation standards for consumer clothes dryers, which are expressed as CEF_{D2}, are shown in Table V.45.

TABLE V.45—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR CONSUMER CLOTHES DRYERS

Product class	CEF_{D2} (lb/kWh)
Electric, Standard (4.4 cubic feet (''ft^3'') or greater capacity)	3.93
Electric, Compact (120 volts (''V'')) (less than 4.4 ft^3 capacity)	4.33
Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	3.57
Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.68
Ventless Electric, Combination Washer-Dryer	2.33
Vented Gas, Standard (4.4 ft^3 or greater capacity)	3.48
Vented Gas, Compact (less than 4.4 ft^3 capacity)	2.02

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2020$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the benefits of GHG and NO_X emission reductions.

Table V.46 shows the annualized values for consumer clothes dryers under TSL 3, expressed in 2020$. The

results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for consumer clothes dryers is $85.7 million per year in increased equipment costs, while the estimated annual benefits are $1,111 million from reduced equipment operating costs, $320 million from GHG reductions, and $406 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $1,752 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for consumer clothes dryers is $80.7 million per year in increased equipment costs, while the estimated annual benefits are $1,313 million in reduced operating costs, $320 million from GHG reductions, and $541 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $2,094 million per year.

TABLE V.46—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER CLOTHES DRYERS

[TSL 3]

	Million 2020$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	1,313	1,227	1,403
Climate Benefits *	320	311	327
Health Benefits **	541	526	551
Total Benefits †	2,174	2,065	2,280
Consumer Incremental Product Costs ‡	80.7	80.5	76.6
Net Benefits	2,094	1,984	2,204
7% discount rate			
Consumer Operating Cost Savings	1,111	1,050	1,178
Climate Benefits *	320	311	327
Health Benefits **	406	395	413
Total Benefits †	1,837	1,757	1,917
Consumer Incremental Product Costs ‡	85.7	85.3	82.4
Net Benefits	1,752	1,671	1,835

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

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO_2), methane (SC–CH_4), and nitrous oxide (SC–N_2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). Together these represent the global social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. See section. IV.L of this document for more details. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

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

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

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

D. Reporting, Certification, and Sampling Plan

In addition to reporting cycle time, the California IOUs also encouraged DOE to incorporate refrigerant type and charge quantity into the reporting requirement for any products that use heat pump technology, stating that the regulatory landscape around refrigerant types and charge quantity has been changing rapidly and disclosure of these two parameters would be useful for compliance with those requirements. The California IOUs also stated that ENERGY STAR currently allows manufacturers to voluntarily disclose the refrigerant type. (California IOUs, No. 26 at p. 6)

DOE will continue to monitor the regulatory landscape around refrigerants in the consumer clothes dryer industry, and if DOE determines that the additional reporting information would be useful, DOE may consider requiring that information in a future separate rulemaking that would address any necessary amendments to reporting requirements for all covered products and equipment.

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For consumer clothes dryers, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.21. As discussed in the

previous paragraphs, DOE is not proposing to amend the product-specific certification requirements for consumer clothes dryers.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

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), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to the OIRA for review. OIRA has determined that this proposed regulatory action constitutes an economically significant regulatory action under section 3(f) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the proposed/final regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') 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 (*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.

In accordance with EPCA, DOE is publishing this NOPR as part of the legislated 6-year review of energy conservation standards for consumer clothes dryers. (42 U.S.C. 6295(m)) The most recent standards rulemaking for consumer clothes dryers was promulgated on April 21, 2011. Specifically, DOE published a direct final rule (the ''2011 Direct Final Rule'') amending the energy conservation standard for consumer clothes dryers manufactured on and after January 1, 2015. 76 FR 22454 (Apr. 21, 2011). Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m))

For manufacturers of consumer clothes dryers, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (*See* 13 CFR part 121.) The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support-table-size-standards.* Manufacturing of consumer clothes dryers is classified under NAICS 335220, ''Major Household Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using public information and subscription-based company reports to identify potential small business manufacturers. DOE reviewed the CCMS database,[89] California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[90] the ENERGY STAR Product Finder dataset,[91] individual company websites, import/export logs, and product specifications to create a list of companies that manufacture, produce, import, or private label the products covered by this rulemaking.

[89] U.S. Department of Energy's Compliance Certification Database is available at *regulations.doe.gov/certification-data* (last accessed October 8, 2021).

[90] California Energy Commission's Modernized Appliance Efficiency Database System is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed October 8, 2021).

[91] ENERGY STAR Product Finder is available at *energystar.gov/productfinder/* (last accessed October 8, 2021).

DOE relied on public information and market research tools (*e.g.,* reports from Dun and Bradstreet [92]) to determine company structure, location, headcount, and annual revenue. DOE screened out companies that do not manufacture the products covered by this rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated. DOE also asked stakeholders and industry representatives if they were aware of any small manufacturers during manufacturer interviews and through requests for comment.

DOE identified 15 OEMs of the covered product. Of these 15 OEMs, DOE determined none of them qualify as a domestic ''small business manufacturer'' of consumer clothes dryers. Given the lack of small domestic OEMs with a direct compliance burden, DOE concludes that the proposed rule would not have ''a significant impact on a substantial number of small entities.'' DOE requests comment on this certification conclusion.

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).

C. Review Under the Paperwork Reduction Act

Manufacturers of consumer clothes dryers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for consumer clothes dryers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including consumer clothes dryers. 76 FR 12422 (Mar. 7, 2011); 80 FR 5099 (Jan. 30, 2015). 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.

In this rulemaking, DOE proposes standards expressed as the combined energy factor, determined in accordance with the appendix D2 test procedure (CEF_{D2}). Were this NOPR to be finalized as proposed, manufacturers of consumer clothes dryers would certify to DOE using the certification template associated with appendix D2 once the standard goes into effect. The public reporting burden under appendix D2 is not substantially different than the public reporting burden under appendix D1 and is already required for ENERGY STAR certification. Adopting standards based on the CEF_{D2} metric would not cause any measurable change in reporting burden or hours to manufacturers of consumer clothes dryers. Thus, DOE is not proposing any changes to its information collection requirements as these are already accounted for by DOE's existing regulations. DOE seeks comment on DOE's estimated burden for certifying compliance under appendix D2 should amended standards be finalized.

Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section

[92] The Dun & Bradstreet subscription login is available at *app.dnbhoovers.com.*

3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by consumer clothes dryer manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency consumer clothes dryers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m) this proposed rule would establish amended energy conservation standards for consumer clothes dryers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes amended energy conservation standards for consumer clothes dryers, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[93] 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. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present rulemaking.

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=50&action=viewlive.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the webinar. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and are to be emailed. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the previous procedures that may be needed for the proper conduct of the webinar.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

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

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as

[93] 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 November 2021).

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. Comments and documents submitted via email 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. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

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

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

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

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE seeks comment on the method for estimating manufacturing production costs.

(2) DOE seeks comment on additional information regarding potential classification errors within the CCMS database. See section IV.A.1 of this document.

(3) DOE requests comment on any potential impacts that different technology options, including any that may impact cycle times, have on fabric care. See section IV.B.1 of this document.

(4) DOE seeks comment on the baseline and incremental efficiency levels used in the NOPR engineering analysis. See section IV.C.1 of this document.

(5) DOE seeks comment on the baseline and incremental MPCs from the NOPR engineering analysis, as well as any data on the impact of supply chain challenges that could better inform the cost analysis. See section IV.C.3 of this document.

(6) DOE seeks comment on product cost trends over time of heat pump technology. See section IV.F.1 of this document.

(7) DOE requests information and data on repair cost for replacing an electromechanical and electronic control panel. See section IV.F.5 of this document.

(8) DOE seeks input from interested parties on characterizing maintenance and repair costs for more-efficient consumer clothes dryers. See section IV.F.5 of this document.

(9) DOE requests comments, information, and data on the no-new-standards case efficiency distribution of consumer clothes dryers. See section IV.F.8 of this document.

(10) DOE requests comment on its methodology for estimating shipments. DOE also requests comment on its approach to estimate the market share for each consumer clothes dryer product class. See section IV.G of this document.

(11) DOE requests comment on any new information or data that points to an impact on usage due to a change in cycle times (See section IV.H.2 of this document) or changes to cycle times as a result of the proposed standard.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this proposed rulemaking that may not specifically be identified in this document.

VIII. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on August 14, 2022, by Kelly J. Speakes-Backman, 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 August 16, 2022.

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 the introductory text to paragraph (h)(3) and adding paragraph (h)(4) to read as follows:

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

* * * * *

(h) * * *

(3) Clothes dryers manufactured on or after January 1, 2015 and before [*date 3*

years after publication of a final rule], shall have a combined energy factor no less than:

* * * * *

(4) Clothes dryers manufactured on or after [*date 3 years after publication of a final rule*], shall have a combined energy factor, determined in accordance with Appendix D2 of this subpart, no less than:

Product class	CEF_{D2} (lb/kWh)
Electric, Standard (4.4 ft^3 or greater capacity)	3.93
Electric, Compact (120V) (less than 4.4 ft^3 capacity)	4.33
Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	3.57
Vented Gas, Standard (4.4 ft^3 or greater capacity)	3.48
Vented Gas, Compact (less than 4.4 ft^3 capacity)	2.02
Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.68
Ventless Electric, Combination Washer-Dryer	2.33

* * * * *

[FR Doc. 2022–17900 Filed 8–22–22; 8:45 am]

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FEDERAL REGISTER

Vol. 87 Tuesday,
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Part III

Securities and Exchange Commission

17 CFR Part 240
Clearing Agency Governance and Conflicts of Interest; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–95431; File No. S7–21–22]

RIN 3235–0695

Clearing Agency Governance and Conflicts of Interest

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; partial withdrawal of proposed rule; withdrawal of applicability of proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing rules under the Securities Exchange Act of 1934 (''Exchange Act'') to help improve the governance of clearing agencies registered with the Commission (''registered clearing agencies'') by reducing the likelihood that conflicts of interest may influence the board of directors or equivalent governing body (''board'') of a registered clearing agency. The proposed rules would identify certain responsibilities of the board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency. In support of these objectives, the proposed rules would establish new requirements for board and committee composition, independent directors, management of conflicts of interest, and board oversight.

DATES: As of August 23, 2022, SEC withdraws amendatory instructions # 7 and 8 (§§ 240.17Ad–25 and 240.17Ad–26 in Release No. 34–64017), published at 76 FR 14472 on March 16, 2011. Also as of August 23, 2022, SEC withdraws the applicability of the proposed rule published at 75 FR 65881 on October 26, 2010 (Release No. 34–63107) as it pertained to clearing agencies.

Comments on this proposal should be received on or before October 7, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–21–22 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–21–22. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments are also 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. Operating conditions may limit access to the Commission's public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Matthew Lee, Assistant Director, Stephanie Park, Senior Special Counsel, Claire Noakes, Special Counsel, or Tanin Kazemi, Attorney-Adviser, Office of Clearance and Settlement at (202) 551–5710, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is withdrawing the following proposed rules under the Exchange Act: Regulation MC as proposed for security-based swap clearing agencies,[1] and rules proposed for clearing agencies at 17 CFR 240.17Ad–25 (''Rule 17Ad–25'') and 240.17Ad–26 (''Rule 17Ad–26'').[2] In their place, the Commission is proposing a new Rule 17Ad–25 to mitigate conflicts of interest, promote the fair representation of owners and participants in the governance of a clearing agency, identify responsibilities of the board, and increase transparency into clearing agency governance.

The Commission is also mindful of the differing perspectives that exist at registered clearing agencies among stakeholders, including owners and participants (some of whom also are clearing agency owners), small and large participants, and direct participants (who are clearing members) and indirect participants.[3] Proposed Rule 17Ad–25 would establish new requirements for clearing agency boards to address and mitigate conflicts of interest and to help ensure more effective oversight of the clearing agency by the board. The Commission believes these requirements would help ensure that a clearing agency's governance arrangements can more effectively manage these different perspectives so that the clearing agency can, among other things, help ensure that the design and implementation of risk management decisions are effective. Specifically, the proposed rule would: (i) define independence in the context of a director serving on the board of a registered clearing agency and require that a majority of directors on the board be independent, unless a majority of the voting rights distributed to shareholders of record are directly or indirectly held by participants of the registered clearing agency, in which case at least 34 percent of the board must be independent directors; (ii) establish requirements for a nominating committee, including with respect to the composition of the nominating committee, fitness standards for serving on the board, and documenting the process for evaluating board nominees; (iii) establish requirements for the function, composition, and reconstitution of the risk management committee; (iv) require policies and procedures that identify, mitigate or eliminate, and document the identification and mitigation or elimination of conflicts of interest; (v) require policies and procedures that obligate directors to report potential conflicts promptly; (vi) require policies and procedures for the board to oversee relationships with service providers for critical services; and (vii) require policies and procedures to solicit, consider, and document the registered clearing agency's consideration of the views of its participants and other

[1] Exchange Act Release No. 63107 (Oct. 14, 2010), 75 FR 65882 (Oct. 26, 2010) (''Regulation MC Proposing Release'').

[2] Exchange Act Release No. 64017 (Mar. 3, 2011), 76 FR 14471 (Mar. 16, 2011) (''Clearing Agency Standards Proposing Release'') (proposing Rules 17Ad–25 and 17Ad–26).

[3] Examples of indirect participants might be entities such as customers or clients of direct participants or clearing members since they rely on services provided by a direct participant to access the services of the clearing agency.

relevant stakeholders regarding its governance and operations.

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I. Introduction

Clearing agencies registered with the Commission play an important role in the securities markets. They help ensure the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and related funds, which has the effect of protecting investors and persons facilitating transactions by and acting on behalf of investors.[4] As such, Section 17A of the Exchange Act requires that, before an entity provides clearing agency services, it must register with the Commission.[5] Under the Commission's supervision, registered clearing agencies, as self-regulatory organizations (''SROs'') under Section 19 of the Exchange Act,[6] must submit to the Commission changes to their rules for review and approval or to be deemed immediately effective upon filing.[7]

Given the important role of clearing agencies in the U.S. financial system, the governance framework of each clearing agency is an integral part in helping to ensure that the clearing agency is resilient and strong. A transparent and reliable governance framework has a positive and lasting cascading effect: Through the decision-making of the clearing agency and to its effective and efficient supervision. From the outset, an ideal governance framework that establishes a clear and deliberative process would have the clearing agency consider a range of stakeholder views as part of its rules and risk management practices, resulting in more thorough and robust SRO rule proposals for the Commission to consider in supervising the clearing agency. In essence, improved governance would help promote optimum practices for all registered clearing agencies to follow to help ensure that their processes and decisions are clear, transparent, and reliable, that risks are appropriately monitored, addressed, and managed, and that their leadership is competent and accountable. When these fundamental guiding principles on governance influence and permeate a clearing agency's culture and operations, the clearing agency will instill confidence in its participants, the markets, and the investing public, thereby meeting and promoting the policy objectives in Section 17A of the Exchange Act regarding the prompt and accurate clearance and settlement of securities transactions, among other objectives.[8]

The Commission has previously stated that clear and transparent governance arrangements help promote accountability and reliability in the decisions, rules and procedures of the clearing agency because they provide interested parties (such as owners, direct and indirect participants, and general members of the public) with information about how such decisions are made and what the rules and procedures are designed to accomplish.[9] In turn, clear and transparent governance arrangements help optimize the clearing agency's decisions, rules and procedures that the Commission considers in the SRO rule filing process because clearing agency transparency improves the quality of the information shared with stakeholders, which in turn improves the public comments submitted in response to rule filings. While the business models of clearing agencies vary and include entities that are affiliates of publicly traded companies and entities that function as participant-owned utilities, the key components of a clearing agency's governance arrangements include the

[4] *See* 15 U.S.C. 78q–1(a)(1)(A); *see, e.g.,* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, Principles for financial market infrastructures (Apr. 16, 2012), at 5 (''PFMI''), *http://www.bis.org/publ/cpss101a.pdf* (stating that financial market infrastructures (''FMIs''), which include clearing agencies like central counterparties (''CCPs'') and central securities depositories (''CSDs''), ''[w]hile safe and efficient . . . contribute to maintaining and promoting financial stability and economic growth, FMIs also concentrate risk. If not property managed, FMIs can be sources of financial shocks, such as liquidity dislocations and credit losses, or a major channel through which these shocks are transmitted across domestic and international financial markets'').

[5] *See* 15 U.S.C. 78q–1(a)(2); *see also* 17 CFR 240.17Ab2–1.

[6] Upon registration, registered clearing agencies are SROs under Section 3(a)(26) of the Exchange Act. *See* 15 U.S.C. 78c(a)(26).

[7] Except for certain rule changes that do not need approval, set forth in 17 CFR 240.19b–4(f), an SRO must submit proposed rule changes to the Commission for review and approval pursuant to Rule 19b–4 under the Exchange Act. A stated policy, practice, or interpretation of an SRO, such as its written policies and procedures, would generally be deemed to be a proposed rule change. *See* 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

[8] *See* 15 U.S.C. 78q–1(a)(1)(A)–(D); *see also* Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66219, 66252 (Nov. 2, 2012) (''Clearing Agency Standards Adopting Release'') (noting that ''[g]overnance arrangements have the potential to play an important role in making sure that clearing agencies fulfill the Exchange Act requirements that the rules of a clearing agency be designed to protect investors and the public interest and to support the objectives of owners and participants. Similarly, governance arrangements may promote the effectiveness of a clearing agency's risk management procedures by creating an oversight framework that fosters a focus on the critical role that risk management plays in promoting prompt and accurate clearance and settlement'').

[9] *See* Clearing Agency Standards Proposing Release, *supra* note 2, at 14488 (''Clear and transparent governance arrangements promote accountability and reliability in the decisions, rules and procedures of the clearing agency because they provide interested parties (such as owners, participants, and general members of the public) with information about how such decisions are made and what the rules and procedures are designed to accomplish. The key components of a clearing agency's governance arrangements include the clearing agency's ownership structure, the composition and role of its board, the structure and role of board committees, reporting lines between management and the board, and the processes that ensure management is held accountable for the clearing agency's performance. Governance arrangements have the potential to play an important role in making sure that clearing agencies fulfill the Exchange Act requirements that the rules of a clearing agency be designed to protect investors and the public interest and to support the objectives of owners and participants. Similarly, governance arrangements may promote the effectiveness of a clearing agency's risk management procedures by creating an oversight framework that fosters a focus on the critical role that risk management plays in promoting prompt and accurate clearance and settlement.'').

clearing agency's ownership structure, the composition and role of its board, the structure and role of board committees, reporting lines between management and the board, and the processes that help ensure management is held accountable for the clearing agency's performance.[10] Regardless of the business model, the clearing agency is more effective when it has governance arrangements that accomplish the following: (1) help ensure that the clearing agency satisfies the Exchange Act requirements and Commission rules that are designed to protect investors and the public interest; and (2) support the objectives of the clearing agency's owners, direct participants, and indirect participants.[11]

In recognizing the implications that a robust governance framework has on the operations of clearing agencies, the Commission adopted a series of clearing agency governance requirements. In 2012, the Commission adopted a general governance rule for all registered clearing agencies (that are not covered clearing agencies) under Rule 17Ad–22(d).[12] In 2016, the Commission adopted a governance rule under Rule 17Ad–22(e) as part of its heightened standards for covered clearing agencies, defined as a registered clearing agency that provides the services of a central counterparty or central securities depository.[13] The Commission took a broad, principles-based approach in the design of both rules, and emphasized that governance remains an area of continued consideration and interest, with the goal of establishing an evolving regulatory framework for clearing agencies.[14]

During the ensuing years since the adoption of the 2016 covered clearing agency governance rule, the Commission has observed and learned from recurring tensions among incentive structures in the area of clearing agency governance. The Commission understands that differing views among clearing agency stakeholders can have a ripple effect on the decisions that clearing agencies make, including risk management decisions that, in turn, affect clearing members and the larger financial community. Accordingly and for the reasons described throughout this release, the Commission is proposing rules that would build upon and strengthen the existing governance requirements adopted by the Commission in the Clearing Agency Standards Adopting Release in 2012 and the CCA Standards Adopting Release in 2016.[15] Specifically, the Commission believes that the existing clearing agency governance rules should be enhanced to help balance the differing incentives of the registered clearing agencies, clearing members, and other key stakeholders. While the governance requirements adopted by the Commission at that time are broad and principles-based, the rules proposed today would set more specific and defined parameters and requirements for governance for all registered clearing agencies—both covered clearing agencies under Rule 17Ad–22(e) under the Exchange Act and all registered clearing agencies other than covered clearing agencies that are subject to Rule 17Ad–22(d) under the Exchange Act. Because all clearing agencies would face these tensions, the Commission believes it is appropriate to have this governance proposal apply to all registered clearing agencies. In this regard, the rules would establish new governance requirements on board composition for independent directors, nominating committees, risk management committees, conflicts of interest, board obligations to oversee service providers for critical services, and an obligation to formally consider stakeholder viewpoints. The proposed rules are designed to address governance issues specific to registered clearing agencies, due to their distinct ownership structures and organizational forms. Moreover, the rules are designed to take a multi-layered approach to governance in that one rule alone would not necessarily capture and address an issue relating to governance; each of the different rules proposed today would provide one additional mitigation layer to help ensure that registered clearing agencies are designed, managed, and operated under a robust governance framework to protect investors and the public interest and help promote the prompt and accurate clearance and settlement of securities transactions. Each mitigation layer improves the robustness of the governance framework by itself, with each additional mitigation layer having a cumulative effect on robustness.

In Part II below, the Commission provides context for the rule proposal by (i) discussing the different perspectives that exist among various stakeholders at registered clearing agencies, (ii) briefly summarizing changes to the regulatory framework for registered clearing agencies following passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[16] and (iii) describing recent events that have increased focus among market participants on the governance arrangements that direct risk management policies and procedures at registered clearing agencies.

II. Background

Rule 17Ad–22 under the Exchange Act provides for two categories of registered clearing agencies and contains a set of rules that apply to each category. The first category is covered clearing agencies, which are registered clearing agencies that provide CCP[17] or

[10] *See id.* at 66269.

[11] *See id.* at 66252.

[12] *See* 17 CFR 240.17Ad–22(d)(8) (requiring that all registered clearing agencies aside from covered clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures).

[13] *See* 17 CFR 240.17Ad–22(e)(2) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, support the public interest requirements in Section 17A of the Exchange Act and the objectives of owners and participants, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, specify clear and direct lines of responsibility, and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency); *see also* Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786 (Oct. 13, 2016) (''CCA Standards Adopting Release'').

[14] *See* Clearing Agency Standards Adopting Release, *supra* note 8, at 66252 (stating that ''[w]e continue to perform a careful review and evaluation of the comments that the Commission received on proposed Rules 17Ad–25, 17Ad–26 and Regulation MC, which commenters rightly observed represent separate, and in some cases more prescriptive, proposed requirements related to clearing agency governance and mitigation of conflicts of interest . . . .We believe it is more appropriate to consider those issues in connection with the Commission's ongoing consideration of those rules'').

[15] *See* 17 CFR 240.17Ad–22; *see also* Clearing Agency Standards Adopting Release, *supra* note 8; CCA Standards Adopting Release, *supra* note 13.

[16] Public Law 111–203, 124 Stat. 1376 (2010).

[17] A CCP is a type of registered clearing agency that acts as the buyer to every seller and the seller to every buyer, providing a trade guaranty with respect to transactions submitted for clearing by the CCP's participants. *See* 17 CFR 240.17Ad–22(a)(2); Exchange Act Release No. 88616 (Apr. 9, 2020), 85 FR 28853, 28855 (May 14, 2020) (''CCA Definition Adopting Release''). A CCP may perform a variety of risk management functions to manage the market, credit, and liquidity risks associated with transactions submitted for clearing. For example, CCPs help manage the effects of a participant default by closing out the defaulting participant's open positions and using financial resources available to the CCP to absorb any losses. In this way, the CCP can prevent the onward transmission of financial risk. *See, e.g.,* Exchange Act Release No. 94196 (Feb. 9, 2022), 87 FR 10436, 10448 (Feb. 24, 2022) (''T+1 Proposing Release''). If a CCP is unable to perform its risk management functions

CSD [18] services.[19] Rule 17Ad–22(e) applies to covered clearing agencies and includes requirements intended to address the activity and risks that their size, operation, and importance pose to the U.S. securities markets, the risks inherent in the products they clear, and the goals of both the Exchange Act and the Dodd-Frank Act.[20] The second category includes registered clearing agencies other than covered clearing agencies; such clearing agencies must comply with Rule 17Ad–22(d).[21] Rule 17Ad–22(d) establishes a regulatory regime to govern registered clearing agencies that do not provide CCP or CSD services.[22] Currently, all clearing agencies registered with the Commission that are actively providing clearance and settlement services are covered clearing agencies.[23] Although all currently registered and active clearing agencies meet the definition of a covered clearing agency, thereby making Rule 17Ad–22(d) not applicable to any registered and active clearing agencies at present, clearing agencies that are not covered clearing agencies may register with the Commission in the future and would be subject to Rule 17Ad–22(d).[24]

In establishing these regimes under Rule 17Ad–22 under the Exchange Act, the Commission stated that the approach under Rules 17Ad–22(d) and (e) takes into account clearing agency activities and the risks they pose, while promoting robust risk management practices and the general safety and soundness of registered clearing agencies and addressing concerns relating to the level of concentration in the provision of clearing agency services.[25] The Commission recognized that Rule 17Ad–22(d) would allow new entrants to more firmly establish themselves as clearing agencies, which is important for the deconsolidation and diffusion of risk across the market.[26] Notwithstanding their different risk profiles, all registered clearing agencies—whether covered clearing agencies under Rule 17Ad–22(e) or registered clearing agencies under Rule 17Ad–22(d)—are important to the U.S. financial system, as evident in their obligations under Section 17A of the Exchange Act. Effective governance—the primary way by which a clearing agency develops and oversees the provision of its clearance and settlement services—is the lynchpin to ensuring a well-functioning and resilient clearing agency that can withstand periods of market stress.[27] In this regard, the Commission believes that the governance requirements in proposed Rule 17Ad–25 should apply to all registered clearing agencies. The Commission's intent with respect to proposed Rule 17Ad–25 is, in part, to take another incremental step to help ensure that risks posed by registered clearing agencies are appropriately managed consistent with the purposes of the Exchange Act.

A. Differing Perspectives at Registered Clearing Agencies

The Exchange Act requires each registered clearing agency to be so organized and have the capacity to facilitate prompt and accurate clearance and settlement.[28] It also requires each registered clearing agency to have rules that assure the fair representation of shareholders and participants in the selection of directors and the administration of its affairs.[29] These requirements highlight the importance of a clearing agency's organization in facilitating prompt and accurate clearance and settlement, and of the need for a clearing agency to have rules that help ensure that both owners and participants participate in the selection of directors and the administration of its affairs, including board governance. Moreover, the Commission's recent experience has revealed that differing perspectives among other categories of stakeholders may influence the ways risk management decisions and practices develop and are implemented by the registered clearing agency. These differing views—whether between small and large clearing members or between direct and indirect participants of the clearing agency—warrant attention as they may manifest themselves in a clearing agency's decision-making to benefit one category of stakeholders at the expense of another category of stakeholders.

effectively, however, it can transmit risk throughout the financial system.

[18] A CSD is a type of registered clearing agency that acts as a depository for handling securities, whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible. Through use of a CSD, securities may be transferred, loaned, or pledged by bookkeeping entry without the physical delivery of certificates. A CSD also may permit or facilitate the settlement of securities transactions more generally. *See* 15 U.S.C. 78c(a)(23)(A); 17 CFR 240.17Ad–22(a)(3); CCA Definition Adopting Release, *supra* note 17, at 28856. If a CSD is unable to perform these functions, market participants may be unable to settle their transactions, transmitting risk through the financial system.

[19] *See* 17 CFR 240.17Ad–22(a)(5).

[20] *See* CCA Standards Adopting Release, *supra* note 13, at 70793. The Financial Stability Oversight Council (''FSOC'') has designated certain financial market utilities (''FMUs'')—which include clearing agencies that manage or operate a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the FMU—as systemically important or likely to become systemically important (''SIFMUs''). *See* 12 U.S.C. 5463. An FMU is systemically important if the failure of or a disruption to the functioning of such FMU could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. *See* 12 U.S.C. 5462(9).

[21] *See* 17 CFR 240.17Ad–22(d).

[22] *See* CCA Standards Adopting Release, *supra* note 13, at 70793.

[23] They are The Depository Trust Company (''DTC''), FICC, NSCC, ICE Clear Credit (''ICC''), ICE Clear Europe (''ICEEU''), The Options Clearing Corporation (''OCC''), and LCH SA.

[24] The Boston Stock Exchange Clearing Corporation (''BSECC'') and Stock Clearing Corporation of Philadelphia (''SCCP'') are currently registered with the Commission as clearing agencies but conduct no clearance or settlement operations; both inactive clearing agencies are subject to Rule 17Ad–22(d). *See* Exchange Act Release No. 63629 (Jan. 3, 2011), 76 FR 1473, 1474 (Jan. 10, 2011) (''BSECC Notice''); Exchange Act Release No. 63268 (Nov. 8, 2010), 75 FR 69730, 69731 (Nov. 15, 2010) (''SCCP Notice'').

[25] *See* CCA Standards Adopting Release, *supra* note 13, at 70793.

[26] *See id.*

[27] *See* SEC Division of Trading and Markets and Office of Compliance Inspections and Examinations, Staff Report on the Regulation of Clearing Agencies (Oct. 1, 2020) (''Staff Report on Clearing Agencies''), *https://www.sec.gov/files/regulation-clearing-agencies-100120.pdf.*

[28] 15 U.S.C. 78q–1(b)(3)(A).

[29] 15 U.S.C. 78q–1(b)(3)(C). The Exchange Act specifically states the ''fair representation of . . . shareholders (or members) and participants'' in the selection of directors and the administration of affairs, reflecting the fact that a clearing agency could be either a for-profit or not-for-profit entity. *See* Regulation of Clearing Agencies, Exchange Act Release No. 16900, 20 SEC Docket 415, 420 n.15 (June 17, 1980) (explaining that ''[t]he fair representation requirement was adopted verbatim from S. 249, the Senate bill that preceded the Securities Acts Amendments of 1975. The report of the Senate Committee on Banking, Housing and Urban Affairs to accompany S. 249 states: 'The rules of the clearing agency must assure fair representation of its shareholders (or members) and participants in the decision making process of the clearing agency . . . . The reference to shareholders of [sic] members makes it clear that the bill establishes no norm as to whether clearing agencies should or should not be operated for profit. The bill makes no attempt to set up particular standards of representation or participation. Rather, it provides that the Commission must assure itself that the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders or members. Fair representation of participants may be found if they are afforded an opportunity to acquire voting stock of the clearing agency in proportion to their use of its facilities''). ''Members,'' however, is a term often used to describe the participants of a clearing agency. This release refers to ''shareholders (or members)'' collectively as ''owners'' of the registered clearing agency. In some instances, owners and shareholders may differ in certain respects, such as the nature and extent of their voting rights on the board. To avoid confusion, in this release the Commission uses only ''participants'' to refer to the direct users of a clearing agency, which have met the standards for participation and have executed a participation agreement.

First, based on its supervisory experiences, the Commission has observed that owners and participants may have structural incentives that differ from one another, leading to differing views as to the efficacy of certain risk management tools and the potential for divergent interests in the risk management of the clearing agency. For example, owners and participants may have differing views as to the scope of products cleared by the clearing agency, the minimum standards required for participation in the clearing agency, and the size, timing, and nature of financial resource requirements applied as part of the risk management framework.

Fundamentally, an owner's interest in protecting the equity and continued operation of the clearing agency diverges from a participant's interest in avoiding the allocation of losses from a defaulting participant. Diverging interests and incentives among owners and participants with respect to loss allocation or scope of products—such as in the event that some participants may want to limit access to a market by limiting access to clearing, while owners would like to expand the scope of products to collect fees–could limit the benefits of a clearing agency, and even potentially cause harm to the market it serves as well as the broader financial system to the extent that they might undermine the risk mitigating purpose of the clearing agency by failing to achieve the right balance among competing interests.[30]

When a clearing agency chooses to mutualize the risk it faces among its owners and participants, it may find a closer alignment of incentives among owners and participants because both owners and participants would bear losses associated with a failure of the clearing agency.[31] In considering how to mutualize the risk it faces, a clearing agency may choose from a number of different approaches. For example, a clearing agency may be organized so that the participants are owners of the clearing agency,[32] which may eliminate diverging incentives between owners and participants. Regardless of the approach, as stated above, the Exchange Act requires that a clearing agency be so organized and have the capacity to facilitate prompt and accurate clearance and settlement. In addition, the Exchange Act requires that the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.[33]

Second, the Commission has observed differing views between large and small participants in a registered clearing agency about risk management practices. Consolidation among market participants in recent years has resulted in the increased concentration of clearance and settlement activity among a smaller set of firms. For example, over 90 percent of the total notional amount of the U.S. market in credit derivatives is concentrated in four U.S. commercial banks.[34] Large clearing agency participants, especially participant-owners, often have different incentives from smaller participants. When a small number of dominant participants exercise control or influence over a registered clearing agency with respect to the services provided by the registered clearing agency or the rules applicable to its participants, these participants may promote margin requirements that are not commensurate with the risks and particular attributes of each participant's specific products, portfolio, and market, thereby indirectly limiting competition and increasing their ability to maintain higher profit margins. Given such incentives, a registered clearing agency that is dominated by a small number of large participants might make decisions that are designed to provide them with a competitive advantage.

Third, the Commission's proposal is informed, in part, by its experience overseeing registered clearing agencies with regard to the concerns raised by certain participants that access criteria and risk management standards may impose disproportionate costs relative to the value of access to clearing agencies. In addition, when the Commission proposed Regulation MC, the Commission identified a potential area where a conflict of interest of participants that exercise undue control or influence over a security-based swap clearing agency could adversely affect the central clearing of security-based swaps by limiting access to the security-based swap clearing agency, either by restricting direct participation in the security-based swap clearing agency or restricting indirect access by controlling the ability of non-participants to enter into correspondent clearing arrangements.[35] The resulting conflicts of interest could limit the benefits of a registered security-based swap clearing agency in the securities market to indirect participants. As a result, the Commission believes it should continue to implement measures that help ensure the decisions of a registered clearing agency reflect the interests and perspectives of the broadest cross-section of stakeholders as possible.

This proposal is intended to help ensure that a registered clearing agency's governance arrangements can manage these differing perspectives and interests more effectively. As discussed in detail below, the Commission believes that the proposed rules would help ensure that a registered clearing agency's governance arrangements can more effectively manage the divergent interests between and among clearing agency owners and participants, small and large participants, and direct and indirect participants of a clearing agency, which, in turn, would improve a clearing agency's risk management practices to be fair and more effective. Imposing these requirements on all registered clearing agencies would have the effect of building upon existing governance requirements with consistent, more defined and robust governance standards across all registered clearing agencies.

B. Regulatory Framework for Registered Clearing Agencies

The regulatory framework for registered clearing agencies has evolved over the last decade. Existing elements of the regulatory framework establish policies and procedures requirements for minimum standards to help promote participation in registered clearing agencies.[36] Other rules require that certain clearing agencies have policies and procedures for governance arrangements that support the objectives of owners and participants and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders.[37]

[30] For a discussion of the importance of aligning clearing agency governance with the interests of those who bear the financial risk, *see infra* note 167 and accompanying text.

[31] *See* Jorge Cruz Lopez & Mark Manning, Who Pays? CCP Resource Provision in the Post-Pittsburgh World (Dec. 2017), *https://www.bankofcanada.ca/wp-content/uploads/2017/12/sdp2017-17.pdf.*

[32] *See, e.g.,* Exchange Act Release No. 52922 (Dec. 7, 2005), 70 FR 74070 (Dec. 14, 2005) (explaining that participants of DTC, FICC, and NSCC that make full use of the services of one or more of these clearing agency subsidiaries of DTCC are required to purchase DTCC common shares).

[33] *See* 15 U.S.C. 78q–1(b)(3)(C).

[34] *See* Staff Report on Clearing Agencies, *supra* note 27, at 21 (citing the Office of the Comptroller of the Currency, Quarterly Report on Bank Trading and Derivatives Activities, Third Quarter 2019, graph 4 (Dec. 2019), *https://www.occ.gov/publications-andresources/publications/quarterly-report-on-bank-trading-and-derivatives-activities/files/pub-derivativesquarterly-qtr3-2019.pdf*).

[35] *See* Regulation MC Proposing Release, *supra* note 1, at 65885.

[36] *See, e.g.,* 17 CFR 240.17Ad–22(b)(5)–(7).

[37] *See, e.g.,* 17 CFR 240.17Ad–22(e)(2)(iii), (vi).

Following the enactment of the Dodd-Frank Act, the Commission has taken multiple steps to strengthen its regulatory framework for clearing agencies by: (i) establishing minimum requirements for governance, operations, and risk management practices of registered clearing agencies; [38] (ii) enhancing the Commission's oversight and enforcement of the technology and systems infrastructure that supports clearing agencies; [39] (iii) establishing an enhanced regulatory framework for systemically important clearing agencies and clearing agencies for security-based swaps; [40] and (iv) expanding the enhanced regulatory framework from systemically important clearing agencies to all registered clearing agencies that provide CCP or CSD services so that the set of covered clearing agencies includes the seven active clearing agencies registered with the Commission.[41] In addition, the Commission has adopted rules to help promote access to registered clearing agencies, including rules that require a registered clearing agency that performs CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (i) provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership on fair and reasonable terms at the clearing agency to clear securities for itself or on behalf of other persons; (ii) have membership standards that do not require that participants maintain a minimum portfolio size or minimum transaction volume; and (iii) provide that a person maintaining net capital equal to or greater than $50 million may obtain membership at the clearing agency, provided that such person is able to comply with other reasonable membership standards.[42]

1. Current Requirements and Past Proposals on Clearing Agency Governance

In the recent past, the Commission addressed clearing agency governance with the adoption of two rules. In 2016, the Commission adopted a rule that requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, support the public interest requirements in Section 17A of the Exchange Act, and the objectives of owners and participants, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, specify clear and direct lines of responsibility, and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.[43] In 2012, the Commission adopted a rule that requires all registered clearing agencies aside from covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act, to support the objectives of owners and participants, and to help promote the effectiveness of the clearing agency's risk management procedures.[44] The Commission took a broad, principles-based approach to these governance rules to give a clearing agency the discretion to consider its unique characteristics and circumstances, including ownership and governance structures, effect on direct and indirect participants, membership base, markets served, and the risks inherent in products cleared, while at the same time, largely being subject to the requirements of the SRO rule filing process, which requires public notice and comment and consideration by the Commission.[45]

The Commission also proposed, but did not adopt, other rules directed to clearing agency governance: proposed Regulation MC, which contemplated limitations on ownership and minimum requirements for independent directors intended to satisfy a requirement for Commission rulemaking set forth in Section 765 of the Dodd-Frank Act (''Section 765''); [46] proposed Rule 17Ad–25, which included additional requirements for a clearing agency to mitigate conflicts of interest; [47] and proposed Rule 17Ad–26, which included requirements for a clearing agency to establish standards for directors on the board and committees thereof.[48] The Commission did not adopt those proposals, which were issued in 2010 and 2011, and is now withdrawing them because of the multiple changes that the Commission has made to its regulatory framework for clearing agencies as stated above.

As part of the incremental evolution of the Commission's clearing agency regulatory framework that has occurred over the past decade, the Commission now believes that updated rules are warranted to build upon and strengthen the existing clearing agency governance framework, given the trends the Commission has observed in the securities markets and during its supervisory processes.[49] Specifically,

[38] *See* 17 CFR 240.17Ad–22; *see also* Clearing Agency Standards Adopting Release, *supra* note 8; CCA Standards Adopting Release, *supra* note 13; CCA Definition Adopting Release, *supra* note 17.

[39] *See* 17 CFR 242.1000 *et seq.; see also* Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72251 (Dec. 5, 2014) (''Regulation SCI Adopting Release'').

[40] *See* 17 CFR 240.17Ad–22(e); CCA Standards Adopting Release, *supra* note 13.

[41] *See* CCA Definition Adopting Release, *supra* note 17.

[42] 17 CFR 240.17Ad–22(b)(5)–(7).

[43] *See* 17 CFR 240.17Ad–22(e)(2); *see also* CCA Standards Adopting Release, *supra* note 13, at 70802. The Commission also issued guidance on Rule 17Ad–22(e)(2) ''because . . . [as] there may be a number of ways to address compliance with Rule 17Ad–22(e)(2), the Commission . . . provid[ed] the following guidance that a covered clearing agency generally should consider in establishing and maintaining its policies and procedures: . . . whether the roles and responsibilities of its board of directors are clearly specified, and whether there are documented procedures for the functioning of the board of directors, such as procedures for identifying, addressing, and managing member conflicts of interest, and for reviewing the board's overall performance and the performance of its individual members regularly.'' CCA Standards Adopting Release, *supra* note 13, at 70806–07.

[44] *See* 17 CFR 240.17Ad–22(d)(8); *see also* Clearing Agency Standards Adopting Release, *supra* note 8, at 66251–52.

[45] *See generally* CCA Standards Adopting Release, *supra* note 13, at 70800 (''With a number of exceptions, Rule 17Ad–22(e) does not prescribe a specific tool or arrangement to achieve its requirements. The Commission believes that when determining the content of its policies and procedures, each covered clearing agency must have the ability to consider its unique characteristics and circumstances, including ownership and governance structures, effect on direct and indirect participants, membership base, markets served, and the risks inherent in products cleared. This ability, however, is subject to the requirements of the SRO rule filing and advance notice processes, which provide some opportunities for the public and participants to comment on the covered clearing agency's rules, policies, and procedures. The Commission does not believe that a granular or prescriptive approach to its regulation of covered clearing agencies would be appropriate, nor would such an approach ensure that a covered clearing agency does not become a transmission mechanism for systemic risk. Moreover, the Commission believes that the primarily principles-based approach reflected in Rule 17Ad–22(e) will help a covered clearing agency continue to develop policies and procedures that can effectively meet the evolving risks and challenges in the markets that the covered clearing agency serves.''); Clearing Agency Standards Adopting Release, *supra* note 8, at 66252 (''We appreciate the perspective of commenters who prefer the more general policies and procedures design of Rule 17Ad–22(d)(8) to any more prescriptive rulemaking by the Commission in the area of clearing agency governance.'').

[46] *See* Regulation MC Proposing Release, *supra* note 1, at 65893–904.

[47] *See* Clearing Agency Standards Proposing Release, *supra* note 2, at 14497–98.

[48] *See id.* at 14498–99.

[49] As discussed further below, the Commission believes that the targeted set of proposed rules for governance included in this release can help ensure that the framework effectively addresses the considerations set forth in Section 765 with respect

Continued

the Commission believes that addressing the composition of a board and its committees will help ensure effective governance, help promote transparency into decision-making processes, facilitate fair representation of owners and participants, and mitigate the potential effects of conflicts of interest between owners and participants, large and small participants, and direct and indirect participants. For these reasons, proposed Rule 17Ad–25 includes provisions directed to all registered clearing agencies.

2. Commodity Futures Trading Commission's Governance Framework for Derivatives Clearing Organizations

Three clearing agencies registered with the Commission are also registered as derivatives clearing organizations (''DCOs'') with the Commodity Futures Trading Commission (''CFTC''). The Commission acknowledges that, while other agency rules and regulations on governance may apply to a clearing agency registered with the Commission that are similar in scope or purpose to proposed Rule 17Ad–25, the Commission remains obligated to ensure that risk in the U.S. securities markets is appropriately managed—including through promulgation of its own rules and regulations—consistent with the purposes of the Exchange Act. Additionally, because Rule 17Ad–22(e) under the Exchange Act and other comparable regulations—including DCO governance rules adopted by the CFTC in January 2020 [50]—are based on the same international standards, namely the PFMI, the potential for inconsistent regulation is low. In this regard, the Commission believes its existing governance rules for covered clearing agencies and registered clearing agencies other than covered clearing agencies are consistent with the CFTC's governance rule for DCOs.[51] Certain proposed requirements in this rulemaking are also consistent with the requirements in the CFTC's DCO regime, which provides conflicts of interest and board composition rules.[52] Further, in developing these rules, Commission staff has consulted with the CFTC and the Board of Governors of the Federal Reserve System (''FRB'').

C. Risks Associated With Clearance and Settlement

The Commission also believes that the proposed governance rules would help ensure that registered clearing agencies make more effective risk management decisions that take into account relevant stakeholder perspectives and concerns. Recent episodes of increased market volatility—in March 2020 following the outbreak of the COVID–19 pandemic, and in January 2021 following heightened interest in certain ''meme'' stocks—have revealed potential vulnerabilities in the U.S. securities market and highlight the essential role of registered clearing agencies in managing the risk that securities transactions may fail to clear or settle.[53] These events underscore the importance of a strong regulatory framework to oversee registered clearing agencies that clear or settle securities transactions and provide transparency to the markets.

Among other things, the rules of a registered clearing agency generally require its participants to transfer collateral to the clearing agency, which may include different types of collateral, such as margin payments, funds, or other assets, and the requirements associated with these rules may change in response to changes in market volatility. The terms of these rules, and the related policies and procedures of the registered clearing agency that implement them, are generally approved by the board as part of the clearing agency's governance arrangements. These rules, policies, and procedures are also subject to Commission review as proposed rule changes under Section 19 of the Exchange Act and Rule 19b–4 thereunder.[54] The potential for sudden and large increases in the margin required by a registered clearing agency of its participants, as evidenced in the March 2020 and January 2021 events stated above, have increased scrutiny by a wide variety of market participants into the way a registered clearing agency establishes, implements, maintains, and enforces its rules that impose margin requirements.[55] Some market participants have suggested that such margin requirements are too conservative; [56] others have suggested that margin requirements do not sufficiently consider the range of participants in a clearing agency and the downstream effect such requirements may have on other types of investors.[57] In response to this increased attention, the Basel Committee on Banking Supervision (''BCBS''), the Committee on Payments and Market Infrastructure (''CPMI''), and the International Organization of Securities Commissions (''IOSCO'') jointly released a consultative paper on CCP margin practices, focused on, among other things, recent market volatility and the apparent drivers of the size and composition of margin calls.[58]

Concerns about the size and timing of margin requirements are only one example of an area in which direct and indirect participants that rely on the clearance and settlement process have expressed concerns about clearing

to clearing of security-based swaps. Although Section 765 directed the Commission to focus on conflicts of interest specifically with respect to security-based swap clearing agencies, the Commission believes that conflicts of interest concerns can arise across all registered clearing agencies regardless of the asset classes served.

[50] *See* DCO General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020), *https://www.cftc.gov/sites/default/files/2020/01/2020-01065a.pdf*.

[51] *See* 17 CFR 39.24 (requiring DCOs to, among other things, have governance arrangements that are written, clear and transparent, place a high priority on the safety and efficiency of the derivatives clearing organization, and explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders; the board of directors shall make certain that the DCO's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders).

[52] *See* 17 CFR 39.25 (requiring DCOs to establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization, establish a process for resolving such conflicts of interest, and describe procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors); 17 CFR 39.26 (requiring DCOs to ensure that the composition of the governing board or board-level committee of the DCO includes market participants and individuals who are not executives, officers, or employees of the derivatives clearing organization or an affiliate thereof). We note that the CFTC recently proposed amendments to its DCO governance framework relating to risk management committee requirements. *See* Governance Requirements for Derivatives Clearing Organizations, Release Number 8565–22 (July 27, 2022), *https://www.cftc.gov/PressRoom/PressReleases/8565-22*.

[53] *See, e.g.,* SEC, Staff Report on Equity and Options Market Structure Conditions in Early 2021 (Oct. 14, 2021) (''2021 Staff Report''), *https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf*. Staff reports, Investor Bulletins, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these staff documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[54] 15 U.S.C. 78s; 17 CFR 240.19b–4.

[55] *See, e.g.,* Fitch Ratings, Margin Call Disparity, Breaches Could Drive Clearinghouse Scrutiny (July 20, 2020), *https://www.fitchratings.com/research/non-bank-financial-institutions/margin-call-disparity-breaches-could-drive-clearinghouse-scrutiny-20-07-2020*.

[56] *See* Alexander Campbell, CCP Margin Buffers Too Big, Research Suggests (July 9, 2019), *https://www.risk.net/risk-management/6783941/ccp-margin-buffers-too-big-research-suggests*.

[57] *See* Glenn Hubbard et al., Report of the Task Force on Financial Stability, Brookings Institution (June 2021), *https://www.brookings.edu/wp-content/uploads/2021/06/financial-stability_report.pdf*.

[58] *See* BCBS–CPMI–IOSCO, Consultative Report, Review of Margining Practices (Oct. 2021), *https://www.bis.org/bcbs/publ/d526.pdf*.

agency governance and, in particular, the way that such governance would oversee or employ risk management tools under stressed market conditions. Two other areas of heightened attention concern a clearing agency's process for loss allocation in the event of a participant default and an event other than a participant default (hereinafter a ''non-default loss''), such as an operational failure, cyber-attack, or theft. For example, participants and others have expressed concerns about the extent to which existing governance structures at registered clearing agencies would function during a potential recovery or resolution scenario, which would occur in the event that a clearing agency's prefunded financial resources available to absorb any loss—sometimes referred to as the ''clearing fund'' or ''guaranty fund''—are insufficient to close out a defaulting participant's portfolio without allocating losses among the non-defaulting participants of the clearing agency.[59] Based on its supervisory experience, the Commission believes that this loss allocation process could thus have significant implications for the risk management of its non-defaulting participants.

Further, although concerns about the size and timing of margin requirements are, at one level, concerns about the risk management practices of a clearing agency, they also implicate clearing agency governance because the governance arrangements of a registered clearing agency will determine the process for developing and approving policies and procedures for imposing margin requirements, and the governance and management of the registered clearing agency will also implement these policies and procedures, whether during normal market conditions or periods of increased market volatility.

In this regard, proposed Rule 17Ad–25 is intended to help ensure that in periods of market stress or stress on the registered clearing agency, the governance process of all registered clearing agencies is transparent, objective, and addresses conflicts of interest. Trust among market participants in the national system for clearance and settlement, particularly in times of market stress, necessarily depends on trust in the ability of registered clearing agencies to more effectively manage the risk flowing from that market stress and, when necessary, transparently and objectively impose increased margin requirements or employ loss allocation mechanisms.

III. Proposed Rules

The Commission is proposing rules under the Exchange Act and to address the considerations set forth in Section 765 of the Dodd-Frank Act. Section 17(a) of the Exchange Act directs registered clearing agencies to make and keep for prescribed periods such records, furnish such copies, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the Exchange Act.[60] Section 17A of the Exchange Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and provides the Commission with the authority to regulate those entities critical to the clearance and settlement process.[61] Section 23(a) of the Exchange Act authorizes the Commission to make rules and regulations as necessary or appropriate to implement the provisions of the Exchange Act.[62] The enactment of the Payment, Clearing, and Settlement Supervision Act (''Clearing Supervision Act'') in 2010 (Title VIII of the Dodd-Frank Act) reaffirmed the importance of the national system for clearance and settlement.[63] Specifically, Congress found that the ''proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payments, securities, and other financial transactions.'' [64] In addition, Section 765 of the Dodd-Frank Act specifically directs the Commission to adopt rules to mitigate conflicts of interest for security-based swap clearing agencies.[65] Accordingly, the Commission is proposing these rules pursuant to overlapping statutory authorities, because although the Commission is able to propose these rules pursuant to Section 17A of the Exchange Act, the Commission is also meeting the mandatory rulemaking requirements of Section 765. The Commission preliminarily has determined that these proposed rules are necessary and appropriate to improve the governance of a clearing agency that clears security-based swaps and in which a major security-based swap participant has a material debt or equity investment.

The Commission had previously reviewed the potential for conflicts of interest at security-based swap clearing agencies in accordance with Section 765 of the Dodd-Frank Act when it proposed Regulation MC, and had identified those conflicts that could affect access to clearing agency services, products eligible for clearing, and risk management practices of the clearing agencies.[66] The Commission had identified three key areas where it believed a conflict of interest of participants who exercise undue control or influence over a security-based swap clearing agency could adversely affect the central clearing of security-based swaps.[67] First, participants could limit access to the security-based swap clearing agency, either by restricting direct participation in the security-based swap clearing agency or restricting indirect access by controlling the ability of non-participants to enter into correspondent clearing arrangements. Second, participants could limit the scope of products eligible for clearing at the security-based swap clearing agency, particularly if there is a strong economic incentive to keep a product traded in the over-the-counter (''OTC'') market for security-based swaps. Third, participants could use their influence to reduce the amount of collateral they would be required to contribute and liquidity resources they would have to expend as margin or guaranty fund to the security-based swap clearing agency. Although the Commission does not believe that the participants of security-based swap clearing agencies are engaged in these types of activities, the Commission recognizes that these three potential conflicts of interest could limit the benefits of a security-based swap clearing agency in the security-based swaps market, and even potentially cause substantial harm to that market and the broader financial markets.

Nevertheless, there are benefits to having participant incentives known and reflected in the decision making activity of a board of directors. Employees of participants—in particular, chief risk officers or their equivalent—are likely to bring technical expertise to a board of directors. Participants are often exposed to enormous financial liability in the event of a default, and so they have strong

[59] In 2018, a default at a European CCP increased scrutiny of the auction process through which a CCP may choose to close out a defaulted portfolio. CPMI–IOSCO issued a report on issues for consideration in 2020. *See* Bank for International Settlements, Central Counterparty Default Management Auctions—Issues for Consideration (June 2020), *https://www.bis.org/cpmi/publ/d192.pdf*.

[60] *See* 15 U.S.C. 78q(a).

[61] *See* 15 U.S.C. 78q–1(a)(2)(A).

[62] *See* 15 U.S.C. 78w(a).

[63] *See* 12 U.S.C. 5461–5472.

[64] 12 U.S.C. 5461(a)(1).

[65] *See* 15 U.S.C. 8343.

[66] *See* Regulation MC Proposing Release, *supra* note 1, at 65885.

[67] *See id*.

incentives to have sound risk management at the clearing agencies. In order to promote the utility of having directors who are familiar with participant operations, the proposed rule does not prohibit directors who, among other things, receive compensation from participants from meeting the definition of independent director (provided all other requirements of the proposed rules are met).[68]

For the reasons discussed throughout this release, the Commission is proposing rules for all registered clearing agencies to establish requirements for governance, including requirements for the composition of the board of directors, to mitigate conflicts of interest, to establish certain obligations of the board to oversee service provider relationships, and to establish an obligation of the board to consider the views of participants and other relevant stakeholders. Each of these proposed rules are discussed further below.

A. Board Composition and Requirements for Independent Directors

1. Proposed Rules 17Ad–25(b), (e) and (f)

Proposed Rules 17Ad–25(b), (e), and (f) would establish requirements related to independent directors. First, proposed Rule 17Ad–25(b)(1) would require that a majority of the directors of a registered clearing agency must be independent directors, as defined in proposed Rule 17Ad–25(a). The proposed rule would also provide that, if a majority of the voting interests issued as of the immediately prior record date are directly or indirectly held by participants, then at least 34 percent of the members of the board of directors must be independent directors. Proposed Rule 17Ad–25(a) would define an ''independent director'' to mean a director that has no material relationship with the registered clearing agency, or any affiliate thereof. Proposed Rule 17Ad–25(a) also would define ''material relationship'' to mean a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director, and includes relationships during a lookback period of one year counting back from making the initial determination in proposed Rule 17Ad–25(b)(2). In addition, proposed Rule 17Ad–25(a) would define ''affiliate'' to mean a person that directly or indirectly controls, is controlled by, or is under common control with the registered clearing agency. Proposed Rule 17Ad–25(b)(2) would require each registered clearing agency to broadly consider all the relevant facts and circumstances, including under proposed Rule 17Ad–25(g), on an ongoing basis, to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency to qualify as an independent director. In making such determination, a registered clearing agency must (i) identify the relationships between a director, the registered clearing agency, any affiliate thereof, along with the circumstances set forth in proposed Rule 17Ad–25(f); (ii) evaluate whether any relationship is likely to impair the independence of the director in performing the duties of director; and (iii) document this determination in writing. Such documentation requirements would be subject to the recordkeeping and retention requirements that apply to all SROs under Section 17(a)(2) of the Exchange Act.[69]

The Commission believes that proposed Rules 17Ad–25(a) and 17Ad–25(b)(2) could provide registered clearing agencies with a broad pool of potential candidates to serve as independent directors. For example, an employee of a participant of the registered clearing agency, a professional in the securities or financial services industries, an academic, and other such qualified persons would be eligible for consideration as an independent director as long as the candidate meets the other criteria under the definition of material relationship and proposed Rule 17Ad–25(f).

Proposed Rule 17Ad–25(e) would require that, if any committee has the authority to act on behalf of the board of directors, the composition of that committee must have at least the same percentage of independent directors as is required under these rules for the board of directors, as set forth in proposed paragraph (b)(1).

Proposed Rule 17Ad–25(f) would describe certain circumstances that would always exclude a director from being an independent director. These circumstances would include: (1) the director is subject to rules, policies, and procedures by the registered clearing agency that may undermine the director's ability to operate unimpeded, such as removal by less than a majority vote of shares that are entitled to vote in such director's election; (2) the director, or a family member, has an employment relationship with or otherwise receives compensation, other than as a director, from the registered clearing agency or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency; (3) the director, or a family member, is receiving payments from the registered clearing agency, or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency that reasonably could affect the independent judgment or decision-making of the director, other than the following: (i) compensation for services as a director to the board of directors or a committee thereof; or (ii) pension and other forms of deferred compensation for prior services not contingent on continued service; (4) the director, or a family member, is a partner in, or controlling shareholder of, any organization to or from which the registered clearing agency, or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency, is making or receiving payments for property or service, other than the following: (i) payments arising solely from investments in the securities of the registered clearing agency, or affiliate thereof; or (ii) payments under non-discretionary charitable contribution matching programs; (5) the director, or a family member is employed as an executive officer of another entity where any executive officers of the registered clearing agency serve on that entity's compensation committee; or (6) the director, or a family member, is a partner of the outside auditor of the registered clearing agency, or an employee of the outside auditor who is working on the audit of the registered clearing agency, or any affiliate thereof. Proposed Rules 17Ad–25(f)(2)–(6) would be subject to a lookback period of one year (counting back from making the initial determination in proposed Rule 17Ad–25(b)(2)). Family member would be defined to include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person (other than a tenant or employee) sharing a household with the director or a nominee for director, a trust in which these persons (or the director or a nominee for director) have more than fifty percent of the beneficial interest, a foundation in which these persons (or the director or a nominee for director) control the management of assets, and

[68] Other jurisdictions have chosen a different approach, as discussed below. *See infra* Part IV.B.2.

[69] *See* 15 U.S.C. 78q(a)(2).

any other entity in which these persons (or the director or a nominee for director) own more than fifty percent of the voting interests.

At the time of the 2016 CCA Standards Adopting Release, the Commission declined to incorporate more prescriptive governance elements into the rule as urged by commenters, including specific requirements on independent representation on the board or risk committee or governance relating to business relationships and affiliates,[70] based on the premise that the requirements in Section 17A of the Exchange Act relating to fair representation and the public interest provided sufficient grounds to hold covered clearing agencies accountable to these concerns.[71] Similarly, with regard to the 2012 governance rule for all registered clearing agencies that are not covered clearing agencies, the Commission declined to adopt more prescriptive elements to its approach on governance with regard to board composition.[72] However, given the growing concentration of clearing and settlement participants among a small number of firms[73] and the concentration of differing perspectives into distinct groups of clearing agency stakeholders, the Commission believes it is appropriate to propose requirements on independent representation to facilitate the consideration and management of diverse stakeholder interests in the decision-making of the clearing agency.

2. Discussion

(a) Board of Director Oversight of Management

Several current requirements under the Exchange Act and regulations are applicable to a clearing agency's board of directors. Section 17A of the Exchange Act requires that the rules of a clearing agency assure the fair representation of owners and participants in the selection of directors and the administration of the clearing agency's affairs.[74] Rule 17Ad–22(e)(2)[75] under the Exchange Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that, in relevant part, (i) support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants; (ii) establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; and (iii) consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.

Given the importance of the board oversight function,[76] CPMI–IOSCO has issued guidance regarding the board's obligations with respect to oversight of management.[77] This guidance provides several examples of effective oversight of management by clearing agency boards. For example, the guidance highlights the board's responsibility for: (i) carefully overseeing, monitoring and evaluating management's implementation of the risk-management framework; (ii) taking appropriate steps to help ensure that management is performing risk-management tasks properly and effectively; (iii) ensuring that processes are in place for effective and timely communication, reporting and information flow between management and the board; (iv) communicating with management about risk management processes; and (v) when assessing the risk-management framework, appropriately challenging management to demonstrate the effectiveness of risk-management processes.[78] Likewise, the report stated that while a board may not delegate its ultimate responsibilities regarding risk management, it may assign certain tasks, so long as the board clearly defines the assigned tasks and retains ultimate responsibility over such tasks.[79]

(b) Requirement for Independent Directors

Corporate governance tools exist to help ensure that the board performs more effective oversight of the management of the company. One such tool is the independent director, which could bolster the board's ability to perform effectively by reducing the potential for financial or other relationships between directors and those persons who are overseen by directors, such as management.[80] The Commission is proposing a definition of ''independent director'' that retains elements of the definition used in Regulation MC, but with modifications.[81] The Commission continues to believe that as part of the definition, the key operating elements are the concepts of material relationships and affiliates, so those elements would be retained. However, at the same time, the Commission proposes using a modified definition of

[70] *See* CCA Standards Adopting Release, *supra* note 13, at 70804 (stating that ''[a]fter careful consideration of the comments, the Commission has determined not to modify Rule 17Ad–22(e)(2) to include specific requirements related to public or independent representation on the covered clearing agency's board or risk committee . . . . The Commission is declining to modify Rule 17Ad–22(e)(2) to further specify that a particular director represent the interests of buy-side or sell-side market participants . . . . In addition, and for the same reasons, the Commission is declining to modify Rule 17Ad–22(e)(2) to provide further specification regarding business relationships and affiliates because these topics, like the above, are already addressed by the fair representation requirement in Section 17A(b)(3)(C) and the public interest requirements of Section 17A of the Exchange Act'').

[71] *See* 15 U.S.C. 78q–1(b)(3)(C).

[72] *See* Clearing Agency Standards Adopting Release, *supra* note 8, at 66251 (adopting the rule largely as proposed and declining to incorporate prescriptive requirements as suggested by commenters, including ''[o]ne commenter [who] urged the Commission to ensure that Rule 17Ad–22(d)(8) as well as any requirements adopted from the Commission's proposed Regulation MC pertaining to the mitigation of conflicts of interest are designed to ensure that buy-side market participants have a meaningful voice in the operating committees of clearing agencies because that representation is critical to promoting robust governance arrangements at clearing agencies and serving the best interests of the U.S. financial system. Another commenter stated that proposed Rules 17Ad–22(d)(8), 17Ad–25, and 17Ad–26 reflect a better approach to governance, conflicts of interest, and board and committee composition than the Commission's proposed requirements for clearing agencies under Regulation MC. One commenter urged the Commission to consider complementing proposed Rule 17Ad–22(d)(8) with a minimum board independence requirement so that at least two-thirds of all board directors would be required to be independent'').

[73] *See* Staff Report on Clearing Agencies, *supra* note 27, at 21.

[74] *See* 15 U.S.C. 78q–1(b)(3)(C).

[75] *See* 17 CFR 240.17Ad–22(e)(2)(iii)–(iv), (vi).

[76] As a foundational principle of U.S. state corporate law, a board of directors of a corporation has ultimate responsibility for the oversight of management, consistent with a director's fiduciary duties of loyalty and care to a company. *See, e.g.,* Del. Code tit. 8, sec. 141 (2022) (establishing that the board is ultimately responsible for the corporation's management). In the context of a registered clearing agency incorporated under such principles, this means that the board has ultimate responsibility for ensuring an effective framework for the management of risk by the registered clearing agency, so that the clearing agency can facilitate the prompt and accurate clearance and settlement of securities transactions. To discharge this duty effectively, the board must necessarily work closely with management, but also effectively oversee it.

[77] *See* CPMI–IOSCO, Final Report, Resilience of central counterparties (CCPs): Further guidance on the PFMI (July 2017) (''CCP Resilience Guidance''), *https://www.bis.org/cpmi/publ/d163.pdf.*

[78] *See id.* at 5.

[79] *See id.*

[80] *See, e.g.,* Bruce Dravis, Director Independence and the Governance Process (Aug. 14, 2018), *https://www.americanbar.org/groups/business_law/publications/blt/2018/08/05_dravis/.* In the United States, independent directors traditionally are not selected from among management and are not intended to serve as representatives of management, and therefore they do not carry the same financial or other relationships that might create a conflict of interest between the director's interests and the director's duties to the company.

[81] *See* Regulation MC Proposing Release, *supra* note 1, at 65897.

''independent directors'' because of changes in scope of this proposed rulemaking. Regulation MC resulted from a public roundtable discussion and meetings held with interested persons, in part, to gain further insight into the sources of conflicts of interest at security-based swap clearing agencies.[82] Regulation MC had proposed a narrower definition of independent director, which would have excluded directors who had material relationships with participants and their affiliates as well,[83] and the proposal would have covered only one class of registered clearing agencies: security-based swap clearing agencies. Pursuant to Section 765, Regulation MC was designed to address anticipated governance concerns relating to participant activity [84] that existed in the OTC derivatives market. At the time of the proposal, the Commission also proposed Rules 17Ad–25 and 17Ad–26 for registered clearing agencies that took a broad, principles-based approach to clearing agency governance. Because some registered clearing agencies that would be subject to this proposal have participants who are also owners, the Commission's current proposal, under proposed Rule 17Ad–25(b)(1), creates a carve-out from the majority independence requirement when a majority of voting interests are owned by participant-owners, as set forth below.

The Commission believes that requiring a registered clearing agency to include independent directors on the board can improve the board's ability to conduct more effective oversight of management, which is a critical component of the effectiveness of a registered clearing agency. Independent directors constitute a set of directors that do not have potential conflicts of interest resulting from their relationships with management. This helps the board manage conflicts of interest among directors because independent directors do not have the existing relationships or accompanying incentives that might, for example, discourage or dis-incentivize the board to review management's decisions in a thorough, transparent, and consistent way. The appearance of conflicts of interest can reduce confidence among direct and indirect participants, other stakeholders, and the public in the functioning of the clearing agency, particularly during periods of market stress when general confidence in market resilience may be low.

The practice of employing independent directors is common across the financial industry and across public companies more generally.[85] Although Commission rules do not currently require the boards of registered clearing agencies to include independent directors, each of the registered clearing agencies already require directors with some independence characteristics (such as ''nonexecutive,'' or ''public'' directors).[86]

In that vein, in addition to the above dynamic that exists between the board and management, registered clearing agencies must also manage the competing and sometimes divergent interests of owners and participants, as previously discussed in Part II.A.[87] The structure of a registered clearing agency, and the risk management tools that it employs, affect how the interests of owners, participants, and other types of stakeholders align. For example, the risk mutualizing and trade guaranty features provided by covered clearing agencies provide for the shift of the consequences of one party's actions to another, binding disparate interests together in certain circumstances, such as a participant default. These features both affect how different stakeholders maximize their own self-interest and also distinguish the governance of a clearing agency from other corporate structures, such as those of other financial services companies or, more generally, publicly traded companies, who are unable to legally bind their customers with financial obligations that are theoretically uncapped. In particular, the owners of a clearing agency may seek to shift risks to the participants of the clearing agency to decrease the level of exposure that the owners face by capitalizing the clearing agency. Meanwhile, participants in the registered clearing agency may seek to raise the cost of participation to exclude competitors from the benefits of the clearing agency's risk mutualizing and mitigating tools, or they may seek to reduce their exposure to the clearing agency by not making certain assets available for use by the clearing agency during loss allocation. As described below, there can be countervailing benefits to having the interests of a director and the interests of an owner aligned, so as to increase the likelihood that decisions made will benefit shareholders. Likewise, there are benefits to having the interests of a director and the interests of a participant aligned, in order to increase the likelihood that decisions will take into account the long-term needs of participants. The requirement in Section 17A for fair representation recognizes that clearing agencies may serve competing stakeholders, such as owners and participants, both in the selection of directors and administration of their affairs.[88] Directors may carry these perspectives when they serve on the board, and these perspectives may influence the ultimate decision-making of the board. For example, one set of

[82] *See id.* at 65885.

[83] *See id.* at 65928 (defining independent director as ''(1) A director who has no material relationship with: (i) The security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable; (ii) Any affiliate of the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable; (iii) A security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable; or (iv) Any affiliate of a security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable.'').

[84] *See id.* at 65885 (''These [security-based swap] entities are not wholly-owned by participants or exchanges and may have different governance related issues than the securities clearing agencies currently registered with the Commission.'').

[85] *See, e.g.,* Quoc Trung Tran, Independent Directors and Corporate Investment: Evidence from an Emerging Market, 21 J. Econ. & Dev. 30 (2019), *https://www.emerald.com/insight/content/doi/10.1108/JED-06-2019-0008/full/html* (noting that ''independent directors have become a common approach of corporate governance'' in recent years). For example, the NYSE listing standards require that a majority of the board of directors of a listed company be independent, and they preclude managers or employees of the company from meeting the independence standard, among other criteria. *See, e.g.,* Weil, Gotshal & Manges LLP, Requirements for Public Company Boards (Jan. 3, 2022), *https://www.weil.com/-/media/files/pdfs/2022/january/requirements_for_public_company_boards_including_ipo_transition_rules.pdf.*

[86] *See* DTCC, Board Mission Statement and Charter (Oct. 2021), at 5, *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Mission-and-Charter.pdf;* ICC, Regulation and Governance Fact Sheet (Sept. 2021), at 2, *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Regulation_and_Governance.pdf;* ICEEU, Disclosure Framework (Jan. 31, 2021), at 20, *https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf;* OCC, Board of Directors Charter and Corporate Governance Principles (Sept. 22, 2021), at 4–5, *https://www.theocc.com/getmedia/99ed48a4-aa44-45ac-8dee-9399b479a1c8/board_of_directors_charter.pdf;* LCH SA, Board of Directors (2022), *https://www.lch.com/about-us/structure-and-governance/board-directors-0.*

[87] *See, e.g.,* Securities Industry Study, Report of the Subcommittee on Commerce and Finance, H.R. Rep. No. 92–1519, at 84 (1972) (''1972 House Report'') (stating generally about SROs such as clearing agencies, ''[s]elf-regulators may be parochial in adjustment and accommodating competing aims and policies. Furthermore, since self-regulatory bodies are composed of disparate subsidiary groups, the legitimate interests of a particular group may be overridden, or the tugging and pulling may result in inaction or impasse'').

[88] *See* 15 U.S.C. 78q–1(b)(3)(C).

stakeholders could use the board to shift costs and risk exposure to others (*e.g.,* owners shifting them to participants), in ways that could undermine the risk mutualizing and mitigating purpose of the clearing agency.[89] The Commission is also mindful that ultimately, owners (as holders of voting interests) are generally in the position of electing directors (subject to any restrictions on ownership, classes of shares, *etc.*), meaning that any director who has a material relationship with a participant and who has been nominated as a potential independent director must nonetheless be voted onto the board of directors by the owners; so ultimate approval of a director would remain in the hands of owners, creating an incentive for even a director who is employed by a participant to take into account the views of owners. Nonetheless, the criteria for independent directors under the proposed rules would help ensure that independent directors retain those features that distinguish their interests from those of other directors because, for example, an independent director cannot have an employment relationship with or otherwise receive compensation (other than as a director) from the registered clearing agency or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency. In addition, although independent directors may be elected, in part, by owners, the views of owners would not be the only stakeholders' views that independent directors would consider.

Given the above dynamics between owners and participants, the Commission believes that registered clearing agency processes involving risk management or director nominations are also implicated in managing the dynamics between owners and participants. Therefore, the relationships affecting the independence of a director in the context of a registered clearing agency also include those between the director and the registered clearing agency itself or its affiliates.[90] The ability of a registered clearing agency to help ensure effective risk management and loss allocation in the event of a default or non-default loss is linked to the interests of the owners of the clearing agency, who may also have financial relationships with the participants (or be the participants) of such registered clearing agency.[91] For example, The Options Clearing Corporation (''OCC'') is owned by certain options exchanges, whose customers may also be participants of OCC.[92] Similarly, participants in the registered clearing agencies that are subsidiaries of The Depository Trust & Clearing Corporation (''DTCC'') are required to purchase common shares of DTCC as part of periodic efforts to keep ownership proportionate to such owners' use of clearing agency services.[93] Such provisions that require common shares to be periodically re-allocated to reflect levels of use of the clearing agency services create financial and other relationships between a registered clearing agency, its participants, its affiliates, and its owners. In this sense, registered clearing agencies are not organized in a way that reflects the corporate ownership of the typical publicly traded company, where the shareholder base is a dispersed population that may have coordination problems, and therefore the scope of inquiry cannot end simply at whether a director is independent from management alone.[94] Rather, the owners of a registered clearing agency reflect a few key groups, who may be owners or participants of the clearing agency, and board composition will thus necessarily reflect these different stakeholder groups and their views on risk management.

In the context of a registered clearing agency, the Commission believes that requiring independent directors helps promote the ability of the board to perform its oversight of management function and to support a plurality of viewpoints voiced at the board level. Independent directors would help ensure that, when the interests between owners and participants diverge, the impact of such divergence is more manageable because the board would not be composed entirely of directors who have material relationships either to management (such as under a situation where managers approve compensation or other payments from the registered clearing agency to such director), owners, or participants. Balance between stakeholders with divergent views could help the board to adequately consider the respective needs of all stakeholders, and help promote the integrity of the clearing agency's risk management function. With respect to independent directors serving on the boards of public companies, some studies have questioned whether independent directors succeed in improving shareholder value.[95] For registered clearing agencies, the Commission is proposing a requirement for independent directors for reasons unrelated to improving shareholder value. Rather, registered clearing agencies are subject to an expansive regulatory framework in which they operate as critical and often systemically important financial market utilities.[96] They are subject to requirements under the Exchange Act to facilitate prompt and accurate clearance and settlement, promote the public interest,[97] and help ensure the fair representation of owners and participants (regardless of whether these owners and participants are the controlling owner or the clearing agency's largest participant). As long as a majority of directors are not solely motivated by the needs of one category of stakeholders, this structure can help ensure that the board addresses the full

[89] *See, e.g.,* PFMI, *supra* note 4, at 11 (''FMIs and their participants do not necessarily bear all the risks and costs associated with their payment, clearing, settlement, and recording activities. Moreover, the institutional structure of an FMI may not provide strong incentives or mechanisms for safe and efficient design and operation, fair and open access, or the protection of participant and customer assets. In addition, participants may not consider the full impact of their actions on other participants, such as the potential costs of delaying payments or settlements.'').

[90] Affiliate is proposed to mean a person that directly or indirectly controls, is controlled by, or is under common control with the registered clearing agency. A director would, of course, have a relationship with the clearing agency that arises from service as a director, and the accompanying duties to the company such as the fiduciary duties of the duty of care or the duty of loyalty. These relationships and duties, however, do not create a potential conflict of interest that might impair the independent judgment of the director.

[91] In Part III.A.2.f) below, the Commission discusses how participant-owners may have interests that are well-aligned with the risk management function of the clearing agency, supporting a lower threshold of independent directors when a majority of owners are participant-owners.

[92] *See* OCC, Annual Report (2019), *https://annualreport.theocc.com/About-OCC.*

[93] *See* DTCC, NSCC Important Notice No. A8986 (Apr. 5, 2021) (regarding the period common stock reallocation process), *https://www.dtcc.com/-/media/Files/pdf/2021/4/5/A8986.pdf.*

[94] *See, e.g.,* Donald C. Clarke, Three Concepts of the Independent Director, 32 Del. J. Corp. L. 73 (2007), *https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1045&context=faculty_publications.*

[95] *See, e.g., id.* at 75–77.

[96] *See, e.g.,* 12 U.S.C. 5461; *see also* Board of Governors of the Federal Reserve System, Designated Financial Market Utilities, *https://www.federalreserve.gov/paymentsystems/designated_fmu_about.htm* (providing the list of designated financial market utilities, including five SEC-regulated registered clearing agencies).

[97] *See* 15 U.S.C. 78q–1(b)(3)(C). *See also* Clarke, *supra* note 94, at 82–83 (noting that although there are situations where an independent director may not make an appreciable difference in outcomes, that provided there is a mechanism for accountability, ''[a] director serving the 'public interest' should arguably be independent of *everyone* [such that a director is able to] . . . follow only the dictates of her conscience'').

set of owners and participants, even smaller participants,[98] in fulfilling these statutory objectives. In this way, a requirement for independent directors is well-suited to help promote more effective governance of a registered clearing agency and meet the purposes of the Exchange Act.[99]

(c) Definition of ''Material Relationship''

To be an independent director consistent with the proposed rules, a director must have no material relationships with a registered clearing agency or its affiliate. As defined in proposed Rule 17Ad–25(a), which was carried forward from the Commission's previous proposal in Regulation MC,[100] a ''material relationship'' means a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director. The scope covers relationships during a lookback period of one year counting back from making the initial determination in proposed Rule 17Ad–25(b)(2). The proposed definition is identical to the definition proposed in Regulation MC, except for the addition of a one-year look back period, which is intended to address recently terminated business or personal relationships to prevent evasion of the purposes of this provision, as discussed further below. The Commission is retaining its prior proposed definition of material relationship because the definition of material relationship is not impacted by the type of security cleared (*i.e.,* expanding this proposal to cover all registered clearing agencies rather than security-based swap clearing agencies does not alter the rationale provided under the Regulation MC). Establishing a materiality and reasonableness threshold for such relationships provides a registered clearing agency with discretion to apply this requirement across a range of fact patterns while ensuring that they ultimately facilitate the fair representation of owners and participants.

The proposed rule includes relationships both compensatory and otherwise to help ensure that the evaluation of a director's independence is thorough. Such scope of relationships would include not only pecuniary transactions but other types of quid pro quo arrangements, biases, or obligations between persons. Under the Commission's proposed rule, however, such non-compensatory relationships must reach the level of materiality to affect a director's status as an independent director. In addition, the proposed rule would carve out any past relationships that have terminated at least one year prior because the Commission believes such past relationships are unlikely to have a material effect on a director's future decision-making. The proposed definition includes a lookback period, which is meant to cover recently terminated relationships as a method to avoid circumvention of the proposed independent director requirements. As discussed below, the Commission has experience with a one-year lookback period applied to employment relationships between auditors and former audit clients, and the Commission believes that the same objectives underpinning that lookback period would apply here.[101]

Finally, the definition would require consideration of material relationships between a director and any affiliate that directly or indirectly controls, is controlled by, or is under common control with the registered clearing agency. The purpose of this provision is to address potential conflicts of interest that would arise when a director is serving in a management or director role for an affiliate, such as a parent company, of the registered clearing agency,[102] or when a director has a material level of investment in a registered clearing agency or its affiliate. The Commission is not including a bright-line test as to what is a material level of investment because such an investment could be either material to the director, such as a financial investment that is a material percentage of an individual's wealth, or material to the registered clearing agency or its affiliate, such as a material percentage of ownership of a company. For example, if a director held ownership in an affiliated company of a registered clearing agency, this investor relationship should be evaluated for materiality and whether it could affect the independent judgment or decision-making of the director, even if such investment did not amount to such director being a controlling shareholder of such affiliate (which is specifically prohibited for independent directors under proposed rule 17Ad–25(f)(4), as discussed further below). If such relationships were not considered, then a director who serves on the management of the parent company and therefore indirectly manages the registered clearing agency itself through the holding structure could nonetheless be considered independent. The proposed definition would help mitigate evasion of the spirit of the independent director requirement through the use of multi-tier holding company structures that place management responsibility at multiple levels of the organizational structure. If the functional role of managing a clearing agency was housed in a parent company, thereby allowing a manager to claim to be an independent director by virtue of not being an employee of the registered clearing agency itself but instead of the parent company, then the Commission's intent in this proposed rule could be easily circumvented.

(d) Process for Assessing Relationships

Proposed Rule 17Ad–25(b)(2) establishes a process by which a registered clearing agency must identify, evaluate, and document its determinations regarding director independence. These requirements have been included in the rule because achieving director independence necessarily requires an assessment of a director's relationships. The provisions of Rule 17Ad–25(b)(2) include requirements to establish a process to identify and evaluate any such relationships and to document that process to help ensure that a registered clearing agency has considered a wide range of potential relationships, and applied its analysis transparently and consistently over time.

The proposed rule also requires a registered clearing agency to affirmatively determine that no material relationships exist, broadly considering

[98] *See id.* at 80 (stating that non-management directors are viewed as potentially protecting small shareholders from big shareholders).

[99] *See infra* Part IV.C.1 (discussing proposed Rules 17Ad–25(b), (e), and (f)).

[100] *See* Regulation MC Proposing Release, *supra* note 1, at 65897.

[101] *See generally* Sarbanes-Oxley Act of 2002, Public Law 107–204, sec. 206, 116 Stat. 745, 774 (2002) (''SOX'').

[102] The potential implications of a director of a registered clearing agency having a material relationship with an affiliated company have been discussed in the context of European Union-based CCPs under the 2012 Regulatory Technical Standards (''RTS''), adopted by the European Commission as part of the European Market Infrastructure Regulation (''EMIR''). Chapter III, Article 3 of the RTS states, ''[a] CCP that is part of a group shall take into account any implications of the group for its own governance arrangements including whether it has the necessary level of independence to meet its regulatory obligations as a distinct legal person and whether its independence could be compromised by the group structure or by any board member also being a member of the board of other entities of the same group. In particular, such a CCP shall consider specific procedures for preventing and managing conflicts of interest including with respect to outsourcing arrangements.'' *See* Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, 2013 O.J. (L 52), at art. 3(4), *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0153&from=EN.*

all the relevant facts and circumstances. The Commission believes that establishing a process helps ensure more effective identification and evaluation of any material relationships. The Commission also believes that affirmatively determining that a director is independent helps promote a thorough review of the director's relationships and helps promote confidence in the governance arrangements of the clearing agency because each such director's independence status will have been evaluated by the registered clearing agency. The Commission has not specified in the rule the particular sources of information to be reviewed or the particular approach to inquiring about relationships because the facts and circumstances of each director or candidate's relationships are likely to differ. The Commission is not specifying a checklist of sources to consult and searches to perform, in order to avoid inadvertently leaving off such checklist a source that cannot be foreseen.

(e) Excluded Relationships

The process set forth under Rule 17Ad–25(b)(2) would also require analysis of certain circumstances pursuant to which a director would be precluded from being an independent director, regardless of any determinations otherwise made pursuant to Rule 17Ad–25(b)(2). These scenarios are intended to address cases where, in the Commission's view, the circumstances clearly prevent a director from exercising independent judgment or decision-making.

Currently, owners of registered clearing agencies are predominantly non-natural persons such as participants, exchanges, or a parent company. The Commission does not expect that a natural person serving as a director would typically be a controlling shareholder of such registered clearing agency, although there may be future registered clearing agencies with this organizational structure. However, due to the fact that directors are natural persons, but owners of registered clearing agencies currently tend to be non-natural persons, many of the circumstances described below seek to address the connection between the natural person director and the non-natural person owner.

Proposed Rule 17Ad–25(f)(1) limits the ability for a registered clearing agency to undercut the authority of independent directors, such as through provisions established by a registered clearing agency in the bylaws or other organizational documents. For example, if one director who happened to be associated with management was authorized to remove independent directors him or herself, rather than through the normal channels of removing a director via a majority vote of the shareholders, then any independent directors might be beholden to such director. Likewise, if some directors—such as those with relationships to management—could conduct closed meetings that exclude independent directors to discuss matters before the board, the ability of independent directors to perform their duties could be undercut. This provision would not limit the ability of a registered clearing agency to manage or mitigate conflicts of interests among its directors, such as by implementing through policies and procedures a requirement that conflicted directors recuse themselves from a matter pursuant to a conflicts of interest policy, if such recusal would be necessary for that director to operate more effectively. Rather, the provision addresses whether independent directors would be limited, restricted, or chilled in expressing their views because they were subject to removal by a management director or denied information relevant to the decision-making process.

Proposed Rules 17Ad–25(f)(2) through (5) identify circumstances where a director is precluded from being an independent director because the director has an employment relationship or has received a payment from the clearing agency, its affiliates, or its holders of controlling voting interests, either directly or through indirect channels. Several of the provisions reference a family member, which the Commission is proposing to define broadly, to include natural persons who are related by blood, marriage, or household, including living antecedents and descendants, as well an non-natural persons (trusts and other legal entities) that are controlled by such natural persons. The Commission is intending for the prohibition to be comprehensive as to the relationship in order to cover potentially meaningful relationships. Although the list includes non-natural persons controlled by an extensive list of natural persons, a director would not necessarily need to compile a list of trusts or companies controlled by various in-laws and relatives. Instead, if the director compiled the list of natural persons referenced in the definition, a registered clearing agency could determine whether those persons (or legal entities under their control) were doing business with the registered clearing agency, any of its affiliates, the holder of a controlling voting interest of the registered clearing agency, the outside auditor, or an entity where an executive officer of the registered clearing agency serves on such entity's compensation committee, in a manner that would exclude a person from being considered an independent director under proposed Rule 17Ad–25(f), as described below. A registered clearing agency is likely already determining who it is conducting business with as part of evaluating whether to enter into contracts with those companies.

Proposed Rule 17Ad–25(f)(2) precludes a director from being an independent director when the director is also an employee of the registered clearing agency or its affiliates, a requirement intended to reflect the traditional concept of director independence from management, discussed above. Proposed Rule 17Ad–25(f)(3) and (4) preclude a director from being an independent director when receiving certain types of payments, such as in a scenario where the director is a partner or a controlling shareholder of a consulting firm that contracts with the registered clearing agency, or where the director's spouse is a partner or controlling shareholder of a service provider that is hired by the registered clearing agency. These proposed rules address circumstances where payments would create a conflict of interest and undermine the ability of the director to maintain independent judgment. The proposed rules would carve out certain types of payments, such as payments from pensions or deferred compensation for prior services. The Commission believes that such payments are generally made in response to past, rather than future, activity and therefore do not have the potential to create conflicts of interest by affecting future decision-making by the director.

The list of payments for property or services in proposed Rule 17Ad–25(f)(4) scopes in participant clearing fees as well. The Commission is restricting the ability of a director to be independent if he or she is a partner or controlling shareholder of a participant because he or she could directly profit from reducing the size of the clearing fees even if that impairs the quality of the risk management of the clearing agency.

Proposed Rule 17Ad–25(f)(5) would preclude independence if a director, or a family member, is employed the as an executive officer of another entity where any executive officers of the registered clearing agency serve on that entity's compensation committee. The intent of this provision would prevent circular arrangements whereby compensation

could be elevated among a chain of interested persons.

Proposed Rule 17Ad–25(f)(6) would preclude a director from being an independent director when the director is a partner of an outside auditor or is an employee working on an audit of the registered clearing agency. As above, these limitations are designed to reduce the potential for conflicts of interest that would impair an independent director's independent judgment.

Finally, proposed Rule 17Ad–25(f) would subject paragraphs (f)(2)–(6) to a one-year lookback period, which is intended to capture conflicts of interest that may arise from relationships that have recently terminated (such as departure from a job). As with the lookback period in the ''material relationship'' definition, the purpose of this lookback period is the same for all provisions, as well as in the material relationship definition, which is to cover relationships that have recently terminated, while not reaching back so far in time as to impede the registered clearing agency's ability to select from a large pool of skilled and experienced candidates for independent director. The Commission believes that a one-year lookback period is consistent with similar requirements in other statutes and Commission rules.[103]

(f) Majority of Independent Directors

In assessing the appropriate quantum of independent directors to be required under the proposed rule, the Commission has considered the potential impact of divergent interests between owners and participants, or the potential in which the interests of owners and participants might diverge. The Commission believes that requiring a majority of independent directors is most likely to result in the board acting from a position where the interests of all the stakeholders of the clearing agency are considered, rather than the interests of a particular subset of owners or participants. Having a majority of independent directors reduces the potential misalignment of interests among directors and management, and among owners and participants, helping to ensure that a majority of directors are unattached to these dynamics. In other words, an unattached or ''disinterested'' majority helps promote consideration of the risk management purposes of the clearing agency, and helps decrease the likelihood that other interests that may arise from a potential conflict of interest are the determinative factor in board decisions. If a majority of directors are non-independent directors, then a majority of directors influenced by potential or perceived conflicts of interest could sway the outcome of board decisions.

The Commission recognizes, however, that the interests of an owner and a participant can overlap in some cases, such as when a participant also owns a portion of its equity. For example, the Exchange Act provides that the Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.[104] The opportunity for a participant to become such an owner of a clearing agency is one method to mitigate the potential for conflicts of interest among these two groups, by more closely aligning the interests of a participant with those of a voting interest holder (*i.e.,* owner).

In this structure, owners and participants would be one and the same, and the dynamic where diverging interests between owners and participants undermine the risk management function of the clearing agency is less likely because participant-owners would necessarily internalize and synthesize the divergent interests resulting from ownership and participation. In other words, participant-owners are less likely to use their equity share to shift the burdens of risk management to the participants of the clearing agency because they are themselves participants. When a majority of voting shares are held by participant-owners, the Commission believes that the interests of the board will be more closely aligned with ensuring more effective risk management. In this circumstance, the Commission believes it is appropriate to reduce the number of independent directors required under the rule to promote the selection of directors by participant-owners because directors voted by a majority of persons intended to represent the clearing agency's participant-owners would mitigate against the possibility of a divergence of interests. Accordingly, the Commission is proposing a lower requirement for independent directors of at least 34 percent of directors when the registered clearing agency has a majority of its voting interests directly or indirectly held by participants; indirectly held by participants refers to participant ownership of a parent company. For example, if a registered clearing agency is wholly-owned by a holding company, and the holding company is majority owned by the participants of the registered clearing agency, then a 34 percent threshold would apply. Alternatively, if a registered clearing agency was 51 percent owned by a holding company, and that holding company was 100 percent owned by the participants of the registered clearing agency, then that would also amount to a majority ownerships of participants, which would cause the 34 percent independent director provision to apply. The Commission proposes to require 34 percent, or greater than one-third of directors, to encourage a significant portion of directors to meet the independence requirement but to provide a comparatively higher level of discretion to the clearing agency to select non-independent directors. A requirement for greater than one-third independent directors would align with the requirement for independence in other jurisdictions for clearing agencies.[105] In addition, if 34 percent of directors are independent directors, and participants and owners of the registered clearing agency are predominantly the same entity (*i.e.,* participant-owners), then it remains less likely that any one of the three distinct groups seeking to influence the registered clearing agency—owners, management, and participants—will establish an outsized influence over the remaining non-independent directors.

Finally, the proposed rule defines the 34 percent requirement using the term ''holders of voting interests'' rather than simply ''owners'' so that the lower threshold only applies when participant-owners are entitled to vote to elect a director, irrespective of whether someone is otherwise entitled to the financial attributes of such ownership. The Commission is not using the term owner as the equivalent concept of holder of a voting interest, because the financial attributes of a security can be separated from the voting rights of a security. The Commission is focused on who has the ability to influence who is voted onto the board—which accompanies voting rights, not financial attributes—as the relevant factor in deciding whether

[103] *See* SOX, *supra* note 101.

[104] *See* 15 U.S.C. 78q–1(b)(3)(C).

[105] *See* EMIR at art. 27(2), *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN* (stating that ''[a] CCP shall have a board. At least one third, but no less than two, of the members of that board shall be independent''); *see also id.* at art. 2(28) (defining independent member of the board to mean a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board).

participants can enjoy that benefit of ownership as participant-owners.

(g) Other Committees of the Board Generally

Proposed Rule 17Ad–25(e) would impose the independent director requirement as applied to the full board of directors under Rule 17Ad–25(b)(1) to any board committee that has the authority to act on behalf of the board. For example, if 34 percent of the board must be composed of independent directors, any committee that is taking action based on a board delegation also should have at least 34 percent of its members be independent directors, unless otherwise required to meet a higher standard under the rules.[106] The purpose of the proposed rule is to prevent a registered clearing agency from circumventing the proposed requirement for independent directors by delegating key decisions of the board to a committee with fewer independent directors than those required of the full board under Rule 17Ad–25(b)(1).

3. Request for Comment

The Commission requests comment on all aspects of proposed Rules 17Ad–25(b), (e), and (f). In particular, the Commission requests comment on the following specific topics:

1. Is requiring that the boards of registered clearing agencies have a majority of independent directors an effective tool for ensuring a transparent and objective governance process that balances the potentially competing or divergent interests of owners and participants? Has the Commission accurately described the benefits of independent directors, as defined in this release, to the board of a registered clearing agency? Why or why not?

2. Are there other ways to define ''independent director'' or ''material relationship'' that would achieve the Commission's goals? If so, what are they? Should the Commission establish a numerical threshold, such as $100,000 annually, for compensatory relationships in order for them to be considered material under this rule? If so, what should that numerical threshold be? Please be specific. Should the Commission create a list of the types of relationships that should be considered either material or that could affect the independent judgment or decision-making of a director under this rule, and should that list distinguish between compensatory and non-compensatory relationships? Why or why not?

3. Should the Commission define the term ''control'' in the proposed rules? If so, would it be appropriate to adopt a definition similar to the one in 17 CFR 246.2, which states that control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise?

4. What is the appropriate percentage of independent directors on the board of a registered clearing agency? Does the requirement for a majority of directors to be independent directors support the goals discussed in this proposal? Would another threshold be more effective at addressing diverging views among owners, participants, and other relevant stakeholders in the registered clearing agency? For example, would a requirement that one-third of the directors be independent (which has been adopted by European jurisdictions) provide the benefits of independent directors without any of the potential drawbacks? Please explain.

5. Is the application of director independence requirements appropriate for all registered clearing agencies, or should there be distinctions made among registered clearing agencies based on certain factors, such as organizational structure or products cleared? If so, what factors are relevant and why? Would these proposed rules apply to all types of organizational structures in a consistent manner, or would they impede a registered clearing agency from changing its organizational structure into a more innovative or efficient structure?

6. Is a one-year lookback period adequate for purposes of the ''material relationship'' definition and proposed Rules 17Ad–25(f)(2)–(6)? For example, is a one-year time period for the receipt of certain payments by clearing agencies the appropriate length of time to determine that a director is precluded from being considered independent? How will this impact the ability of clearing agencies to recruit experienced persons to serve as directors? More generally, how large is the pool of potential directors that could serve as independent directors, as defined in this release, on the boards of registered clearing agencies? Are there particular elements of the independent director definition that limit the pool of potential independent directors? Should those elements be modified to expand the pool?

7. Is it appropriate to include affiliates of registered clearing agencies as relevant to the consideration of material relationships of independent directors, as well as certain scenarios that preclude independence?

8. Is the scope of the scenario in proposed Rule 17Ad–25(f)(4) overly broad or overly narrow in covering all partners, regardless of relative holdings, and controlling shareholders? Should this provision cover all shareholders, or non–managing partners, instead? Why or why not?

9. The Commission is proposing in Rule 17Ad–25(f)(3) to carve out directors who are serving as directors on other boards from the list of scenarios that explicitly preclude independence. Is this carve-out appropriate in order to permit a director of a registered clearing agency who also serves as a director of another legal entity to qualify as independent (provided all other requirements are met), or should there be some restrictions, such as restrictions on serving as a director of an affiliate, or participant? Why or why not?

10. The Commission requests comment on whether the proposal to require independent directors raises any potential legal issues for those directors or clearing agency governance committee members. Specifically, as a matter of corporate law, would independent directors or committee members be forced to contend with competing duties or obligations to the clearing agency such as under laws of another jurisdiction, including any duties or obligations that would foreclose participation in the board or the committees? If so, how may the goal of receiving independent, diverse opinions be achieved?

11. The Commission requests comment on whether the proposed approach to board composition and board member independence may raise compliance issues with respect to being registered with the Commission and the CFTC or a non-U.S. regulatory authority. If so, what steps should the Commission take to continue to facilitate dually-registered clearing agencies?

12. The Commission requests comment on whether the requirement to undergo a broad consideration of facts and circumstances when determining whether a board member is independent is sufficiently clear. Is there additional guidance needed on what sources could be consulted or what types of relationships could be considered?

13. The Commission is applying the lowered threshold applicable to registered clearing agencies whose voting interests are majority-held by participants, or whose parent company's

[106] For example, to help ensure that evaluations of director nominees made by the nominating committee reflect independent judgment, proposed Rule 17Ad–25(c)(2) would require that the nominating committee be composed of a majority of independent directors in all cases. *See infra* Part III.B.1 (discussing the proposed rule).

voting interests are majority-held by the registered clearing agency's participants. Does this scope strike the right balance between permitting flexibility in ownership structures versus providing the lowered threshold of 34 percent independent directors only when warranted (*i.e.,* when the interests of participants and owners are less likely to diverge when participant-owners are the holders of voting interests)? Why or why not?

14. Should the Commission permit directors who have material relationships with participants (such as being an employee of a participant), other than those relationships that are explicitly precluded in Rule 17Ad–25(f), to meet the definition of independent director, or should these relationships be precluded as well? Should the Commission be more restrictive, as is proposed in paragraph (f)(2), with respect to compensation and payments received from the registered clearing agency or its affiliates, rather than participants? Why or why not?

15. The Commission is soliciting comment on how to view participant clearing fees or other payments from participants that generate revenue for the clearing agency as a potential scenario that precludes director independence. Is it sufficiently clear in the text of proposed Rule 17Ad–22(f)(4) that revenues from participants are covered under the scope of this prohibition? Should the Commission treat revenues from participants differently from other sources of revenues or expenditures? Should the Commission create a carve out for lower levels of revenues in order to promote the opportunity for partners or controlling shareholders of small participants to be able to qualify as an independent director, such as by creating a minimum threshold of payments covered by this provision? Why or why not?

16. The Commission is proposing an extensive list of natural persons who fall within the definition of family member for this rulemaking, along with legal entities under their control. Has the Commission chosen an appropriate scope for the definition of family member, or is the definition unworkable, either because it is overbroad, or because it misses an important category of persons?

17. Should the Commission define ''family member'' to refer to ''spouse or spousal equivalent''? Why or why not? Is adding ''spousal equivalent'' unnecessary because such person would be covered as ''any person (other than a tenant or employee) sharing a household,'' which is already part of the definition? Please explain.

18. The Commission is not specifying particular roles for several aspects of this rulemaking, such as who makes the determination that a director is an independent director. Should the Commission be more prescriptive and specify whose responsibility it is to make such a determination? Why or why not?

B. Nominating Committee

1. Proposed Rule 17Ad–25(c)

Proposed Rule 17Ad–25(c)(1) would require each registered clearing agency to establish a nominating committee and a written evaluation process whereby such nominating committee shall evaluate individual nominees to serve as directors. Proposed Rule 17Ad–25(c)(2) would require that (i) independent directors comprise a majority of the nominating committee, and (ii) an independent director chair the nominating committee. Proposed Rule 17Ad–25(c)(3) would require the nominating committee to specify and document fitness standards approved by the board. Such fitness standards for serving as a director would need to be consistent with all the requirements of proposed Rule 17Ad–25, and also would include that the individual nominee is not subject to any statutory disqualification as defined under Section 3(a)(39) of the Exchange Act.[107] Proposed Rule 17Ad–25(c)(4) would require the nominating committee to document the outcome of the clearing agency's written evaluation process in a manner that is consistent with the nominating committee's written fitness standards required under proposed Rule 17Ad–25(c)(3). The process would require the nominating committee to: (i) take into account each nominee's expertise, availability, and integrity, and demonstrate that the board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives; (ii) demonstrate that the nominating committee has considered whether a particular nominee would complement the other board members, such that, if elected, the board of directors, taken as a whole, would represent the views of the owners and participants, including a selection of directors that reflects the range of different business strategies, models, and sizes across participants, as well as the range of customers and clients the participants serve; (iii) demonstrate that the nominating committee considered the views of other stakeholders who may be impacted by the decisions of the registered clearing agency, including transfer agents, settlement banks, nostro agents, liquidity providers, technology or other service providers; and (iv) identify whether each selected nominee would meet the definition of independent director in proposed Rules 17Ad–25(a) and (f), and whether each selected nominee has a known material relationship with the registered clearing agency or any affiliate thereof, an owner, a participant, or a representative of another type of stakeholder of the registered clearing agency described in (iii) above.

2. Discussion

In Part III.A.2, the Commission discussed the importance of requiring independent directors on the board of a registered clearing agency to help manage the dynamics that exist between owners and participants. To help ensure that the nomination process for the selection of independent directors is thoughtful and transparent, promote the integrity of determinations that a nominee is independent and is qualified to serve, and also promote more effective governance, the Commission is proposing to require a nominating committee that is composed of a majority of independent directors and chaired by an independent director. The Commission is proposing to require that the nominating committee be composed of a majority of independent directors in all cases, even where a clearing agency is majority-owned by participants, to help ensure that the evaluation of director nominees by the nominating committee reflects independent judgment.[108]

(a) Requirement for Nominating Committee

Many registered clearing agencies already have a designated nominating committee.[109] However, these nominating committees may not serve as the exclusive governing body for evaluating director nominees. To create a record that would help to ensure the integrity of the nominating committee's consideration of each potential nominee's qualifications, including

[107] Section 3(a)(39) of the Exchange Act lists the particular events that would subject a person to ''statutory disqualification'' with respect to membership or participation in, or association with a member of, a self-regulatory organization, such as a registered clearing agency. 15 U.S.C. 78q–1(a)(3)(C).

[108] *See supra* note 106 and accompanying text (explaining that, despite the composition requirements for certain board committees under proposed Rule 17Ad–25(e), the lower independence threshold under proposed Rule 17Ad–25(b)(1) will not apply to the nominating committee).

[109] *See infra* Part IV.B.4.a)(2) (discussing the current baseline for the proposed rule).

whether such nominee would qualify as an independent director under proposed Rules 17Ad–25(b), (e), and (f), the Commission believes that requiring the nominating committee to be the exclusive governing body for evaluating director nominees helps ensure that director selections are made consistent with the proposed requirements and without influence from potential conflicts of interest. Some registered clearing agencies currently allow other governing bodies and/or constituents of their organizational structure to select certain directors.[110] While the proposed rule would not prohibit such approaches, it would require that any such nominees be submitted first to the nominating committee for evaluation—before being considered by the board—pursuant to a written evaluation process established by the registered clearing agency. This proposed requirement would help ensure that nominees are evaluated in a manner consistent with the requirements for independent directors and other qualifications to serve.

(b) Role of Independent Directors

Not all registered clearing agencies require that the nominating committee be chaired by an independent director or composed of a majority of independent directors. As discussed above, however, independent directors are well-suited to help manage the divergent interests that exist among management, owners, and participants,[111] and are also best incentivized to help ensure that nominees do not have conflicts of interest that would preclude independent decision-making or otherwise undermine the decisions of the board.[112] Because a majority of independent directors can help provide perspectives broader than owners and participants, constituting the nominating committee with a majority of independent directors would help promote the fair representation of owners and participants in the selection of directors. In addition, independent directors would facilitate a fair evaluation of a nominee's qualifications, including whether such individual would meet the Commission's proposed criteria for being an independent director, as such an evaluation would be conducted by a body that is free from influence in the performance of its duties and whose majority would itself satisfy the proposed criteria for being independent directors. By contrast, when evaluating nominees, directors serving on the nominating committee who are not independent directors may be more likely to favor board candidates whose views align with those persons with whom the director has a material relationship, reducing the likelihood that the nominating committee will consider a set of director nominees that represent the different stakeholders in a clearing agency. Thus, having a nominating committee that is composed of majority independent directors should help to address and facilitate both the selection of independent directors, as well as the selection of a broad range of directors that reflect the different stakeholder groups in a fair and more representative way.

(c) Fitness Standards

Fitness standards for directors help ensure that directors have the necessary qualifications and experience to contribute more effectively to board governance, and most clearing agencies already have documented fitness standards for serving as director. The Commission believes that codifying this practice by requiring documented fitness standards will help ensure that directors are subject to consistent standards, fairly applied over time by the nominating committee and the board. Because the Commission is proposing rules to require independent directors, the Commission also believes requiring documented fitness standards will help ensure that a nominee's qualifications and relationships are reviewed pursuant to a consistent set of standards before the nomination is voted on by the board. In addition, the Commission is establishing that the nominating committee is responsible for maintaining the fitness standards because the composition of the nominating committee, in which a majority of directors must be independent directors, helps ensure that the standards are objective and evenly applied across nominees and over time because they will be maintained by a majority of directors from among the objective and disinterested group of independent directors.

Although many registered clearing agencies already have documented fitness standards for selecting nominees to serve as directors generally, not all registered clearing agencies have an existing requirement to forbid directors who have been subject to a statutory disqualification. Because such individuals have been found in violation of applicable laws or suspended from membership or participation in an SRO, the Commission does not believe such an individual should serve in the capacity of a director, where functionally the individual would be in a position to advise and direct the decisions of a registered clearing agency. The Commission believes that adding such a requirement helps ensure a nominee's fitness to serve on the board.

(d) Selection Criteria for Directors

Based on its supervisory experience, the Commission believes that enhancements to clearing agency governance practices would facilitate the ability of clearing agencies to obtain and address input from a broader array of market participants, especially on risk management issues, to improve resilience. Additionally, based on its supervisory experience, the Commission believes that clearing agencies should consider the views of relevant stakeholders, such as clearing members and clients, in their decision-making, as these groups will ultimately bear the majority of any losses incurred as a result of decisions affecting the clearing agency's risk profile. Further, based on its supervisory experience, the Commission believes that smaller participants and clients of participants should be represented on clearing agency boards and board committees, including the risk management committee, such that their views and perspectives are formally considered in board decisions that may impact them. In the Commission's view, the diverse perspectives and expertise that smaller participants and clients of participants can provide will help inform a clearing agency's operations and thereby improve the resilience of the registered clearing agency. Therefore, the Commission believes that board governance of the risk management function of the clearing agency will be enhanced when it has the benefit of more diverse perspectives on relevant risk management issues from across the range of stakeholders—owners, direct participants, and indirect participants—

[110] For example, OCC currently allows certain participant exchanges to select Exchange Director nominees for election to OCC's board. *See* OCC, By-Laws (rev. Apr. 11, 2022), at 39, *https://www.theocc.com/getmedia/3309eceb-56cf-48fc-b3b3-498669a24572/occ_bylaws.pdf* (''An individual may be nominated by, elected by, and serve as an Exchange Director for more than one Equity Exchange.''); *see also* OCC, Board of Directors Charter and Corporate Governance Principles (rev. Sept. 22, 2021), at 4, 6, *https://www.theocc.com/getmedia/99ed48a4-aa44-45ac-8dee-9399b479a1c8/board_of_directors_charter.pdf* (providing that Public Director and Member Director nominees are selected by OCC's Governance and Nominating Committee, but Exchange Director nominees are instead selected by OCC's Equity Exchanges).

[111] *See supra* Part III.A.2 (discussing independent directors as a governance tool to address such divergent interests).

[112] *See supra* Part III.A.2 (discussing independent directors as a governance tool to address such conflicts).

in a registered clearing agency. Accordingly, proposed Rules 17Ad–25(c)(4)(i), (ii), and (iii) would require that clearing agencies take steps to facilitate diverse perspectives and expertise on the board of directors, as well as greater involvement by these stakeholders.

In the Commission's view, the proposed rules would complement the Exchange Act requirements for fair representation of owners and participants in the clearing agency's selection of directors and the administration of the clearing agency's affairs.[113] Proposed Rule 17Ad–25(c)(4)(ii) would help ensure that, when evaluating director nominees, the nominating committee considers nominees that represent the views of a broad range of participants with different business strategies, models, and sizes—such as smaller participants and clients of participants—for director positions. The Commission believes that it is useful for the nominating committee to also consider nominees who are representatives from participants and their clients for director positions because directors representative of a diverse cross-section of the clearing agency's participants and clients of participants are more likely to identify and understand the disparate impacts of different risks and risk management practices across the full set of participants and their clients.

While proposed Rule 17Ad–25(c)(4)(iii) does not require a registered clearing agency to include other types of stakeholders in the selection of directors, the Commission understands that other stakeholders—including transfer agents, settlement banks, nostro agents, liquidity providers, technology or other service providers—may be impacted by board decisions concerning risk management and other significant operational issues. Therefore, the Commission believes that board governance may benefit in some instances from considering such stakeholders' perspectives in the evaluation process for director nominees. Accordingly, proposed Rule 17Ad–25(c)(4)(iii) would help ensure that the nominating committee considers the views of other stakeholders who may be impacted by the decisions of the clearing agency into the evaluation process for director nominees. In this regard, the Commission believes that proposed Rule 17Ad–25(c)(4)(iii) would facilitate a process that considers the wide variety of perspectives that may have an interest in the risk management purpose of the clearing agency.

Proposed Rule 17Ad–25(c)(4)(iii) would give the nominating committee discretion to determine how to consider the views of other stakeholders, in part based on the markets served by the clearing agency and the relevant interested stakeholders. In the Commission's view, relevant stakeholders generally would include persons and entities that access the national system for clearance and settlement indirectly (*e.g.,* institutional and retail investors), entities that rely on the national system for clearance and settlement to more effectively provide services to investors and market participants, and other market infrastructures.[114] The Commission believes that considering the views of such persons and entities in particular would support the Exchange Act requirements that clearing agencies be able to facilitate prompt and accurate clearance and settlement, protect investors and the public interest, and ensure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the clearing agency is responsible.[115] The Commission understands that the scope of relevant stakeholders who may be impacted by the decisions of the registered clearing agency will vary for each registered clearing agency and could include direct participants, indirect participants, and other stakeholders described in proposed Rule 17Ad–25(c)(4)(iii).

Finally, proposed Rule 17Ad–25(c)(4)(iv) would require the nominating committee's process to identify whether each selected nominee would meet the independent director definition in proposed Rules 17Ad–25(a) and (f), and whether each selected nominee has a known material relationship with the registered clearing agency or any affiliate thereof, an owner, a participant, or a representative of another stakeholder of the registered clearing agency described in proposed Rule 17Ad–25(c)(4)(iii). Such record would help to ensure and verify the integrity and consistency of the nominating committee's process and adherence to the clearing agency's standards for independent directors, consistent with proposed Rules 17Ad–25(b), (e), and (f).

3. Request for Comment

The Commission requests comment on all aspects of proposed Rule 17Ad–25(c). In particular, the Commission requests comment on the following specific topics:

19. Is it appropriate for the Commission to require that the nominating committee be the exclusive venue for evaluating nominees for director to the board of directors? What alternative arrangements or processes might also be appropriate for evaluating director nominees? Should the rules incorporate such arrangements? Why or why not? Please explain.

20. Should the Commission be more prescriptive in requiring that certain types of stakeholders, such as smaller participants and customers, be afforded a right of participation in the board of a clearing agency? Why or why not? If so, which types of stakeholders? Please explain with specific information.

21. Do commenters agree with the Commission's assessment that requiring a majority of independent directors on the nominating committee will improve the quality of nominees? Please explain.

22. Do commenters believe that the proposed rule will help ensure that the nominating committee considers nominees that represent the views of smaller participants and clients of participants? Please explain. Should the Commission consider additional specific composition requirements? Why or why not? If so, what should those requirements be?

23. Has the Commission provided sufficient specificity regarding the scope and content of the evaluation process for director nominees? Please identify and explain other types of criteria, if any, that should be included in the evaluation process for director nominees. Please identify and explain any proposed criteria that should be excluded from the evaluation process for director nominees.

C. Risk Management Committee

1. Proposed Rule 17Ad–25(d)

Proposed Rule 17Ad–25(d)(1) would require each registered clearing agency to establish a risk management committee (or committees) to assist the board of directors in overseeing the risk management of the registered clearing agency. Proposed Rule 17Ad–25(d)(1) would also require each risk management committee to reconstitute its membership on a regular basis and at all times include representatives from the owners and participants of the registered clearing agency. Proposed Rule 17Ad–25(d)(2) would require that a risk management committee, in the

[113] *See* 15 U.S.C. 78q–1(b)(3)(C).

[114] *See* CCA Standards Adopting Release, *supra* note 13, at 70803 (''Other relevant stakeholders currently include, for example, transfer agents, liquidity providers, and other linked market infrastructures, including exchanges, matching service providers, and payment systems.'').

[115] *See supra* Part I and Part II.A; *see also* 15 U.S.C 78q–1(b)(3)(A).

performance of its duties, be able to provide a risk-based, independent, and informed opinion on all matters presented to it for consideration in a manner that supports the safety and efficiency of the registered clearing agency.

2. Discussion

(a) Purpose and Experience of the Risk Management Committee

Covered clearing agencies are subject to the requirements of Rule 17Ad–22(e) under the Exchange Act, while all registered clearing agencies other than covered clearing agencies are subject to the requirements of Rule 17Ad–22(d) under the Exchange Act.[116] Currently, all registered clearing agencies are covered clearing agencies and, as such, they are required to have risk management committees as a part of their governance arrangements under Rule 17Ad–22(e)(3)(iv).[117] While Rule 17Ad–22(e)(3)(iv) requires covered clearing agencies to have a risk management committee, no parallel requirement exists for registered clearing agencies that are subject to Rule 17Ad–22(d). The Commission recognizes that there may be future registered clearing agencies that are not covered clearing agencies and, as a result, would be subject to Rule 17Ad–22(d). The Commission believes that clearing agencies subject to Rule 17Ad–22(d) will also likely face risk management issues related to their activities and, therefore, that any clearing agency subject to Rule 17Ad–22(d) will likely benefit from having a risk management committee. Accordingly, the Commission is proposing Rule 17Ad–25(d) so that clearing agencies subject to Rule 17Ad–22(d) will also be required to have risk management committees as a part of their governance arrangements.[118] Additionally, because the general requirement for a risk management committee under Rule 17Ad–22(e)(3)(iv) does not outline minimum requirements for such committee, proposed Rule 17Ad–25(d) establishes more defined requirements related to the purpose and function of risk management committees. The specific requirements imposed by proposed Rule 17Ad–25(d) will help enhance risk management governance across all registered clearing agencies.

As discussed above, each registered clearing agency is also a covered clearing agency and, therefore, has established some form of risk management committee to consider risk issues generally.[119] Critical to the effective functioning of a clearing agency is the board's ability to understand and engage with the risks that a registered clearing agency faces and the risk management practices it employs to mitigate those risks. The Commission recognizes that while the board has ultimate responsibility over risk management matters, it may assign certain tasks to a board committee to assist the board in discharging its ultimate responsibility.[120] Therefore, the Commission believes that a risk management committee of the board is a more effective way to help ensure that the board is engaged with and informed of the ongoing risk management of the clearing agency, and that a dedicated committee of the board remains focused exclusively on matters related to risk management. The Commission believes that requiring registered clearing agencies to establish a risk management committee of the board would help ensure that the board can more effectively oversee management's decisions concerning matters that implicate the clearing agency's risk management, including its policies, procedures, and tools for mitigating risk.

In addition, for the risk management committee itself to be effective, it must have a clearly defined purpose and obligations to the board. Accordingly, proposed Rule 17Ad–25(d)(2) would require that a risk management committee, in the performance of its duties, be able to provide a risk-based, independent, and informed opinion on all matters presented to it for consideration in a manner that supports the safety and efficiency of the registered clearing agency. The proposed rule is intended to specify the role of the risk management committee by stating the committee's purpose—namely, to provide a risk-based, independent, and informed opinion on all matters presented to it in a way that supports the safety and efficiency of the registered clearing agency. The Commission believes the proposed rule helps ensure that the committee has a clear scope and sufficient direction to more effectively address risk management related matters, regardless of the participants, markets, and products that a clearing agency serves.

First, with respect to its purpose, the risk management committee's opinions must be risk-based, meaning that its opinions are focused on both the risks that the clearing agency faces and the tools at its disposal to mitigate and address such risks. To facilitate such an approach, the proposed rule provides that the risk management committee must be able to provide an opinion that supports the safety and efficiency of the clearing agency itself. As a result, the Commission believes that when the risk management committee makes recommendations to the board, its opinions should reflect how the decisions support the safety and efficiency of the clearing agency. In the Commission's view, the stated objective of supporting the safety and efficiency of the clearing agency helps ensure that the risk management committee's recommendations represent the best interests of the clearing agency. Second, the risk management committee's opinions must be independent. That is, when making recommendations to the board, the risk management committee's decisions or opinions must be its own, mindful of the objective discussed above, and not merely a rubber stamp for the recommendations presented to the committee by management. The Commission believes that, by requiring the risk management committee to provide an independent opinion, irrespective of its composition, the proposed rule helps ensure that the committee is free from influence in the performance of its duties.

Finally, the risk management committee's opinions must be informed. That is, when making recommendations to the board, the risk management committee's opinions should demonstrate that the committee was able to engage thoughtfully and knowledgeably with the matters presented to it. In this regard, for the risk management committee to provide an informed opinion, its members should have a clear understanding of the clearing agency's operations and risk management procedures, including the risks that it faces and its methods of addressing such risks. Accordingly, the Commission believes that, in complying with this proposed requirement, the risk management committee generally should include directors with specific risk management expertise and

[116] *See supra* notes 17–23 and accompanying text (explaining that there are two categories of clearing agencies: covered clearing agencies and all registered clearing agencies other than covered clearing agencies).

[117] *See* 17 CFR 240.17Ad–22(e)(3)(iv); *see also* CCA Standards Adopting Release, *supra* note 13, at 70807–09 (discussing that, under Rule 17Ad–22(e)(3)(iv), a registered clearing agency's risk management framework must provide risk management personnel with a direct reporting line to, and oversight by, a risk management committee of the board of directors).

[118] *See supra* Part III.C.1 (discussing proposed Rule 17Ad–25(d)(1), which requires a risk management committee to assist the board in overseeing the risk management of a registered clearing agency); *infra* Part VIII (providing the proposed rule text).

[119] *See infra* Part IV.B.4.a)(3).

[120] *See* CCP Resilience Guidance, *supra* note 77, at 5.

experience related to the risks that the clearing agency faces.[121] Because the risks a clearing agency faces will vary depending on the products it clears and the markets it serves, the Commission believes that a clearing agency should have discretion to determine the appropriate qualifications and expertise needed for the risk management committee to provide an informed opinion. The Commission also believes that, by requiring the risk management committee to provide an informed opinion, the proposed rule helps ensure that the committee's recommendations are more reliable and effective. In the Commission's view, the risk management committee's ability to provide risk-based, independent, and informed opinions is critical to the proper functioning and effectiveness of the committee.

(b) Representation of Owners and Participants

Commission rules do not currently require a registered clearing agency to include representatives from the clearing agency's owners and participants on the risk management committee. Based on its supervisory experience, the Commission believes that clearing agencies will benefit from the diverse perspectives and expertise that representatives from owners and participants can provide, which enhances the effectiveness of their risk management practices. With this in mind, the Commission is proposing that the risk management committee at all times include representatives from the owners and participants of the registered clearing agency.[122] In the Commission's view, these representatives would be persons who have a relationship with the clearing agency's owners and participants, such as employees of the owners and participants or those who have an ownership interest in the owners and participants. Based on its supervisory experience, the Commission believes that representatives from a clearing agency's owners and participants will likely have an understanding of the clearing agency's operations and procedures, as well as the complex risk management issues that the clearing agency's board must consider. In this regard, requiring the risk management committee to include representatives from the clearing agency's owners and participants helps ensure that the risk management committee's recommendations to the board reflect these stakeholders' unique perspectives and expertise on risk management issues.

Proposed Rule 17Ad–25(d)(1) requires that the risk management committee at all times include multiple representatives from the owners and participants of the registered clearing agency. By requiring the risk management committee to include representatives from the clearing agency's owners and participants, the Commission believes that the committee will likely include representation from a broad range of participants with different business strategies, models, and sizes. The committee generally should include both small and large participants. The Commission recognizes that, other than requiring that multiple representatives from the clearing agency's owners and participants serve on the committee at all times, the proposed rule does not require that a certain percentage or number of such representatives serve on the committee. Accordingly, the Commission believes that the proposed rule provides a registered clearing agency with some discretion to determine the appropriate composition for the risk management committee with respect to representation from its owners and participants. By requiring that the risk management committee include multiple representatives from the owners and participants of the clearing agency, the proposed rule helps ensure a minimum standard for the inclusion of market participants on risk management committees while providing sufficient flexibility to registered clearing agencies given the range of different sizes, business models, and governance structures across clearing agencies.

(c) Requirement To Reconstitute Membership

Many registered clearing agencies have established policies and procedures for governance arrangements that help promote participation from a broader array of owners and participants on the risk management committee through the use of regular reconstitution.[123] The Commission believes that codifying this practice will set a minimum standard for the reconstitution of the risk management committee's membership. Therefore, the Commission is proposing that the risk management committee reconstitute its membership on a regular basis.[124] Requiring the risk management committee to regularly reconstitute its membership helps ensure that a broad range of owners and participants will be able to provide their risk management expertise and participate in the decision-making of the risk management committee over time. In the Commission's view, the proposed reconstitution requirement achieves the above objective of ensuring a broad range of participation on the risk management committee without imposing specific obligations related to owners, participants, or independent directors that may be suitable in some, but not necessarily all, cases.

Because the risk management committee is broadly responsible for providing recommendations to the board on all risk management related matters, it is important that the committee's membership reflects a wide range of owners and participants with relevant experience and expertise on a variety of risk management issues. By requiring the risk management committee to regularly reconstitute its membership, proposed Rule 17Ad–25(d)(1) helps ensure ongoing diversity of perspectives across owners and participants and expertise on the risk management committee. The Commission believes the proposed reconstitution requirement helps ensure that the risk management committee is well-positioned to provide more effective recommendations to the board on all risk management matters. The Commission also believes the proposed reconstitution requirement helps ensure that the committee is able to provide fresh perspectives on risk management matters, which, in turn, helps promote more effective and reliable risk management practices at a registered clearing agency.

The Commission acknowledges that proposed Rule 17Ad–25(d)(1) only requires the risk management committee to reconstitute its membership ''on a regular basis.'' In this regard, the proposed rule provides a registered clearing agency with discretion to

[121] The Commission has previously recognized that, because clearing and settlement is a highly specialized area, specific risk management expertise and experience are needed to serve on the risk management committee and make informed decisions. *See* Regulation MC Proposing Release, *supra* note 1, at 65899, 65921 (discussing the ''highly specialized risk management expertise required of directors serving on [the risk management] committee'').

[122] *See supra* Part III.C.1 (discussing proposed Rule 17Ad–25(d)(1)); *infra* Part VIII (providing the proposed rule text).

[123] *See, e.g.,* ICC, ICE Clear Credit Regulation and Governance Fact Sheet, at 3 (April 2022), *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Regulation_and_Governance.pdf*; OCC, Risk Committee Charter, at 1 (rev. Sept. 22, 2021), *https://www.theocc.com/getmedia/e71a4c1d-52dc-4c95-aeb1-98dab9159f41/risk_committee_charter.pdf.*

[124] *See supra* Part III.C.1 (discussing proposed Rule 17Ad–25(d)(1)); *infra* Part VIII (providing the proposed rule text).

determine the appropriate timing for reconstitution. For example, the charter for a registered clearing agency's risk management committee could establish that the committee will conduct a review of its members on an annual basis, or other specified length of time, to assess whether the committee continues to be an accurate reflection of the clearing agency's owners and participants. The charter could also establish that members of the committee serve for a specified term, or that the committee would rotate or replace directors on the committee at certain intervals absent a specified turnover threshold among directors. Additionally, registered clearing agencies could stagger terms in order to have regular turnover of participants and other members of the risk management committee.

3. Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–25(d). In addition, the Commission requests comments on the following specific issues:

24. The Commission is not proposing to carve out the risk management committee from the director independence requirements under proposed Rule 17Ad–25(e). Should the Commission include such a carve-out for the risk management committee so that a registered clearing agency would not be required to include independent directors on the committee? Why or why not? If not, should there be separate director independence requirements applicable only to the risk management committee that reflect the highly specialized risk management expertise needed to serve on the committee? Why or why not?

25. Is the proposed requirement that the registered clearing agency's risk management committee be a committee of the board a more effective way to structure the risk management committee than requiring that the risk management committee be an external committee, such as a management committee or an advisory committee? Why or why not? If not, should the risk management committee be structured to represent more participants, regardless of whether those participants are represented on a clearing agency's board? Why or why not?

26. The Commission is not specifying whose responsibility it is to determine the matters presented to the risk management committee for consideration. Should the Commission be more prescriptive and specify whose responsibility it is to make such determinations? If so, should the Commission require the risk management committee to designate thresholds or identify the types of risk management related matters that warrant consideration by the committee? Why or why not? Please explain.

27. Is the proposed requirement that the risk management committee include at all times representatives from the registered clearing agency's owners and participants sufficient to help ensure that the directors serving on the committee will have the specific risk management expertise and relevant experience needed to make effective risk management decisions? Why or why not? In requiring that the risk management committee include such representatives at all times, should the Commission require that a specific percentage or number of representatives from the clearing agency's owners and participants serve on the risk management committee? Why or why not? If so, what percentage or number? Please explain with specific information.

28. Should the Commission require the risk management committee to include at all times a specific percentage or number of representatives from small participants of the clearing agency in addition to representatives from the owners and participants more generally, as proposed? Why or why not? If so, what percentage or number? Please explain with specific information.

29. The Commission is not specifying whose responsibility it is to determine the appropriate qualifications and expertise needed for a director to serve on the risk management committee. Should the Commission be more prescriptive and specify whose responsibility it is to make this determination, such as the nominating committee, or should this determination remain up to the discretion of the registered clearing agency? Why or why not? Please explain.

30. The Commission requests comment on whether the requirement that a risk management committee ''reconstitute'' its membership on a regular basis is sufficiently clear. Is there additional guidance needed on what ''reconstitute'' means? Is it sufficiently clear that the term ''reconstitute'' refers to the membership of the risk management committee and not to the form of the committee? Why or why not? Should the Commission instead require that the membership be ''rotated''?[125] Please explain.

31. Has the Commission provided a sufficient explanation for what constitutes ''on a regular basis'' with respect to how often a risk management committee is required to reconstitute its membership? Why or why not? Would a more specific reconstitution requirement be appropriate? For example, should this requirement specify a frequency for the risk management committee's reconstitution (*e.g.,* annually)? Why or why not? If so, please explain what the appropriate frequency should be.

D. Conflicts of Interest

1. Proposed Rules 17Ad–25(g) and (h)

Proposed Rule 17Ad–25(g) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify and document existing or potential conflicts of interest in the decision-making process of the clearing agency involving directors or senior managers of the registered clearing agency; and mitigate or eliminate and document the mitigation or elimination of such conflicts of interest. Additionally, proposed Rule 17Ad–25(h) would require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.

2. Discussion

At the time of the 2016 CCA Standards Adopting Release, the Commission declined to incorporate more prescriptive governance elements into the rule as urged by commenters, including specific requirements on conflicts of interest,[126] based on the premise that the requirements in Section 17A of the Exchange Act relating to fair representation and the public interest provided sufficient

[125] The CFTC's proposal would require a risk management committee to ''rotate'' its membership on a regular basis. *See supra* note 52 and accompanying text.

[126] *See* CCA Standards Adopting Release, *supra* note 13, at 70804 (stating that ''[o]ne commenter stated that proposed Rule 17Ad–22(e)(2) does not require covered clearing agencies to resolve conflicts of interests among board members and management and urged the Commission explicitly to require covered clearing agencies to document and maintain policies and procedures governing the resolution of conflicts of interests that may impact certain decisions by the board of directors. The Commission notes . . . that the commenter's concern is addressed by Section 17A(b)(3)(F) of the Exchange Act, which requires that the rules of a clearing agency be designed, in general, to protect investors and the public interest'').

grounds to hold covered clearing agencies accountable to these concerns.[127] At the time, the Commission also observed that as a general matter, the market for clearing agency services demonstrates evidence of a significant volume of activity being concentrated in a small number of large financial institutions.[128] The concentration of clearing and settlement services within a handful of entities continues, suggesting that additional interventions may be appropriate.[129] The Commission is concerned that this characteristic could impede the continued development of open, transparent, and competitive markets and, therefore, believes it is appropriate to propose requirements on registered clearing agencies on mitigating or eliminating conflicts of interest so that such conflicts do not undermine the integrity of decisions made in the governance of the clearing agency. The proposed rules are intended to address concerns that the institutions that currently dominate the securities markets would have conflicts of interest that influence their participation in the development of centralized trading and clearance and settlement systems for securities. As they relate to clearing agencies that clear security-based swaps, the proposed rules would also advance the policy objectives set forth in Section 765 by establishing new requirements for policies and procedures that require such clearing agencies to identify, mitigate or eliminate, and document the identification and mitigation or elimination of conflicts of interest.

With the above in mind, requirements on registered clearing agencies to address conflicts of interest would strengthen the integrity of a registered clearing agency's governance arrangements, including those regarding director independence, the fitness standards applied and nominations made by the nominating committee, and the independent opinions and recommendations made by the risk management committee previously discussed. Proposed Rules 17Ad–25(g) and (h) help promote the integrity of these governance arrangements by helping ensure that a registered clearing agency is capable of both identifying potential conflicts when they arise and subjecting conflicts to a transparent and uniform process of review, mitigation or elimination, and documentation. Specifically, the proposed rules would help ensure that potential conflicts of interest are identified and documented, that policies and procedures for their management have been established ex ante to help ensure a consistent approach over time, and that cases are subject to established processes for review and mitigation or elimination. In some cases, for example, a conflicts of interest policy may simply require that a director or senior manager recuse herself from a particular decision to mitigate or eliminate the conflict of interest. At the same time, the Commission believes that disclosure, while an effective tool for the clearing agency to identify and recognize a conflict of interest, is insufficient by itself to reduce the potential harm a conflict of interest may have on the clearing agency. Instead, the Commission believes that as the clearing agency is best positioned to identify and address conflicts of interest that may arise in its operations and risk management and decision-making, the clearing agency is best positioned through reasonable policies and procedures to mitigate—namely, reduce—or eliminate these conflicts of interest so that such conflicts do not undermine the integrity of decisions made in the governance of the clearing agency. In addition, the policies and procedures approach helps ensure the documentation of conflicts of interest and their mitigation or elimination, helping the Commission to assess and compare the types of conflicts that arise across clearing agencies to help promote more effective oversight and regulation of clearing agencies.

In the absence of policies and procedures to address conflicts of interest, directors and senior managers of a registered clearing agency could undermine the purpose of requiring independent directors and centralizing the nominating process for new directors in a nominating committee composed of a majority of independent directors. More broadly, the proposed rules help to ensure that when directors and senior managers develop relationships that create potential conflicts of interest, the clearing agency has a process to manage those relationships to mitigate or eliminate conflicts so that they do not undermine the integrity of decisions made in the governance of the clearing agency.

(a) Potential Conflicts

Under proposed Rule 17Ad–25(g), the registered clearing agency must be able to identify and document both existing and potential conflicts of interest involving directors or senior managers of the registered clearing agency. The rule is intended to address the conflicts of interests of directors and senior managers that could undermine the decision-making process within a registered clearing agency or interfere with fair representation and equitable treatment of clearing members or other market participants by a registered clearing agency. Being able to identify potential conflicts of interest is critical to ensuring the effective identification and management of actual conflicts of interest. In other words, a clearing agency must be able to spot close cases, where another director, manager, employee, or observer might perceive a conflict of interest, in order to more effectively manage actual conflicts and help ensure the integrity of decisions made in the governance of the clearing agency.

As previously discussed in Part II.A, it is important for the registered clearing agency to consider the differing incentives and interests of individual directors, once they are on the board, when they are governing the registered clearing agency. The board as a whole is ultimately responsible for overseeing the clearing agency's compliance with the regulatory obligations under the Dodd-Frank Act and the Exchange Act, including the open and fair access requirements.[130] Yet, depending on their affiliation with owners, large participants, small participants, or indirect participants, individual directors may be subject to different perspectives and motivations when fulfilling these duties and roles. Like participants themselves, direct participant directors may on balance be more likely to favor reducing or minimizing the risk exposure of the clearing agency, potentially at the expense of more open access; in contrast, indirect participant directors may be inclined to favor expanded access to products and services, which may increase the amount of risk that the clearing agency must successfully manage.[131]

The Commission believes that because interests and incentives may vary among directors and over time for

[127] *See* 15 U.S.C. 78q–1(b)(3)(C).

[128] *See* CCA Standards Adopting Release, *supra* note 13, at 70793 (stating that ''the Commission has considered the level of concentration in the provision of clearing agency services'' and acknowledging concerns ''that at present the clearance and settlement industry, like much of the financial sector, can be described as highly concentrated, and . . . that it is paramount . . . [to] promote the proliferation of viable new clearing agencies, given that existing clearing agencies typically serve as intermediaries for trillions of dollars in trading volumes'').

[129] *See* Staff Report on Clearing Agencies, *supra* note 27, at 21.

[130] *See* Regulation MC Proposing Release, *supra* note 1, at 65888.

[131] *See id.*

a range of reasons, it is not possible to predict how any individual director will address particular matters. For this reason, the approach taken in proposed Rule 17Ad–25(g)—as well as proposed Rule 17Ad–25(h)—is intended to achieve an appropriate balance among these various considerations by taking a principles-based approach to addressing conflicts of interest. While the proposed rule provides the registered clearing agency with a certain level of discretion to address specific facts and circumstances it faces in light of its governance structure, the product it clears, and the market it serves, it is designed to complement other applicable, more prescriptive requirements in this proposal, which the registered clearing agency may also separately apply where relevant. Additionally, the proposed rule is intended to limit the clearing agency's discretion through more prescriptive procedural requirements the clearing agency must undertake to establish, implement, maintain, and enforce written policies and procedures reasonably designed to document the identification, mitigation or elimination of conflicts of interest under proposed Rule 17Ad–25(g).

(b) Obligation of Directors To Report

Because a registered clearing agency may not have access to information necessary to identify a potential conflict of interest, proposed Rule 17Ad–25(h) would also require a registered clearing agency to have policies and procedures that require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director. The proposed rule takes elements from the ''material relationship'' definition, which was carried forward from the Commission's previous proposal in Regulation MC,[132] without incorporating the definition into the proposed rule itself. Specifically, the Commission is requiring policies and procedures that focus on any relationship or interest that reasonably could affect the independent judgment or decision-making of the director, rather than material relationships or interests, so that the registered clearing agency—not the party with a reporting obligation—can determine whether a relationship or interest is subject to mitigation or elimination under the conflicts of interest policy. This approach helps ensure that the registered clearing agency has sufficient information to investigate, identify and address potential conflicts.

(c) Policies and Procedures Approach

Because organizational structures vary across clearing agencies, as do the products, markets, and market participants served by the clearing agency, the Commission has taken a policies and procedures approach in the proposed rule to manage conflicts. This provides registered clearing agencies with discretion to design policies that fit their particular structure and circumstances, and help ensure that policies and procedures remain effective over time as circumstances change. While the Commission has identified some specific circumstances in proposed Rules 17Ad–25(f) that preclude a director from being an independent director because they present a clear conflict of interest, as a general matter the Commission believes that a clearing agency should have discretion to assess conflicts and determine how to mitigate or eliminate them.

3. Request for Comment

The Commission generally requests comments on all aspects of proposed Rules 17Ad–25(g) and (h). In addition, the Commission requests comments on the following specific issues:

32. Are proposed Rules 17Ad–25(g) and (h) sufficient to have registered clearing agencies address conflicts of interest within their governance arrangements? Why or why not? Please provide specific examples to illustrate your points, if possible.

33. Do commenters agree with the potential conflict concerns that the Commission has identified? What effect would the identified conflicts of interest likely have? Should the Commission focus on any of these conflicts more than others? Are there other existing conflicts concerns that commenters believe warrant scrutiny? If so, what are they and how are they likely to affect registered clearing agencies? Which conflicts of interest could potentially cause the greatest harm to a registered clearing agency? Please explain.

34. What potential new conflicts of interest could arise that the Commission should consider? What other parties may have conflicts of interest that would affect whether they should control or participate in the governance of a registered clearing agency? In what circumstances do these conflicts of interest arise?

35. Are there any additional requirements and/or guidance that the Commission could provide to help registered clearing agencies evaluate the relationships of their directors and senior managers to identify potential sources of conflicts? Please explain with specifics in terms of processes that would help identify both existing and potential conflicts of interest involving directors or senior managers of the registered clearing agency.

36. In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director, does proposed Rule 17Ad–25(h) provide sufficient requirements to have directors document and inform the registered clearing agency promptly of potential conflicts of interest? Why or why not?

37. Is the ''reasonably could affect'' standard proposed in Rule 17Ad–25(h) sufficient? Why or why not?

E. Board Obligation To Oversee Service Providers for Critical Services

1. Proposed Rule 17Ad–25(i)

Proposed Rule 17Ad–25(a) would define the term ''service provider for critical services'' to mean any person that is contractually obligated to the registered clearing agency for the purpose of supporting clearance and settlement functionality or any other purposes material to the business of the registered clearing agency.[133] Proposed Rule 17Ad–25(i)(1) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to confirm and document that risks

[132] *See id.* at 65896–97.

[133] The proposed rule would not apply to utility companies, such as a power company providing general power services for the registered clearing agency, although general power services are necessary to allow a registered clearing agency to function and operate, as a general matter. The Commission believes that such services neither support the core clearance and settlement functionality of the registered clearing agency nor are material to the clearing agency's business, in that the power company does not perform the core clearance and settlement functionality or material clearing agency business functions itself. At the same time, the registered clearing agency should be aware of how issues relating to such services may impact its obligations under the Exchange Act. This is consistent with Commission staff's views. *See, e.g.,* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Regulation SCI (rev. Aug. 21, 2019), *https://www.sec.gov/divisions/marketreg/regulation-sci-faq.shtml* (stating that ''an issue at a power utility may interrupt the electric power supplied to an SCI entity's SCI systems. Even if the outage at the power utility's system would not itself be an SCI event, there is a significant likelihood that an SCI entity would nonetheless experience an SCI event following such an outage'').

related to critical service provider relationships are managed in a manner consistent with the registered clearing agency's risk management framework, and to review senior management's monitoring of relationships with service providers for critical services. Proposed Rule 17Ad–25(i)(2) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to approve policies and procedures that govern the relationship with service providers for critical services. Proposed Rule 17Ad–25(i)(3) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to review and approve plans for entering into third-party relationships where the engagement entails being a service provider for critical services to the registered clearing agency. Proposed Rule 17Ad–25(i)(4) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to, through regular reporting to the board by senior management, confirm that senior management takes appropriate actions to remedy significant deterioration in performance or address changing risks or material issues identified through ongoing monitoring.

2. Discussion

Under existing requirements, the Commission requires registered clearing agencies to manage operational risk, which can include risks associated with relationships with service providers for critical services. Rule 17Ad–22(d)(4) under the Exchange Act requires a registered clearing agency that is not a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.[134] Rule 17Ad–22(e)(17) under the Exchange Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[135] Additionally, under Regulation SCI, the Commission requires registered clearing agencies as SCI entities to conduct risk assessments of SCI systems at least once per year and report the findings to senior management and the board of directors.[136]

Based on its supervisory experience, the Commission has observed that clearing agencies have used service providers to help ensure the prompt and accurate clearance and settlement of securities transactions, and that in some cases, service providers are affiliates or a parent company within the same holding company structure as the registered clearing agency itself. Service providers may also be third party entities, such as technology providers, data providers, or providers of other services. Because of the range of relationships and needs of a registered clearing agency, service providers can perform a wide variety of functions. For example, a clearing agency may contract with its parent company to staff the registered clearing agency.[137] A clearing agency may contract with one or more investment advisers to help facilitate the closing out of a defaulting participant's portfolio.[138] A clearing agency may use one or more data service providers to help calculate pricing information for securities.[139] A clearing agency may also purchase technology services from service providers that may help to facilitate clearance and settlement in a number of ways. In each of the cases described above, failure of the service provider to perform its obligations would pose significant operational risks and have critical effects on the ability of the registered clearing agency to perform its risk management function and facilitate prompt and accurate clearance and settlement. In this regard, under existing requirements, including Regulation SCI, outsourcing a clearance and settlement functionality to a service provider for critical services does not relieve the registered clearing agency of its statutory and regulatory obligations, which remain with the registered clearing agency.[140]

As firms explore new technologies that can facilitate prompt and accurate clearance and settlement in new and innovative ways, clearing agencies may increasingly determine that service providers will offer the most effective technology to perform key functions.[141] Reliance on service providers will require careful oversight of these relationships because service provider relationships are a key source of operational risk to a registered clearing agency, risk which can result in service outages that, due to the centralizing nature of registered clearing agencies, could have implications for the national system for clearance and settlement.

Ultimately, it is the responsibility of the board to oversee the relationships that management establishes with service providers to help ensure that management is performing its function more effectively and that the clearing agency can facilitate prompt and accurate clearance and settlement. Accordingly, the Commission believes it is appropriate to propose certain requirements relating to the board oversight of service providers for critical services.

(a) Definition of Service Providers for Critical Services

Registered clearing agencies perform some oversight of certain service provider relationships, pursuant to existing Commission requirements with respect to these relationships.[142] Against this backdrop and as part of the evolution of the registered clearing agency regulatory framework, the

[134] *See* 17 CFR 240.17Ad–22(d)(4).

[135] *See* 17 CFR 240.17Ad–22(e)(17).

[136] *See* 17 CFR 242.1000–1007.

[137] *See, e.g.,* DTCC, Businesses and Subsidiaries, *https://www.dtcc.com/about/businesses-and-subsidiaries; see also* Part IV.B.1 (explaining that DTC, FICC, and NSCC are clearing agency subsidiaries of DTCC).

[138] *See, e.g.,* NSCC, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures (Dec. 2021), at 84, *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf* (''NSCC utilizes the services of investment advisors and executing brokers to facilitate such [close-out purchase and sale] transactions [for open Continuous Net Settlement (CNS) positions] promptly following its determination to cease to act. NSCC may engage in hedging transactions or otherwise take action to minimize market disruption as a result of such purchases and sales.'').

[139] *See, e.g.,* FICC, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures (Dec. 2021), at 58, 65, *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/FICC_Disclosure_Framework.pdf* (''Collateral securities are re-priced every night, from pricing sources utilized by FRM's [Financial Risk Management's] Securities Valuation unit . . . . FICC utilizes multiple third-party vendors to price its eligible securities and uses a pricing hierarchy to determine a price for each security.'').

[140] *See* Regulation SCI Adopting Release, *supra* note 39, at 77276 (expressing that an ''SCI entity should be responsible for managing its relationship with third parties operating systems on behalf of the SCI entity through due diligence, contract terms, and monitoring of third party performance'').

[141] *See id.* at 72252–53.

[142] *See* 17 CFR 240.17Ad–22(d)(4) and (e)(17); 17 CFR 242.1000–1007.

Commission proposes a companion governance requirement to these existing rules that makes explicit the registered clearing agency's board obligation to oversee the range of its service providers for critical services. In this regard, proposed Rule 17Ad–25(a) would define the scope of ''service provider for critical services'' to mean any person that is contractually obligated to the registered clearing agency for the purpose of supporting clearance and settlement functionality or any other purposes material to the business of the registered clearing agency. Absent regular monitoring and oversight, these relationships could endanger the operational resilience of a registered clearing agency and call into question the registered clearing agency's ability to meet its obligations under the Exchange Act.

(b) Obligations of the Board

In addition, proposed Rule 17Ad–25(i) would explicitly obligate the registered clearing agency to have policies and procedures that require its board to oversee a registered clearing agency's relationships with service providers for critical services. Proposed Rule 17Ad–25(i) includes a policies and procedures approach because, the Commission believes that, given the range of potential service provider relationships, the risks that they pose, and the different ways in which they might interact with different types of products, markets, and market participants, a registered clearing agency will need to exercise its discretion and judgment in managing these risks and reviewing steps taken by management.

Accordingly, under paragraphs (1) and (2), the board would be charged with reviewing senior management's monitoring of each relationship with a service provider for critical services, confirming and documenting that the risks related to such relationships have been considered and addressed consistent with the clearing agency's risk management framework, and, more generally, approving policies and procedures that govern such relationships. One method of confirming and documenting the risks posed by a service provider for critical services to the registered clearing agency would be for the board to complete a self-assessment based on the format and substance of Annex F in the PFMI [143] that highlights oversight expectations applicable to critical service providers. Annex F, in its form as of the date of this publication, provides a comprehensive basis for the board of a registered clearing agency to use to assess a service provider's risk identification and management, information security management, reliability and resilience, technology planning, and the strength of communications with users. Completing such a self-assessment is not mandatory but may be helpful for the registered clearing agency to demonstrate compliance with this element of proposed Rule 17Ad–25(i)(1).

Paragraph (1) would also require review of senior management's oversight of a service provider relationship. The Commission believes that the board should be aware of the risks flowing into the registered clearing agency, including through its relationships with service providers for critical services, and maintain awareness of those risks over time by monitoring management's oversight of the relationship. In its traditional function as a check on management, the board can help ensure that, for example, management assesses and addresses performance issues by the provider under any agreement with the provider and helps to ensure that product or other deliverables are provided timely and consistent with the terms of the agreement.

Under paragraph (3), the board should review and approve plans for entering into third-party relationships where the engagement entails being a service provider for critical services to the registered clearing agency. The Commission believes the board's participation in this regard is required as part of sound risk management when the clearing agency enters into contractual relationships with third parties. Board involvement would help ensure that the terms of performance for the service provider are sufficient to support the needs of the registered clearing agency and any increased level of risk to the registered clearing agency is evaluated, assessed, and accounted for. If renewal of third-party contracts or performance issues are called into question, the Commission believes that the Board should generally review such matters as part of its oversight responsibilities in existing governance arrangements and requirements.[144]

Finally, under paragraph (4), the board would have responsibility for overseeing the extent to which senior management remedies performance issues under a service provider contract. A key source of risk in any service provider relationship to a registered clearing agency is the operational risks that may arise if a service provider is not performing pursuant to the agreed terms of the contractual relationship. Without the board's effective ongoing monitoring of such risks and oversight of management's remedial actions to control such risks, the registered clearing agency may be faced with increasing levels of risk that undermine sound risk management and operational resilience. Accordingly, the Commission believes that policies and procedures should specifically provide for regular reporting to the board by senior management to ascertain whether senior management is taking appropriate remedial actions to mitigate or eliminate the risks of a critical service provider's significant performance deterioration or other material changes in the relationship that would result in an unacceptable increase in risk to the registered clearing agency if not remedied in a timely manner.

3. Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–25(i). In addition, the Commission requests comments on the following specific issues:

38. Is the definition of ''service provider for critical services'' sufficiently clear and properly scoped? Why or why not? Please explain and include alternative definitions, if possible.

39. In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to oversee relationships with service providers of critical services, should the Commission provide specific guidance regarding the means and measures by which the board performs such oversight responsibilities? Why or why not?

40. In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to confirm and document that risks related to relationships with service providers for critical services are managed in a manner consistent with its risk management framework, should the Commission require—rather than provide as guidance, as currently formulated—that the board confirm and document the risks through a self-assessment as discussed above? Why or why not?

[143] *See* PFMI, *supra* note 4, at 170–71.

[144] *See generally* 17 CFR 240.17Ad–22(d)(8), (e)(2). Existing Rules 17Ad–22(d)(8) and (e)(2) impose obligations on a governance arrangements of the clearing agency to promote the effectiveness of the clearing agency's risk management procedures. Proposed Rule 17Ad–25(i)(3) would impose obligations on the Board when initiating a third-party relationship.

F. Obligation to Formally Consider Stakeholder Viewpoints

1. Proposed Rule 17Ad–25(j)

Proposed Rule 17Ad–25(j) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in its governance and operations on a recurring basis.

2. Discussion

Currently, all registered clearing agencies are covered clearing agencies and, as such, they are subject to requirements for their governance arrangements to include policies and procedures that support the public interest and the objectives of owners and participants, as well as that consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders.[145] However, no parallel requirement exists for registered clearing agencies that are subject to Rule 17Ad–22(d). Based on its supervisory experience, the Commission believes that enhancing clearing agency governance practices will facilitate the ability of clearing agencies subject to Rule 17Ad–22(d) to obtain and consider the views of a diverse cross-section of their participants and stakeholders, who will likely bear any of the losses incurred as a result of the clearing agency's decisions with respect to its governance and operations. Accordingly, the proposed rule would supplement existing Commission requirements by also requiring that a registered clearing agency have policies and procedures to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders regarding material developments in the clearing agency's governance and operations. The Commission believes that other relevant stakeholders generally would include investors, customers of participants, as well as securities issuers.

The Commission understands that many registered clearing agencies already have established committees, working groups, and other fora of varying size, scope, and formality to share and solicit information with participants, the customers of their participants, and other stakeholders regarding changes to risk management and other services offered by the clearing agency. These groups and fora are useful tools for information sharing and gathering, and help promote an open dialogue between the clearing agency, its participants, and other relevant stakeholders. Accordingly, the Commission is proposing Rule 17Ad–25(j) to help promote the formalization of these processes and structures to help ensure their ongoing use, both for the existing set of registered clearing agencies and for potential future registrants. The Commission believes that the proposed rule would help ensure that these types of groups have a clear purpose and scope by requiring that registered clearing agencies solicit views from relevant stakeholders in addition to their participants and document their consideration of views expressed, and that the views solicited concern topics related to material developments in a clearing agency's governance and operations. Soliciting and considering viewpoints from participants and other relevant stakeholders helps ensure that the board of a registered clearing agency is informed of the full range of views across its participants and stakeholders while making decisions related to material developments in the clearing agency's governance and operations.

In addition, the Commission believes that requiring registered clearing agencies to document their consideration of such viewpoints would help ensure that a record exists of the viewpoints provided by participants and other relevant stakeholders regarding material developments in a clearing agency's governance and operations, ensuring that the clearing agency indicated that it had received such viewpoints and evaluated their merits. Such a requirement also helps promote confidence in the use of such fora and other structures because records will help demonstrate the ways in which registered clearing agencies consider and engage with stakeholder viewpoints. Building a record of such engagements also would help the Commission itself evaluate the ways in which clearing agencies consider stakeholder viewpoints and balance potentially competing viewpoints, facilitating the Commission's monitoring and oversight of registered clearing agencies and their impact on the U.S. securities market.

3. Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–25 (j). In addition, the Commission requests comments on the following specific issues:

41. The Commission understands that some registered clearing agencies have established multiple groups or fora to target specific topics or types of participants when sharing and soliciting information. What should a registered clearing agency consider when determining to establish one versus multiple fora for soliciting viewpoints? Why? How should it select the types of stakeholders or market participants from whom it solicits information? Are there particular topics for which a group or fora should be required under the rule? Are there any merits in limiting the number of different groups or fora to avoid overly fragmenting the discussion of topics and solicitation of viewpoints? Please explain with specific examples, if possible.

42. Should the rule include specific requirements applicable to committees, working groups, or other fora when established by a clearing agency? Please explain.

43. The proposed rule would require that a registered clearing agency solicit viewpoints regarding material developments in its governance and operations. Does limiting the topics for soliciting viewpoints to ''material'' aspects of a clearing agency's governance and operations provide for the appropriate scope of topics for which a clearing agency should solicit viewpoints? Why or why not? Should the rule limit the topics for soliciting viewpoints only to risk management? Why or why not? Conversely, should the set of topics be expanded to include topics such as participation requirements, products cleared, fees, new technologies, services, or other topics relevant to participants and other stakeholders? Please explain with specific examples, if possible.

44. The proposed rule would require that the registered clearing agency solicit viewpoints on a recurring basis. How frequently should a registered clearing agency solicit viewpoints? Should the requirement apply on an annual basis, a quarterly basis, or some other frequency? How should a clearing agency balance the frequency of its outreach against the obligation to document its consideration of viewpoints received?

45. Does the proposed rule interact with the board's fiduciary duty to the clearing agency? If so, how? Please explain with specific information.

G. Considerations Related to Implementation and Compliance

The Commission believes it is important to establish governance requirements for registered clearing agencies given the potentially

[145] *See* 17 CFR 240.17Ad–22(e)(2)(iii) and (vi).

significant risks posed by their size, systemic importance, and/or the risks inherent in the products they clear, and therefore believes that implementation of any of the requirements in proposed Rule 17Ad–25, if adopted, should be prompt. However, the Commission also recognizes that additional time may be warranted to address any new requirements, if adopted, by both clearing agencies currently registered with the Commission and those entities that intend to register as clearing agencies with the Commission while the rules are being finalized.

The Commission intends to review any application for registration as a clearing agency pursuant to the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder, including Rule 17Ad–22 and any amendments thereto, and notes that the compliance date would apply to all clearing agencies, including an applicant for registration as a clearing agency whose application is pending upon the compliance date. In reviewing such an application, Section 17A(b)(3) of the Exchange Act requires that a clearing agency shall not be registered unless the Commission determines that an applicant's rules and operations satisfy each of the requirements set forth in Section 17A(b)(3).[146] Following registration, any registered clearing agency would need to address compliance with any of the requirements in proposed Rule 17Ad–25, if adopted.

The Commission is also mindful of the time and costs that may be incurred by registered clearing agencies to implement aspects of proposed Rule 17Ad–25, if adopted, namely the independence requirements for the board and board committees. Implementation of these proposed requirements could require changes to policies and procedures currently utilized to comply with the Commission's clearing agency rules. These burdens could be exacerbated if affected clearing agencies must begin complying with any proposed Rule 17Ad–25, if adopted, in their existing policies and procedures at or near the same time that they are making changes to their board and board committee composition by undertaking the steps to identify and select candidates to accommodate these proposed requirements. The Commission believes that implementation of the proposed rules, if adopted, can and should be done in a manner that carries out the fundamental policy goals of the rules while minimizing burdens and disruptions as much as practicable, including minimizing the prospect of current directors having to resign before their terms expire. The Commission believes that this should be done pursuant to a phased-in compliance schedule whereby the proposed rules, if adopted, would have a compliance date that is 180 days from publication of the final rules in the **Federal Register** for all the provisions other than proposed Rule 17Ad–25(b)(1), (c)(2), and (e), and 24 months from publication of the final rules in the **Federal Register** for the independence requirement for the board and board committees under proposed Rule 17Ad–25(b)(1), (c)(2), and (e).

1. Request for Comment

46. Are the 180-day and 24-month compliance periods appropriate? Why or why not? Please be specific.

47. Does the phased-in compliance date envisioned by the Commission adequately address the time and resources needed for clearing agencies to comply with proposed Rule 17Ad–25 if adopted? Please explain. Should specific requirements be phased in over time, such as to allow current directors to serve their complete term rather than needing to resign early in order to adjust the number of independent directors on a board? If so, what is the appropriate number of days that would allow current directors to serve their complete terms?

H. General Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–25.

IV. Economic Analysis

A. Introduction

The Commission is sensitive to the economic consequences and effects of the proposed rules, including their benefits and costs.[147] The Commission acknowledges that, since many of these proposals could require a clearing agency to adopt new policies and procedures, the economic effects and consequences of these rules include those flowing from the substantive results of those new policies and procedures. Further, as stated above, Section 17A of the Exchange Act directs the Commission to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents when using its authority to facilitate the establishment of a national system for clearance and settlement of transactions in securities.[148]

This section addresses the likely economic effects of the proposed rules, including their anticipated and estimated benefits and costs and their likely effects on efficiency, competition, and capital formation. Many of the benefits and costs are difficult to quantify. For example, the issue of misaligned incentives is a core economic matter that is persistent across many different types of economic interactions among clearing agency stakeholders. Incentives affect the economic outcome of a transaction but there is little data about how decision-making processes directly affect monetary gains and losses. In addition, quantification of these incentive effects is particularly challenging due to the number of assumptions that would be needed to forecast how clearing agencies would respond to the proposed rules, and how those responses would, in turn, affect the broader market for cleared securities products. While the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature. The Commission also discusses the potential economic effects of certain alternatives to the approaches recommended in this proposal.

[146] *See* 15 U.S.C. 78q–1(b)(3).

[147] Under Section 3(f) of the Exchange Act, whenever the Commission engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, it must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). In addition, Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

[148] *See* 15 U.S.C. 78q–1(a)(2)(A).

B. Economic Baseline

To consider the effect of the proposed rules, the Commission first explains the current state of affairs in the market (the economic baseline). All the potential benefits and costs from adopting the proposed rules are changes relative to the economic baseline. The economic baseline in this proposal considers (1) the current market for registered clearing agency activities, including the number of registered clearing agencies, the distribution of participants across these clearing agencies, and the volume of transactions these clearing agencies process, (2) the current regulatory framework for registered clearing agencies, and (3) the current practices of registered clearing agencies that relate to the proposed rules.

1. Description of Market

Of the nine registered clearing agencies, there are currently seven operating businesses.[149] Six provide CCP services and one provides CSD services.[150] NSCC, FICC, and DTC are all registered clearing agencies that are DTCC subsidiaries. Together they offer clearance and settlement services for equities, corporate and municipal bonds, government and mortgage-backed securities, derivatives, money market instruments, syndicated loans, mutual funds, and alternative investment products in the United States. ICC and ICEEU are both registered clearing agencies for credit default swaps (''CDS''), and are both subsidiaries of Intercontinental Exchange, Inc. (''ICE''). LCH SA, a France-based subsidiary of LCH Group Holdings Ltd, is a registered clearing agency that also offers clearing for CDS. The seventh registered clearing agency, OCC, offers clearing services for exchange-traded U.S. equity options.

Registered clearing agencies broadly operate under one of two models. Specifically, the clearing agency may be organized so that the participants are owners of the clearing agency,[151] or so that participants are not owners of the clearing agency.[152]

Registered clearing agencies currently feature specialization and limited competition. For example, there is only one registered clearing agency serving as a central counterparty for each of the following asset classes: Exchange-traded equity options (OCC), government securities (FICC), mortgage-backed securities (FICC), and equity securities (NSCC). There is also only one registered clearing agency providing central securities depository services (DTC). Registered clearing agency activities exhibit high barriers to entry and economies of scale. These features of the existing market, and the resulting concentration of clearing and settlement services within a handful of entities, informs the Commission's examination of the effects of the proposed rules on competition, efficiency, and capital formation, as discussed below. Table 1 summarizes the most recent data on the number of participants at each registered clearing agency.[153]

TABLE 1—NUMBER OF PARTICIPANTS AT REGISTERED CLEARING AGENCIES

Registered clearing agency	Number of participants
Subsidiaries of The Depository Trust & Clearing Corporation	
National Securities Clearing Corporation	3,532
The Depository Trust Company	841
Fixed Income Clearing Corporation (Government Securities Division)	204
Fixed Income Clearing Corporation (Mortgage Backed Securities Division)	140
Subsidiaries of Intercontinental Exchange	
ICE Clear Credit	29
ICE Clear Europe (CDS Participants Only)	30
Subsidiaries of LCH	
LCH SA (CDSClear Participants Only)	25
The Options Clearing Corporation	184

[149] There are two registered but inactive clearing agencies: BSECC and SCCP. Neither has provided clearing services in well over a decade. *See* Exchange Act Release No. 63629 (Jan. 3, 2011) (BSECC ''returned all clearing funds to its members by September 30, 2010, and [] no longer maintains clearing members or has any other clearing operations as of that date. [] BSECC [] maintain[s] its registration as a clearing agency with the Commission for possible active operations in the future.''); Exchange Act Release No. 63268 (Nov. 8, 2010) (''SCCP ''returned all clearing fund deposits by September 30, 2009; [and] as of that date SCCP no longer maintains clearing members or has any other clearing operations. [] SCCP [] maintain[s] its registration as a clearing agency for possible active operations in the future.''). Because they do not provide clearing services, BSECC and SCCP are not included in the economic baseline or the consideration of benefits and costs. They are included in the PRA for purposes of the PRA estimate, *see infra* at Section V.

[150] *See supra* note 17 (summarizing typical CCP services) and note 18 (summarizing typical CSD services).

[151] *See supra* note 32 (explaining the ownership structure of DTCC and its subsidiary clearing agencies).

[152] OCC is owned by certain options exchanges. ICC and ICEEU are both subsidiaries of ICE, which is listed on the New York Stock Exchange. LCH SA is a subsidiary of LCH Group Holdings, Ltd., which is majority-owned by London Stock Exchange Group plc (a publicly traded company).

[153] Participant statistics are taken from the websites of each of the listed clearing agencies as of August 2021, September 2021, or October 2021. *See* DTCC, NSCC Member Directories, *http://www.dtcc.com/client-center/nscc-directories;* DTCC, DTC Member Directories, *http://www.dtcc.com/client-center/dtc-directories;* DTCC, FICC–GOV Member Directories, *http://www.dtcc.com/client-center/ficc-gov-directories;* DTCC, FICC–MBS Member Directories, *http://www.dtcc.com/client-center/ficc-mbs-directories;* ICE, ICE Clear Credit Participants, *https://www.theice.com/clear-credit/participants;* ICE, ICE Clear Europe Membership, *https://www.theice.com/clear-europe/membership;* LCH, LCH SA Membership, *https://www.lch.com/membership/member-search;* OCC, Member Directory, *http://www.theocc.com/Company-Information/Member-Directory.*

Registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets due to their role as intermediaries.[154] Many securities transactions are centrally cleared by clearing agencies. For example, in 2021 approximately $1.1 trillion (65%) of the notional amount of all single-name CDS transactions in the United States were centrally cleared.[155] In addition, in 2021 DTCC processed $2.4 quadrillion in securities transactions, and OCC cleared 9.9 billion individual options contracts.[156]

Central clearing generally benefits the markets in which it is available through significantly reducing participants' counterparty risk and through more efficient netting of margin. Consequently, central clearing also benefits the financial system as a whole by increasing financial resilience and the ability to monitor and manage risk.[157] Notwithstanding the benefits, central clearing concentrates risk in the clearing agency.[158] Disruption to a clearing agency's operations, or failure on the part of a clearing agency to meet its obligations, could serve as a source of contagion, resulting in significant costs not only to the clearing agency itself or its participants but also to other market participants and the broader U.S. financial system.[159] As a result, proper management of the risks associated with central clearing helps ensure the stability of the U.S. securities markets and the broader U.S. financial system.[160]

2. Overview of the Existing Regulatory Framework

The existing regulatory framework for clearing agencies registered with the Commission includes Section 17A of the Exchange Act and the Dodd-Frank Act, and the related rules adopted by the Commission. The current regulatory system is discussed in Parts I, II and III of this proposal.

The Commission is aware that clearing agencies registered in the U.S. may also be subject to other domestic or foreign regulators. Specifically, clearing agencies operating in the U.S. may also be subject to regulation by the CFTC (as clearing agencies for futures or swaps) and the Board of Governors of the Federal Reserve System (as systemically important financial market utilities or state member banks).[161] In addition, clearing agencies operating in the U.S. may be subject to foreign clearing agency regulators. For example, LCH SA is regulated by l'Autorité des marchés financiers, l'Autorité de Contrôle Prudentiel et de Résolution, and the Banque de France, and is subject to EMIR.[162] ICEEU is regulated by the Bank of England and is subject to EMIR.[163]

The Commission also considers relevant international standards when engaged in rulemaking for clearing agencies. For example, in 2012, the Committee on Payments and Market Infrastructure (CPMI) and the International Organization of Securities Commissions (IOSCO) issued the PFMI, a set of international standards for financial market infrastructures.[164] In connection with rulemaking required by Section 805(a)(2)(A) of the Clearing Supervision Act, 12 U.S.C. 5464(a)(2)(A), the Commission considered the principles and responsibilities in the PFMI when adopting Rule 17Ad–22(e).[165]

Table 2 summarizes the board composition and independent director requirements of the CFTC, the Board of Governors of the Federal Reserve System, and EMIR, as well as the related principle in the PFMI.

[154] *See supra* Part I.

[155] Data from DTCC's Trade Information Warehouse, compiled by Commission staff.

[156] *See* OCC, Annual Report (2021), *https://annualreport.theocc.com;* DTCC, Annual Report (2021), *https://www.dtcc.com/~/media/files/downloads/about/annual-reports/DTCC-2021-Annual-Report.* Within DTCC, NSCC cleared $2.0 trillion of equity trades every day on average, FICC cleared a total of $1.4 quadrillion of government securities transactions and $69 trillion of agency mortgage-backed securities transactions, and DTC settled a total of $152 trillion of securities.

[157] *See* Darrell Duffie, Still the World's Safe Haven? Redesigning the U.S. Treasury Market After the COVID–19 Crisis, Hutchins Center Working Paper No. 62 (June 2020), at 15, *https://www.brookings.edu/wp-content/uploads/2020/05/wp62_duffie_v2.pdf* (''Central clearing increases the transparency of settlement risk to regulators and market participants, and in particular allows the CCP to identify concentrated positions and crowded trades, adjusting margin requirements accordingly. Central clearing also improves market safety by lowering exposure to settlement failures. . . . As depicted, settlement failures rose less in March [2020] for [U.S. Treasury] trades that were centrally cleared by FICC than for all trades involving primary dealers. A possible explanation is that central clearing reduces 'daisy-chain' failures, which occur when firm A fails to deliver a security to firm B, causing firm B to fail to firm C, and so on.'').

[158] *See generally* Albert J. Menkveld & Guillaume Vuillemey, The Economics of Central Clearing, 13 Ann. Rev. Fin. Econ. 153 (2021).

[159] *See generally* Dietrich Domanski, Leonardo Gambacorta & Cristina Picillo, Central Clearing: Trends and Current Issues, BIS Q. Rev. (Dec. 2015), *https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf* (describing links between CCP financial risk management and systemic risk); Darrell Duffie, Ada Li & Theo Lubke, Policy Perspectives on OTC Derivatives Market Infrastructure, Fed. Res. Bank N.Y. Staff Rep. No. 424, at 9 (Mar. 2010), *http://www.newyorkfed.org/research/staff_reports/sr424.pdf* (''If a CCP is successful in clearing a large quantity of derivatives trades, the CCP is itself a systemically important financial institution. The failure of a CCP could suddenly expose many major market participants to losses. Any such failure, moreover, is likely to have been triggered by the failure of one or more large clearing agency participants, and therefore to occur during a period of extreme market fragility.''); Craig Pirrong, The Inefficiency of Clearing Mandates, Policy Analysis No. 655, at 11–14, 16–17, 24–26 (July 2010), *http://www.cato.org/pubs/pas/PA665.pdf* (stating, among other things, that ''CCPs are concentrated points of potential failure that can create their own systemic risks,'' that ''[a]t most, creation of CCPs changes the topology of the network of connections among firms, but it does not eliminate these connections,'' that clearing may lead speculators and hedgers to take larger positions, that a CCP's failure to effectively price counterparty risks may lead to moral hazard and adverse selection problems, that the main effect of clearing would be to ''redistribute losses consequent to a bankruptcy or run,'' and that clearing entities have failed or come under stress in the past, including in connection with the 1987 market break); Hubbard *supra* note 57, at 96 (''In short, the systemic consequences from a failure of a major CCP, or worse, multiple CCPs, would be severe. Pervasive reforms of derivatives markets following 2008 are, in effect, unfinished business; the systemic risk of CCPs has been exacerbated and left unaddressed.''); Froukelien Wendt, Central Counterparties: Addressing their Too Important to Fail Nature, IMF Working Paper No. 15/21 (Jan. 2015), *http://papers.ssrn.com/sol3/Delivery.cfm/wp1521.pdf* (assessing the potential channels for contagion arising from CCP interconnectedness); Manmohan Singh, Making OTC Derivatives Safe—A Fresh Look, IMF Working Paper No. 11/66 (Mar. 2011), at 5–11, *http://www.imf.org/external/pubs/ft/wp/2011/wp1166.pdf* (addressing factors that could lead central counterparties to be ''risk nodes'' that may threaten systemic disruption).

[160] *See* Paolo Saguato, Financial Regulation, Corporate Governance, and the Hidden Costs of Clearinghouses, 82 Ohio St. L.J. 1071, 1074–75 (2022), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3269060* (''[T]he decision to centralize risk in clearinghouses made them critical for the stability of the financial system, to the point that they are considered not only too-big-to-fail, but also too-important-to-fail institutions.'').

[161] Currently, ICC, ICEEU, LCH SA, and OCC are regulated by the CFTC. DTC, FICC, NSCC, ICC, and OCC have been designated systemically important financial market utilities. DTC is also a state member bank of the Federal Reserve System.

[162] *See* LCH, Company Structure, *https://www.lch.com/about-us/structure-and-governance/company-structure.*

[163] *See* ICE, ICEEU Regulation, *https://www.theice.com/clear-europe/regulation.*

[164] *See* PFMI, *supra* note 4.

[165] CCA Standards Adopting Release, *supra* note 13, at 70789, 70796–97. A CPMI–IOSCO assessment report also has assessed that the Commission's rules are consistent with the PFMI principles. *See* CPMI–IOSCO, Implementation monitoring of PFMI: Assessment report for the United States—Payment systems, central securities depositories and securities settlement systems (May 31, 2019), at 2, *https://www.bis.org/cpmi/publ/d184.pdf* (presenting the conclusions drawn by the CPMI and IOSCO from a Level 2 assessment).

TABLE 2—BOARD COMPOSITION AND INDEPENDENT DIRECTOR REQUIREMENTS OF CFTC, BOARD OF GOVERNORS, EMIR, AND CPMI–IOSCO (PFMI)

Organization	Board composition and independence requirements
CFTC	''A derivatives clearing organization shall ensure that the composition of the governing board or board-level committee of the derivatives clearing organization includes market participants and individuals who are not executives, officers, or employees of the derivatives clearing organization or an affiliate thereof.'' (17 CFR 39.26).
Board of Governors of the Federal Reserve System.	'' . . . the designated financial market utility has governance arrangements that are designed to ensure . . . [t]he board of directors includes a majority of individuals who are not executives, officers, or employees of the designated financial market utility or an affiliate of the designated financial market utility'' (12 CFR 234.3(a)(2)(iv)(D)).
European Market Infrastructure Regulation (EMIR).	''A CCP shall have a board. At least one third, but no less than two, of the members of that board shall be independent. Representatives of the clients of clearing members shall be invited to board meetings for matters relevant to Articles 38 and 39. The compensation of the independent and other non-executive members of the board shall not be linked to the business performance of the CCP'' (Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012, Title IV, Article 27). '' 'independent member' of the board means a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board'' (Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012, Title I, Article 2(28)).
CPMI–IOSCO	''[Board] members should be able to exercise objective and independent judgment. Independence from the views of management typically requires the inclusion of non-executive board members, including independent board members, as appropriate. Definitions of an independent board member vary and often are determined by local laws and regulations, but the key characteristic of independence is the ability to exercise objective, independent judgment after fair consideration of all relevant information and views and without undue influence from executives or from inappropriate external parties or interests. The precise definition of independence used by an F[inancial] M[arket] I[nfrastructure (FMI)] should be specified and publicly disclosed, and should exclude parties with significant business relationships with the FMI, cross-directorships, or controlling shareholdings, as well as employees of the organization'' (PFMI, § 3.2.10, footnotes omitted).

In addition to Federal regulation, as noted earlier, clearing agencies must also follow state laws applicable to their choice of organization, such as limited liability companies, corporations, or trusts.[166]

3. Divergent Incentives of Clearing Agency Stakeholders

Several researchers have commented that the misalignment of interests between clearing agency stakeholders (owners and non-owner participants, for example) weakens the effectiveness of clearing agencies' risk management under the existing regulatory framework.[167] Less effective risk management, in turn, impedes the resilience of individual clearing agencies, the clearing services market, and the broader financial markets, as well as competition among participants. However, academic literature has not coalesced around a standard model describing clearing agency governance, leaving some uncertainty about the theoretically best way to mitigate divergent incentives.[168]

As discussed more fully below, the Commission is aware of divergent incentives at some clearing agencies between clearing agency owners and non-owner participants, and the importance of actively addressing these divergent incentives through proactive measures to achieve sound governance and resilience. In the 2020 Staff Report on the Regulation of Clearing Agencies, Commission staff emphasized that ''robust written rules, policies, and procedures are important to clearing agency functioning, but represent only the first step in achieving resilience and compliance. To achieve real-life outcomes that help promote resilience and compliance, rules, policies, and procedures must be . . . subject to sound governance that ensures they will be executed promptly and effectively.'' [169]

(a) Divergent Incentives of Owners vs. Non-Owner Participants

Because clearing agencies mutualize risk among participants but not all participants necessarily hold an equity interest in the clearing agencies,[170] the incentives of clearing agency owners can differ from the incentives of clearing agency participants.[171] For example, owners have an incentive to transfer as much risk of loss as possible to non-owner participants or to lower risk management standards.[172] In such

[166] For example, ''The New York State Department of Financial Services supervises DTC as a New York State-chartered trust company.'' *See* Board of Governors of the Federal Reserve System, Designated Financial Market Utilities. *https://www.federalreserve.gov/paymentsystems/designated_fmu_about.htm.* The OCC is a Delaware corporation. *See* OCC, Certificate of Incorporation, *https://www.theocc.com/Company-Information/Documents-and-Archives/OCC-Certificate-of-Incorporation.*

[167] *See* Saguato, *supra* note 160, at 5, 13 (stating that ''effective risk management in financial institutions can be achieved only if the final risk bearers have a voice in the governance of the firm'' and that ''the existing regulatory framework underestimates and does not address the misaligned incentives that spill from the agency costs of the separation of risk and control and from the member-shareholder divide . . .''); Hester Peirce, Derivatives Clearinghouses: Clearing the Way to Failure, 64 Clev. St. L. Rev. 589 (2016), *https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=3915&context=clevstlrev* (arguing that clearing members must play a central role in risk management); Craig Pirrong, The Economics of Central Clearing: Theory and Practice, ISDA Discussion Papers Series No. 1 (May 2011), at 3, *https://www.isda.org/a/yiEDE/isdadiscussion-ccp-pirrong.pdf* (''CCPs should be organized so as to align the control of risks with those who bear the consequences of risk management decisions.'').

[168] *See* Menkveld & Vuillemey, *supra* note 158, at 21 (''While the literature on central clearing has made significant progress over the past ten years, a number of important questions remain open. On the theoretical front, there is still no standard model of . . . [CCP] governance.'').

[169] Staff Report on Clearing Agencies, *supra* note 27, at 25.

[170] For example, OCC, ICC, ICEEU, and LCH SA are not owned by participants.

[171] *See* Saguato, *supra* note 160, at 1099 (''This new agency conflict that stems from the separation of risk and control and from the 'member-shareholder divide' misaligns the incentives of the clearinghouse from those of its members . . .''). This specific agency conflict is less of a concern in cases where clearing agency participants own shares of the clearing agency, because there is less separation of risk and control. For example, DTC, NSCC, and FICC operate under a utility model, where the participants own shares of the parent company, DTCC.

[172] *See* Menkveld & Vuillemey, *supra* note 158, at 20 (noting that because participants are a ''captive clientele,'' clearing agencies could be incentivized

cases, the owners benefit by receiving higher profits or tying up less capital in their investment while participants are left with greater potential losses in the event of a counterparty default or non-default loss and potentially higher margin and default fund requirements.

(b) Divergent Incentives Among Participants

In addition, different types of participants (direct vs indirect participants or large vs small participants, for example) have divergent incentives. For example, large direct participants have incentives to influence the clearing agency to adopt policies that would exclude smaller dealers from participating directly in the clearing agency.[173] Because there is only one registered clearing agency serving as a central counterparty for some asset classes, such policies could negatively affect competition among clearing agency participants. The diverging incentives of large direct participants compared to smaller indirect participants are mitigated by Rule 17Ad–22, which in part generally requires a clearing agency to admit participants who meet minimum standards.[174]

Large participants also have incentives to influence the clearing agency to adopt policies that could allocate a disproportionately large risk of loss to smaller participants by allowing the large participant to contribute lower quality collateral to satisfy margin or default fund requirements or by promoting margin requirements that are not commensurate with the risks and particular attributes of each participant's specific products, portfolio, and market. The diverging incentives of large participants compared to smaller direct participants are also mitigated by Rule 17Ad–22, which in part generally requires a clearing agency to establish minimum margin and liquidity requirements.[175] By establishing minimum margin and liquidity requirements, Rule 17Ad–22 reduces a large participant's ability to obtain or maintain a competitive advantage through activities such as providing lower quality collateral or promoting margin requirements that are not commensurate with the risks and particular attributes of each participant's specific products, portfolio, and market.

(c) Incentives of Clearing Agency Stakeholders Could Diverge From the Interest of the Broader Financial Markets

Clearing agency stakeholders, such as owners and direct and indirect participants, also have incentives that may not be in alignment with the interests of the broader financial markets.[176] Any such misalignment, if left unmitigated, could limit the benefits of central clearing and hinder the resilience of other financial market intermediaries and the broader financial market.[177] For example, in securities markets where all or part of a transaction may not be subject to a central clearing requirement, a single participant or a small group of participants may have a profit incentive to select bi-lateral clearing over central clearing [178] or seek to influence a clearing agency to not clear a security that would profit the participants more if the security were cleared bi-laterally. Not only could such incentives limit the benefits of central clearing, but they could also impede resilience in the broader financial market by increasing systemic risk.[179] In addition, indirect participants that are not permitted to directly access clearing services have incentives to ''avoid clearing and seek higher-margin trading activity through faux customization.'' [180] This, too, could hinder resilience in the broader financial market by increasing systemic risk. Lastly, as pointed out in a BIS and IOSCO report, ''. . . an FMI and its participants may generate significant negative externalities for the entire financial system and real economy if they do not adequately manage their risks.'' [181] To the extent these negative externalities are not adequately internalized by the clearing agency or otherwise mitigated, they could present systemic risks to the broader financial markets.[182]

4. Current Governance Practices

Registered clearing agencies must operate in compliance with Rule 17Ad–22, though they may vary in the particular ways they achieve such compliance. Some variation in practices across registered clearing agencies derives from the products they clear and the markets they serve.

An overview of current practices at the seven operating clearing agencies is set forth below and includes discussion of clearing agency boards' policies and procedures related to the composition of the board and board committees,

to relax risk management standards); Saguato, *supra* note 160, at 1099, 1102. However, it is possible that a captive clientele could also incentivize a clearing agency to increase its risk management standards if there is participant representation in the governance structure.

[173] *See* Kristin N. Johnson, Commentary on the Abraham L. Pomerantz Lecture: Clearinghouse Governance: Moving Beyond Cosmetic Reform, 77 Brook. L. Rev. 2, 698 (2012), *https://brooklynworks.brooklaw.edu/blr/vol77/iss2/5* (''Large dealers have incentives to limit smaller dealers' access to clearinghouse membership. When large dealers act as brokers for the smaller nonmember dealers, the larger dealers earn revenues for executing transactions for dealers who are nonmembers and ineligible for membership. If eligibility standards preclude smaller dealers from gaining the full benefits of membership, then small dealers who desire to execute transactions must seek the assistance of the larger dealers who are members. Thus, large dealers have commercial incentives to ensure that smaller dealers remain ineligible for membership.''); Sean Griffith, Governing Systemic Risk: Towards a Governance Structure for Derivatives Clearinghouses, 61 Emory L. J. 1153, 1197 (2012), *https://scholarlycommons.law.emory.edu/elj/vol61/iss5/3* (''The major dealers may also use their influence over clearinghouses to protect [their] trading profits, using the clearinghouse as a means of increasing their market share and excluding competitors.'').

[174] *See* 17 CFR 240.17Ad–22(b)(5)–(b)(7) and (e)(18).

[175] *See* 17 CFR 240.17Ad–22(e)(5)–(e)(6).

[176] *Cf.* Bank of England, The Bank of England's supervision of financial market infrastructures—Annual Report (Mar. 2015), at Chapter 2.1.4 (''Strong user and independent representation in [UK CCPs] governance structures should help ensure that UK CCPs focus not only on the management of microprudential risks to themselves but also on systemic risks.'').

[177] *See* Griffith, *supra* note 173, at 1210 (''[T]he containment of systemic risk [is] a public good. . . . Because no private party can enjoy the full benefit of eliminating systemic risk, no private party has an incentive to fully internalize the cost of doing so. As a result, no private party can simply be entrusted with the means of doing so because it is more likely to use those means to some other ends. . . . In other words, none of the commercial parties has the right incentives.'').

[178] *Cf.* Treasury Market Practices Group (TMPG), Best Practice Guidance on Clearing and Settlement, at 3 (July 2019), *https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CS_BestPractices_071119.pdf* (in commenting on the ''potential role for expanded central clearing'' in the secondary U.S. Treasuries market, the TMPG noted that ''changes to market structure that have occurred have also resulted in a substantial increase, in both absolute and percentage terms, in the number of trades that clear bilaterally rather than through a central counterparty. This principally stems from the increased prevalence of P[rincipal] T[rading] F[irm] activity on I[nter]D[ealer]B[roker] platforms.'').

[179] *See* Griffith, *supra* note 173, at 1197 (''[D]ealers have a clear incentive to protect the profits they receive from the bilateral market . . . by keeping trades off of clearinghouses. Keeping trades off of clearinghouses has obvious systemic risk implications: a clearinghouse cannot contain the risk of trades that it does not clear.''). Though bi-lateral clearing serves a well-defined function in eliminating basis risk and allowing for more precise hedging, its benefits in terms of systemic risk mitigation are more limited relative to centralized clearing.

[180] *See* Griffith, *supra* note 173, at 1200.

[181] *See* PFMI, *supra* note 4, at 11.

[182] *Cf. id.* at 128 (Noting that regulators have a role in addressing negative externalities. ''[R]egulation, supervision, and oversight of an FMI are needed to . . . address negative externalities that can be associated with the FMI, and to foster financial stability generally.''); Menkveld & Vuillemey, *supra* note 158, at 22 (''Network externalities create a role for regulators to coordinate investors on a socially desirable equilibrium.'').

conflicts of interests involving directors and senior managers, the obligations of the board regarding overseeing relationships with service providers for critical services, and consideration of stakeholders' views. This discussion is based on the Commission's general understanding of current practices as of the date of this proposal and reflects the Commission's experience supervising registered clearing agencies.

(a) Current Practices Regarding Board Composition

Each registered clearing agency has a board that governs its operations and supervises senior management. Section 17A(b)(3)(C) of the Exchange Act prohibits a clearing agency from registering unless the Commission finds that ''the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.).'' [183] In addition, Rule 17Ad–22(e)(2) requires governance arrangements that support the objectives of owners and participants and consider the interests of other relevant stakeholders.

(1) Independent Directors

Clearing agencies currently use various definitions of independence and independent director. In addition, current practices vary widely regarding the board and board committee requirements for independent directors (as the term is currently used by clearing agencies). For example, clearing agencies' existing requirements for the minimum percentage of independent directors on the board ranges from 0% to 55%. Table 3 summarizes the general board composition and independent director requirements of each operating clearing agency.

TABLE 3—BOARD COMPOSITION AND INDEPENDENT DIRECTOR REQUIREMENTS OF OPERATING CLEARING AGENCIES

Clearing agency	Board composition requirements	Definition of independent director
DTC, FICC, and NSCC (all use the same board as DTCC).	22 directors: 1 non-executive Chair, 1 DTCC executive (DTCC's Pres. & CEO), 14 participant-owner directors, 4 non-participant directors, 1 director designated by DTCC preferred stock shareholder ICE, 1 director designated by DTCC preferred stock shareholder FINRA. (*See https://www.dtcc.com/about/leadership.*).	Independent director is not defined. Independence is listed as one of a number of ''characteristics essential for effectiveness as a Board member.'' (See DTCC Board Election Procedures.[a])
OCC	20 directors: 1 management director (Chair), 5 public directors, 9 participant directors, 5 exchange directors. (*See https://www.theocc.com/Company-Information/Board-of-Directors;* OCC Board Charter.[b]).	A public director ''lacks material relationships to OCC, OCC's senior management, and other directors'' and is ''not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities.'' (OCC Board Charter at 4, 6).
		''A substantial portion of directors shall be 'independent' of OCC and OCC's management as defined by applicable regulatory requirements and the judgment of the Board.'' (OCC Board Charter at 4–5).
ICE Clear Credit	9 directors (a/k/a Board of Managers): at least 5 independent directors and 2 management directors.	An independent director must satisfy the independence requirements in the NYSE Listed Company Manual.[d] An independent director also may not (among other things):
	5 directors elected by ICE US Holding Company L.P. (3 of 5 are independent and the remaining 2 are from ICE management). The Risk Committee designates four nominees (two must be independent and two may be non-independent). (*See* ICC Regulation and Governance Fact Sheet[c] at 2.).	• ''have any material relationships with the Company and its subsidiaries.''
		• be affiliated with a Member Organization or, within the last year, (a) be employed by a Member Organization, (b) have an immediate family member who was an executive officer of a Member Organization, or (c) have received from any Member Organization more than $100,000 per year in direct compensation. (*See* ICC Independence Policy.[e])
ICE Clear Europe	6 to 12 directors (currently 10): at least ⅓ independent directors (excluding the Chair), 1 director approved by the Bank of England, and the president of ICEEU. (*See* ICEEU Organizational Structure Disclosure[f] at 1; ICEEU Articles of Association[g] at paragraph 26.).	Independent director ''means a person who meets the independence criteria for a director, as defined under relevant applicable legislation and who is appointed as a non-executive director'' (ICEEU Articles of Association at paragraph 3).
LCH SA	3 to 18 directors (currently 11 with 5 independent): ''the board shall be composed of the following categories of Directors:'' an independent Chair, independent directors, executive directors, a director proposed by Euronext, user directors, and a director representing London Stock Exchange Group plc. (*See https://www.lch.com/about-us/structure-and-governance/board-directors-0;* LCH SA Terms of Reference of the Board[h] at 4–5.).	Independent director ''means an independent director, who satisfies applicable Regulatory Requirements regarding independent directors and who is appointed in accordance with the Nomination Committee terms of reference'' (LCH SA Terms of Reference of the Board at 2).

a. DTCC, Procedure for the Annual Nomination and Election of the Board of Directors (Feb. 11, 2021), (''DTCC Nomination and Election Procedure''), *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Election-Procedure.pdf.*

[183] 15 U.S.C. 78q–1(b)(3)(C).

b. OCC, Board of Directors Charter and Corporate Governance Principles (Sept. 22, 2021), *https://www.theocc.com/getmedia/99ed48a4-aa44-45ac-8dee-9399b479a1c8/board_of_directors_charter.pdf.*

c. ICE, ICC Regulation and Governance Fact Sheet, *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Regulation_and_Governance.pdf.*

d. *See* Section 303.A.02 of the NYSE Listed Company Manual, *https://nyseguide.srorules.com/listed-company-manual* (''No director qualifies as 'independent' unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).'' The independence requirements also list five situations that would preclude a director from being considered independent).

e. ICE, Independence Policy of the Board of Directors of Intercontinental Exchange, Inc., *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/ICE-Independence-Policy.pdf.*

f. ICE, ICEEU Organizational Structure, Objectives and Strategy, *https://www.theice.com/publicdocs/clear_europe/Organisational_Structure_Objectives_Strategy.pdf.*

g. ICE, Articles of Association of ICEEU (Jan. 29, 2021), *https://www.theice.com/publicdocs/regulatory_filings/ICEEU-2021-013.pdf.*

h. LCH SA, Terms of Reference of the Board (Aug. 18, 2020), *https://www.lch.com/system/files/media_root/LCHSA_Governance%20Arrangements_CFTC%20Self-Certif_18%20Aug%202020.pdf.*

(2) Nominating Committee

Six of the seven operating clearing agency boards have a nominating committee or a committee that serves a similar function. Current practices regarding the minimum level of independent directors on the nominating committee vary widely. For example, DTC, NSCC, and FICC require that the nominating committee be composed entirely of ''non-management'' directors; ICEEU requires that a majority of the nominating committee be independent directors (as defined by ICEEU); LCH SA requires that its nomination committee include an independent chair, at least two independent directors (as defined by LCH SA), and one user director; and OCC requires only that the chairman of the nominating committee be a ''public director.'' [184] As stated previously, the definition of independent director varies across clearing agencies.[185]

All seven boards have fitness standards for directors and processes for identifying and selecting directors. The fitness standards and processes for identifying and selecting directors vary across clearing agencies. For example, OCC's nominating committee is required to ''identify, screen and review individuals qualified to be elected or appointed [to the Board] after consultation with the Chairman,'' [186] whereas DTCC's governance committee, which serves as the nominating committee for DTC, NSCC, and FICC, is not required to consult with the chairman. Instead, DTCC's governance committee ''considers possible nominations on its own initiative and invites suggestions from all participants of each of DTCC's clearing and depository subsidiaries . . . . The Governance Committee may also use a professional director search consultant to assist in identifying candidates for the non-participant Board positions.'' [187]

(3) Risk Management Committee

The Commission already requires that all seven operating clearing agencies have risk management committees, because they are covered clearing agencies.[188] All seven clearing agencies include representatives from participants on the risk management committee, though only four clearing agencies require it.[189] Six of the seven operating clearing agencies identify the risk management committee as a board committee.[190] Three of the seven operating clearing agencies require the risk management committee to be reconstituted on a regular basis.[191]

(b) Current Practices Regarding Conflicts of Interest Involving Directors or Senior Managers

The boards of all seven operating clearing agencies have policies and procedures in place to identify and mitigate conflicts of interests involving directors or senior managers. All seven boards also require directors to notify the clearing agency if a conflict of interest arises.

(c) Current Practices Regarding Board Oversight of Relationships With Service Providers for Critical Services

The Commission already requires registered clearing agencies to manage risks from operations,[192] which can include risks associated with relationships with service providers.[193] The Commission is aware that at least some clearing agencies periodically inform their boards regarding risk management associated with service providers for critical services.

The Commission also requires that SCI entities—including registered clearing agencies—conduct risk assessments of ''SCI systems'' at least once per year in accordance with Regulation SCI and report the findings to senior management and the board of

[184] *See* DTCC Governance Committee Charter 1 (Feb. 2020), *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Governance-Committee-Charter.pdf* (''All members of the Committee shall be members of the Board who are not employed by DTCC ('non-management' directors).''); ICEEU Compliance with PFMI 17 (Jan. 31, 2021), *https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf* (''[T]he Nominations and Compensation Committee may consist of up to five Committee Members the majority of which must be [Independent Non-Executive Directors].''); LCH SA Terms of Reference of the Nomination Committee of the Board of Directors (Sept. 9, 2020), *https://www.lch.com/system/files/media_root/LCH%20SA%20-%20NomCom%20ToRs.pdf* (''[The] membership shall comprise the Chairman, at least two Independent Directors, one User Director and the LSEG Director. The size of the Committee . . . for the current time, will comprise four to six directors.''); OCC Governance and Nominating Committee Charter 1 (Sept. 22, 2021), *https://www.theocc.com/getmedia/483ac739-0d43-46d2-a1ca-7ed38094975c/governance_nominating_charter.pdf* (''The Committee will be composed of at least one Public Director, one Exchange Director, and one Member Director. No Management Director will be a member of the Committee . . . . The Committee Chair will be designated by the Board from among the Public Director Committee members.'').

[185] *See supra* Table 3 and accompanying text.

[186] OCC Governance and Nominating Committee Charter, *supra* note 184, at 3.

[187] DTCC, Procedure for the Annual Nomination and Election of the Board of Directors (Feb. 11, 2021), at 2, *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Election-Procedure.pdf.*

[188] Covered clearing agencies are required to have risk management committees to comply with 17 CFR 240.17Ad–22(e)(3)(iv).

[189] OCC, ICC, ICEEU, and LCH SA each require that the risk committee include representatives from participants. Article 28 of EMIR requires that a clearing agency have a risk committee that includes representatives of its clearing members. *See* EMIR, *supra* note 105, at art. 28(1).

[190] DTC, NSC, FICC, OCC, ICEEU, and LCH SA.

[191] OCC, ICC, and LCH SA require that the committee be reconstituted annually.

[192] *See* 17 CFR 240.17Ad–22(d)(4), (e)(17).

[193] In addition, DTC, as a state member bank of the Federal Reserve System, has received guidance from the Board of Governors of the Federal Reserve System regarding managing service provider risks. *See* SR Letter 13–19/CA Letter 13–21, Guidance on Managing Outsourcing Risk (Dec. 5, 2013, rev. Feb. 26, 2021). The Board of Governors of the Federal Reserve System, jointly with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, proposed updated guidance for banking organizations in 2021 regarding the management of risks arising from third-party relationships. *See* Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Proposed Interagency Guidance on Third-Party Relationships: Risk Management, 86 FR 38182, 38193 (July 19, 2021). The proposed guidance is not yet final.

directors.[194] Insofar as service providers for critical services are the providers of SCI systems, each registered clearing agency board likely already has written policies and procedures reasonably designed to enable the board of directors to oversee service providers for critical services, including confirming that the risks related to service provider relationships are managed in a manner consistent with its risk management framework, reviewing senior management's monitoring of relationships with service providers for critical services, and confirming that senior management takes appropriate actions to remedy significant deterioration in performance or address changing risks or material issues identified through ongoing monitoring of service providers for critical services.[195]

(d) Current Practices Regarding Board Consideration of Stakeholder Viewpoints

Currently, each covered clearing agency is required to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide governance arrangements that consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.[196] The Commission understands that clearing agency boards currently use both formal and informal channels to solicit, receive, and consider the viewpoints of participants and other relevant stakeholders.[197] Clearing agency participants acknowledge that their ability to offer viewpoints has yielded positive but mixed results.[198]

C. Consideration of Benefits and Costs

The discussion below sets forth the potential economic effects stemming from adopting the proposed rules, including the effects on efficiency, competition, and capital formation.

The benefits and costs discussed in this section are relative to the economic baseline discussed earlier, which includes clearing agencies' current practices. In some instances, the proposed rules reflect what we believe to be current practices at many registered clearing agencies. To the extent that a clearing agency's current practices could reasonably be considered to be in compliance with a proposed rule, the clearing agency and broader market would have already absorbed the benefits of the proposed rule and so might not experience any direct benefits if the Commission adopts the rule.[199] In these cases, the Commission believes that imposing these requirements on all registered clearing agencies would have the effect of imposing consistent governance standards across all registered clearing agencies.

If adopted, many of the proposed rules could result in a clearing agency needing to amend its bylaws, rulebook, or other governance documents. Because clearing agencies are SROs, any such amendments that constitute rule changes would be subject to Commission review pursuant to Rule 19b–4. Adopting the proposed rules could also cause a clearing agency to make different business decisions, such as capital expenditure decisions, which would not be subject to the same Commission review process.

It is uncertain to what extent the costs discussed in this section would be borne by clearing agencies, as opposed to participants. For clearing agencies owned by participants, all of the costs will ultimately be passed on to participants because they are residual beneficiaries of the clearing agency. For clearing agencies not owned by participants, the level of pass through would depend upon a number of factors, including the lack of competition among clearing agencies.

1. Economic Considerations for Rule Proposals Regarding Board Composition

As discussed in more detail above, proposed Rules 17Ad–25(b), (e), and (f) would (1) require that a majority of the board (or 34 percent, if a majority of the voting rights are directly or indirectly held by participants) be independent directors (as determined by the clearing agency and precluding certain circumstances that impact independence), (2) establish minimum independent director requirements for the composition of certain board committees, and (3) identify circumstances that would exclude a director from being an independent director.[200]

To the extent an operating clearing agency could determine that its current board meets the proposed minimum requirements for independent directors on the board and board committees, adopting the proposed rule will not directly affect the effectiveness of the clearing agency's governance or directly affect the management of divergent interests between owners and participants, among various types of participants, and between clearing agency stakeholders and the broader financial markets.

To the extent operating clearing agencies would need to change the composition of their boards or board committees to meet the proposed minimum requirements, the proposed rule could help promote more effective governance by providing impartial perspectives and helping mitigate the impact of the divergent interests between owners and participants, among various types of participants, and between clearing agency stakeholders and the broader financial markets. The Commission believes that more effective governance will improve the effectiveness of a clearing agency's risk management practices, which will promote resilience at individual clearing agencies and in the broader

[194] *See* 17 CFR 242.1000–1007.

[195] *See* Regulation SCI Adopting Release, *supra* note 39, at 77276 (noting that ''The Commission agrees with the comment that an SCI entity should be responsible for managing its relationship with third parties operating systems on behalf of the SCI entity through due diligence, contract terms, and monitoring of third party performance. [. . .] The Commission believes that it would be appropriate for an SCI entity to evaluate the challenges associated with oversight of third-party vendors that provide or support its applicable systems subject to Regulation SCI. If an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.'').

[196] *See* 17 CFR 240.17Ad–22(e)(2)(vi).

[197] *See, e.g.,* OCC, Order Approving Proposed Rule Change, Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5508 (Jan. 30, 2020) (''OCC also describes the formal and informal mechanisms that OCC employs to solicit feedback from Clearing Members and other interested stakeholders, including its Financial Risk Advisory Committee, Operations Roundtable, multiple letters and open calls with Clearing Members and other interested stakeholders, and routine in-person meetings with trade groups and individual firms.''); *Cf.* J.P. Morgan et al., A Path Forward for CCP Resilience, Recovery and Resolution (Mar. 10, 2020), *https://www.jpmorgan.com/content/dam/jpm/cib/complex/content/news/a-path-forward-for-ccp-resilience-recovery-and-resolution/pdf-0.pdf* (''[C]learing participants have provided diverse perspectives and detailed feedback to CCPs and regulators through individual firm and industry association position papers, targeted comment letters, and participation in regulatory and industry-sponsored forums on a global scale.'').

[198] *See, e.g.,* J.P. Morgan et al., *supra* note 197, at 1 (explaining that ''[w]hile CCPs and the regulatory community have taken significant steps to address the feedback received, there remain outstanding issues that require additional attention'' and recommending ''[e]nhancing governance practices to obtain and address input from a broader array of market participants on relevant risk issues'' to enhance CCP resilience).

[199] However, a clearing agency whose current practices could reasonably be considered to be in compliance with the proposed rules might still be required to expend resources if the Commission adopted the rule, because the clearing agency would likely need to review its policies and procedures in response to the adoption.

[200] *See supra* Part III.A.1 (discussing proposed Rules 17Ad–25(b), (e), and (f)).

financial markets.[201] For example, more effectively managing divergent interests could help the clearing agency better internalize the costs of participant defaults and non-default losses, which could mitigate a clearing agency's incentive to underinvest in risk management services such as liquidity arrangements and risk modelling. The proposed rules could also help clearing agencies ensure that an appropriate risk-based margin system is in place.

The Commission also believes that better managing the divergent interests could improve the ability of indirect participants to compete with direct participants of the clearing agency. Given that the cleared derivatives market is an imperfect substitute for uncleared derivatives, some commentators argue that large dealers may have an incentive to protect economic rents and therefore may urge boards to adopt policies that restrict the classes or volume of transactions that may use clearinghouse platforms.[202]

Some academic literature on corporate governance could be interpreted to suggest that, under the proposed definition of independent director and the proposed minimum requirements for independent directors on the board and board committees, divergent interests between owners and participants, among various types of participants, and between clearing agency stakeholders and the broader financial markets may continue to adversely impact governance because independent directors in closely held companies will cede to the interests of controlling shareholders unless they are affirmatively incentivized to protect the interests of one or more stakeholder groups.[203] One author suggests that independent directors will be more effective if (1) their explicit purpose is to ''prevent minority expropriation at the hands of the block-holders,'' (2) there is a strong regulation and enforcement regime, and (3) the nomination procedure and the design of incentives guarantee the independent director is accountable to a specific constituency other than controlling shareholders.[204] Another author argues that including independent directors in the governance process provides a roadmap, but does not guarantee results in terms of favoritism and objectivity.[205] While studies on the benefits of independent directors offer mixed results and while independence alone is unlikely to be sufficient to motivate a director to act in the public interest,[206] director independence, particularly when complemented with other governance requirements, may help mitigate divergent incentives.

The Commission believes that the proposed independence rules will work in conjunction with (1) existing governance rules that emphasize the clearing agency's responsibility to owners, participants and other stakeholders,[207] (2) Commission enforcement of securities regulations, and (3) the adoption of other rules in this proposal (such as the proposed nominating committee requirements) to help independent directors mitigate the effects of divergent interests between owners and participants, among various types of participants, and between clearing agency stakeholders and the broader financial markets.

In addition, the Commission believes that standardizing the definition of independent director could improve efficiency by reducing economic frictions and search costs related to monitoring by stakeholders.

The Commission is aware of three primary costs associated with adopting the proposed rules regarding the composition of the board. First, adopting the proposed rules would cause clearing agency boards to immediately expend resources memorializing information that has been gathered for consideration in determining each director's independence, and then preserving the records of the determination. The Commission estimates that each registered, operating clearing agency would incur a one-time burden of approximately $20,353 [208] to comply with proposed Rules 17Ad–25(b), (e), and (f) if the rules were adopted. Clearing agencies would also expend future resources to repeat the above process of memorializing information and documenting a determination, likely twice a year. The Commission estimates that each registered, operating clearing agency would incur an annual, recurring burden of approximately $40,706 [209] to comply with proposed Rules 17Ad–25(b), (e), and (f) if the rules were adopted.

Second, clearing agencies may need to add independent directors to the board, either by replacing directors or increasing the board size.[210] As mentioned earlier, approaches to defining independence for directors vary across clearing agencies. Thus, if proposed Rules 17Ad–25(b), (e), and (f) were adopted, to the extent that a clearing agency's definition of an

[201] See Paolo Saguato, The Unfinished Business of Regulating Clearinghouses, 2020 Colum. Bus. L. Rev. 449, 488 (2020), *https://journals.library.columbia.edu/index.php/CBLR/article/view/7219/3838* (''The agency costs between clearinghouses' shareholders and members (the former participating in the profits of the business, and the latter bearing its final costs) increase the moral hazard of these institutions and threaten clearinghouses' systemic resilience.''); Saguato, *supra* note 160.

[202] *See* Johnson, *supra* note 173, at 698–700.

[203] *See, e.g.,* Clarke, *supra* note 94, at 85 (''The dominant view has been that directors who are responsible to many constituencies are in effect responsible to none . . . ''); Lucian A. Bebchuk & Assaf Hamdani, Independent Directors and Controlling Shareholders, 165 Univ. Pa. L. Rev. 1271, 1274 (2017), *https://scholarship.law.upenn.edu/penn_law_review/vol165/iss6/1/* (taking the position that the best way to help ensure an independent director does not capitulate to controlling shareholders' or management's interests is to help ensure the independent director is accountable to (*i.e.,* nominated by) another group of stakeholders).

[204] *See* Maria Gutierrez & Maribel Saez, Deconstructing Independent Directors, 13 J. Corp. L. Stud. 63, 90 (2013).

[205] *See* Dravis, *supra* note 80.

[206] *See* Clarke, *supra* note 94, at 82–83 (''If one is to rely on NMDs [Non-Management Director's] to exercise their voting power in favor of compliance with external standards, then there needs to be some reason for believing that NMDs will be more likely to do so than non-NMDs. Both kinds of directors can be subject to sanctions for voting to violate clear legal obligations. If the purpose is to encourage corporations to act in accordance with principles that do not constitute legal obligations (for example, ''maximize local employment''), then it is unlikely that NMDs elected by, and accountable to, profit-maximizing shareholders will produce this result. A director serving the ''public interest'' should arguably be independent of everyone—dominant shareholders, management, and indeed all those who have an interest in the company—and follow only the dictates of her conscience. Assuming accountability to be a good thing, however, it is hard to see how such a director could properly be made accountable. In the real world, of course, any director without security of tenure will, in the absence of counterincentives and assuming that the position is desirable, tend to be accountable to whoever was responsible for appointing her.'').

[207] *See, e.g.,* Rule 17Ad–22(e)(2).

[208] This figure is calculated as follows: Chief Compliance Officer for 5 hours at $577 per hour + Compliance Attorney for 44 hours at $397 per hour = $2,885 + $17,468 = $20,353. No hours are allocated to proposed Rules 17Ad–25(e) or (f). *See infra* notes 236 and 237. The per-hour costs ($577 for a Chief Compliance Officer and $397 for a Compliance Attorney) are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. *See* SIFMA, Management and Professional Earnings in the Securities Industry—2013 (Oct. 7, 2013), *https://www.sifma.org/resources/research/management-and-professional-earnings-in-the-securities-industry-2013/.*

[209] This figure is calculated as follows: Chief Compliance Officer for 10 hours at $577 per hour + Compliance Attorney for 88 hours at $397 per hour = $5,770 + $34,936 = $40,706. No hours are allocated to proposed Rules 17Ad–25(e) or (f). *See infra* note 239. The per-hour costs ($577 for a Chief Compliance Officer and $397 for a Compliance Attorney) are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[210] Alternatively, clearing agencies might achieve compliance by reducing the board size and eliminating a sufficient number of non-independent directors.

''independent director'' conflicts with the proposed rules, including the prohibitions in proposed Rule 17Ad–25(f), a clearing agency currently reporting a majority of its directors as independent (or 34 percent, if a majority of the voting rights are directly or indirectly held by participants) on its board may need to replace directors to comply with the rule requirements.[211]

Adding independent directors would require a clearing agency to expend resources conducting a search for new directors. The costs incurred by the clearing agency may vary based on whether it conducts its own search or retains an outside consultant. The Commission estimates that retaining a recruitment specialist to secure an independent director could cost approximately $90,000 per director.[212]

Third, to the extent that non-independent directors tend to have more relevant knowledge and experience than independent directors do, requiring that a majority of directors (or 34 percent, if a majority of the voting rights are directly or indirectly held by participants) be independent could reduce the depth or breadth of relevant expertise that can be brought to clearing agency boards. A reduced level of combined experience on a clearing agency board might impair clearing agency efficiency in the near term. However, the Commission believes that any such effect would be short-lived, as new independent directors gain more experience and prospective director nominees to the board that may not meet existing experience criteria would qualify under the proposed new independence requirements and fitness standards.

The Commission believes that the expected costs to implement proposed Rules 17Ad–25(b), (e), and (f) are sufficiently small that they would not have a material effect on (1) competition among the existing clearing agencies or on a new entrant's ability to enter the market; (2) capital formation, including clearing agencies' ability to raise capital; and (3) the efficiency of clearing agencies or their participants. For example, the Commission estimates that a clearing agency would spend approximately $20,353 plus whatever director search costs were necessary in the first year if the rules were adopted (which the Commission estimates to be up to $90,000 per director), and $40,706 in each year thereafter.

2. Economic Considerations for Rule Proposals Regarding the Nominating Committee

As discussed in more detail above, proposed Rule 17Ad–25(c) would establish minimum requirements for nominating committees, including a minimum composition requirement, fitness standards for serving on the board, and a documented process for evaluating board nominees, including those who would meet the Commission's proposed independence criteria.[213]

Given that six of the seven operating clearing agencies already have nominating committees (or a committee that serves a similar function), the primary benefit of adopting proposed Rule 17Ad–25(c) would be to increase the number of independent directors on existing nominating committees. Insofar as a lack of independent directors on a clearing agency's nominating committee has prevented the clearing agency from having a fairer representation of their shareholders and participants in the selection of their directors and the administration of their affairs, proposed Rule 17Ad–25(c) would help the clearing agency better meet Section 17A's fair representation requirements.

Adopting proposed Rule 17Ad–25(c) would cause clearing agency boards to immediately expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. The Commission estimates that each registered, operating clearing agency would incur a one-time burden of approximately $35,060 [214] to comply with proposed Rule 17Ad–25(c) if the rule was adopted. Clearing agencies would also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised policies and procedures. The Commission estimates that each registered, operating clearing agency would incur an annual, recurring burden of approximately $11,910 [215] to comply with proposed Rule 17Ad–25(c) if the rule were adopted.

The Commission believes that the expected costs to implement proposed Rule 17Ad–25(c) are sufficiently small that they would not have a material effect on (1) competition among the existing clearing agencies or on a new entrant's ability to enter the market; (2) capital formation, including clearing agencies' ability to raise capital; and (3) the efficiency of clearing agencies or their participants.

3. Economic Considerations for Rule Proposals Regarding the Risk Management Committee

As discussed in more detail above, proposed Rule 17Ad–25(d) would require each registered clearing agency to establish a risk management committee (or committees) and establish minimum requirements for the composition, reconstitution, and function of such risk management committees. Based on the Commission staff's review of relevant governance documents, the Commission understands that many registered clearing agencies currently have written governance arrangements that largely conform to the requirements for risk management committees in proposed Rule 17Ad–25(d). The Commission believes that each clearing agency's governance documents and related policies and procedures would need minimal modifications if proposed Rule 17Ad–25(d) were adopted. To the extent that a clearing agency's existing governance documents and related policies and procedures could reasonably be considered to be in compliance with the proposed rules, the benefits of the proposed rule would already be incorporated by market participants.

Adopting proposed Rule 17Ad–25(d) would cause clearing agency boards to immediately expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. The Commission estimates that each registered, operating clearing agency would incur a one-time burden of approximately $3,506 [216] to comply

[211] On the other hand, a clearing agency that does not require a minimum percentage of independent directors could determine that its current slate of directors already satisfies the independence requirements in the proposed rules.

[212] The Commission is basing this estimate on a report by The Good Search noting that the retainer fee for outside directors is on average $90,000. *See* The Good Search, Retained Search Fees, *https://tgsus.com/executive-search-blog/retained-search-fees/*. The Commission believes that this amount could serve as a proxy for the amount of any fee to be charged by a recruitment firm that would conduct a national search for an independent director.

[213] *See supra* Part III.B (discussing proposed Rule 17Ad–25(c)); *infra* Part VIII (providing the proposed rule text).

[214] This figure is calculated as follows: Assistant General Counsel for 30 hours at $507 per hour + Compliance Attorney for 50 hours at $397 per hour = $15,210 + $19,850 = $35,060. *See infra* note 242. The per-hour costs ($507 for an Assistant General Counsel, and $397 for a Compliance Attorney) are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[215] This figure is calculated as follows: Compliance Attorney for 30 hours at $397 per hour = $11,910. *See infra* note 244. The $577 per hour cost for a Chief Compliance Officer is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[216] This figure is calculated as follows: Assistant General Counsel for 3 hours at $507 per hour +

with proposed Rule 17Ad–25(d) if the rule was adopted. Clearing agencies would also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised governance documents and related policies and procedures. The Commission estimates that each registered, operating clearing agency would incur an annual, recurring burden of approximately $1,191 [217] to comply with proposed Rule 17Ad–25(d) if the rule was adopted.

The Commission believes that the expected costs to implement proposed Rule 17Ad–25(d) are sufficiently small that they would not have a material effect on (1) competition among the existing clearing agencies or on a new entrant's ability to enter the market; (2) capital formation, including clearing agencies' ability to raise capital; and (3) the efficiency of clearing agencies or their participants.

4. Economic Considerations for Rule Proposals Regarding Conflicts of Interest Involving Directors or Senior Managers

As discussed in more detail above, proposed Rules 17Ad–25(g) and (h) would (1) require policies and procedures that identify and document existing or potential conflicts of interest, mitigate or eliminate the conflicts of interest and document the actions taken,[218] and (2) require policies and procedures that obligate directors to report potential conflicts.[219]

The Commission believes that each clearing agency's existing policies and procedures for identifying, reporting, and mitigating conflicts of interest by directors or senior managers would need minimal modifications if the proposed rules were adopted. To the extent a clearing agency's existing policies and procedures could reasonably be considered to be in compliance with the proposed rules, the benefits discussed below would already be incorporated by market participants.

The Commission believes that adopting the proposed rules regarding conflicts of interest would help clearing agencies continue to identify and mitigate conflicts of interest by directors and senior managers as circumstances change. For example, by codifying current best practices, the proposed rules would reduce the future ability of clearing agencies to change a clearing agency's conflict of interest disclosure requirements to the detriment of participants and the economic efficiency of the clearing market.

In addition, to the extent that adopting the proposed rule would require clearing agencies to strengthen policies and procedures that deal with identifying, reporting, mitigating or eliminating, and documenting conflicts of interest, strengthening those policies and procedures could reduce the monitoring costs borne by clearing agency stakeholders.

Finally, to the extent a previously undisclosed conflict of interest resulted in less favorable outcomes for the clearing agency—such as higher expenses with service providers or the loss of business from smaller participants—adopting the proposed rule would improve the clearing agency's profitability (operating efficiency) and the economic efficiency of the clearing market.

Adopting the proposed rules regarding conflicts of interest would cause clearing agency boards to immediately expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. The Commission estimates that each registered, operating clearing agency would incur a one-time burden of approximately $6,945 [220] to comply with proposed Rules 17Ad–25(g) and (h) if the rules were adopted. Clearing agencies would also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised policies and procedures. The Commission estimates that each registered, operating clearing agency would incur an annual, recurring burden of approximately $2,382 [221] to comply with proposed Rules 17Ad–25(g) and (h) if the rules were adopted.

The Commission believes that the expected costs to implement proposed Rules 17Ad–25(g) and (h) are sufficiently small that they would not have a material effect on (1) competition among the existing clearing agencies or on a new entrant's ability to enter the market; (2) capital formation, including clearing agencies' ability to raise capital; and (3) the efficiency of clearing agencies or their participants.

5. Economic Considerations for Rule Proposals Regarding Oversight of Service Providers for Critical Services

As discussed in more detail above, proposed Rule 17Ad–25(i) would require policies and procedures enabling the board to oversee relationships with service providers for critical services.

The Commission believes that, to the extent a clearing agency's risk management framework does not already consider how reliance on an affiliated or third-party service provider might affect clearing agency's risks, adopting the proposed rule would enhance the effectiveness of a clearing agency's risk management framework. A more effective risk management framework would reduce the probability of clearing agency failure or financial distress. The reduced probability of these outcomes directly and positively affects the stability of the broader financial system.

Adopting the proposed rules regarding the board's ultimate responsibility for the oversight of relationships with service providers for critical services would cause clearing agency boards to immediately expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. For example, boards might need to create or revise policies for overseeing relationships with service providers for critical services. The Commission estimates that each registered, operating clearing agency would incur a one-time burden of approximately $35,060 [222] to

Compliance Attorney for 5 hours at $397 per hour = $1,521 + $1,985 = $3,506. *See infra* note 248. The per-hour costs ($507 for an Assistant General Counsel, and $397 for a Compliance Attorney) are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[217] This figure is calculated as follows: Compliance Attorney for 3 hours at $397 per hour = $1,191. *See infra* note 250. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[218] *See supra* Part III.D.1 (discussing proposed Rule 17Ad–25(g)).

[219] *See supra* Part III.D.1 (discussing proposed Rule 17Ad–25(h)).

[220] This figure is calculated as follows: Assistant General Counsel for 9 hours at $507 per hour + Compliance Attorney for 6 hours at $397 per hour = $4,563 + $2,382 = $6,945. The Assistant General Counsel's 9 hours are allocated among the proposed rules: 8 hours for proposed Rule 17Ad–25(g) and 1 hour for proposed Rule 17Ad–25(h). The Compliance Attorney's 6 hours are allocated among the proposed rules: 5 hours for proposed Rule 17Ad–25(g) and 1 hour for proposed Rule 17Ad–25(h). *See infra* notes 251, 253, and 255. The per-hour costs ($507 for an Assistant General Counsel and $397 for a Compliance Attorney) are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[221] This figure is calculated as follows: Compliance Attorney for 6 hours at $397 per hour = $2,382. The Compliance Attorney's 6 hours are allocated among the proposed rules: 5 hours for proposed Rule 17Ad–25(g) and 1 hour for proposed Rule 17Ad–25(h). *See infra* notes 252, 254, and 256. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[222] This figure is calculated as follows: Assistant General Counsel for 30 hours at $507 per hour + Compliance Attorney for 50 hours at $397 per hour = $15,210 + $19,850 = $35,060. *See infra* note 261.

Continued

comply with proposed Rule 17Ad–25(i) if the rule was adopted. Clearing agency boards would also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised policies and procedures. The Commission estimates that each registered, operating clearing agency would incur an annual, recurring burden of approximately $11,910 [223] to comply with proposed Rule 17Ad–25(i) if the rule was adopted.

The Commission believes that the expected costs to implement proposed Rule 17Ad–25(i) are sufficiently small that they would not have a material effect on (1) competition among the existing clearing agencies or on a new entrant's ability to enter the market; (2) capital formation, including clearing agencies' ability to raise capital; and (3) the efficiency of clearing agencies or their participants.

6. Economic Considerations for Rule Proposals Regarding Formalized Solicitation, Consideration, and Documentation of Stakeholders' Viewpoints

As discussed in more detail above, proposed Rule 17Ad–25(j) would require policies and procedures to solicit, consider, and document the registered clearing agency's consideration of the views of its participants and other relevant stakeholders regarding material developments in its governance and operations.

The Commission believes that, to the extent clearing agency boards' inadequate solicitation of stakeholder viewpoints has caused some stakeholder views not to be considered, adopting the proposed rules regarding the solicitation, consideration, and documentation of stakeholders' views would improve boards' consideration of different stakeholder views. The Commission believes the improved consideration of different views would help persuade stakeholders with divergent interests to assert their needs more vigorously, which would encourage debate amongst actors with different goals. More informed debates would, in turn, help to foster consensus agreements with mandates and other decisions that are supported by a broader spectrum of stakeholders. Consequently, clearing agencies would identify and develop rule proposals that (to the extent the Commission considers them) would be more likely to meet the public interest requirements under Section 17A of the Exchange Act.[224]

Adopting the proposed rules regarding obligations of the board would cause clearing agency boards to immediately expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. For example, boards might need to create policies for soliciting, considering, and documenting the consideration of stakeholders' views. The Commission estimates that each registered, operating clearing agency would incur a one-time burden of approximately $6,438 [225] to comply with proposed Rule 17Ad–25(j) if the rule was adopted. Clearing agency boards would also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised policies and procedures. The Commission estimates that each registered, operating clearing agency would incur an annual, recurring burden of approximately $1,588 [226] to comply with proposed Rule 17Ad–25(j) if the rule was adopted.

The Commission believes that the expected costs to implement proposed Rule 17Ad–25(j) are sufficiently small that they would not have a material effect on (1) competition among the existing clearing agencies or on a new entrant's ability to enter the market; (2) capital formation, including clearing agencies' ability to raise capital; and (3) the efficiency of clearing agencies or their participants.

D. Reasonable Alternatives to the Proposed Rule

1. More Flexibility in Governance, Operations, and Risk Management

The Commission believes that when determining the content of its policies and procedures, each clearing agency must have the ability to consider the effects of its unique characteristics and circumstances, including ownership and governance structures, on direct and indirect participants, markets served, and the risks inherent in products cleared.[227]

It has been the Commission's experience that particular securities markets (*e.g.,* equities, fixed income, and options) have unique conventions, characteristics, and structures that are best addressed on a market-by-market basis. The Commission recognizes that a less prescriptive approach can help promote efficient and effective practices and encourage regulated entities to consider how to manage their regulatory obligations and risk management practices in a way that complies with Commission rules, while considering the particular characteristics of their business.[228]

Even where current practices at clearing agencies do not significantly differ from the proposed rules, clearing agencies could still potentially face costs associated with the limitations on discretion that would result from the rules, including costs related to limiting a clearing agency's flexibility to respond to changing economic environments. For example, to the extent that clearing agencies having boards with a majority of independent directors value the ability to sometimes have less than a majority of independent directors on the board of directors, they may incur additional costs because, if proposed rules were adopted, they would lose the option to do so.

Although there may be costs to limiting the degree of discretion clearing agencies have over governance, operations, and risk management, the Commission believes there are also potential benefits. For example, clearing agencies may not fully internalize the social costs of differing incentives between owners and participants, among various types of participants, and between clearing agency stakeholders and the broader financial markets and thus, without more granular regulations,

The per-hour costs ($507 for an Assistant General Counsel and $397 for a Compliance Attorney) are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[223] This figure is calculated as follows: Compliance Attorney for 30 hour at $397 per hour = $11,910. *See infra* note 263. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[224] *See* 15 U.S.C. 78q–1(b)(3)(F).

[225] This figure is calculated as follows: Assistant General Counsel for 8 hours at $507 per hour + Compliance Attorney for 6 hours at $397 per hour = $4,056 + $2,382 = $6,438. *See infra* note 267. The per-hour costs ($507 for an Assistant General Counsel and $397 for a Compliance Attorney) are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[226] This figure is calculated as follows: Compliance Attorney for 4 hours at $397 per hour = $1,588. *See infra* note 269. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 208.

[227] *See* CCA Standards Adopting Release, *supra* note 13, at 70806 (''The Commission believes it is appropriate to provide covered clearing agencies with flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, to structure their default management processes to take into account the particulars of their financial resources, ownership structures, and risk management frameworks.'').

[228] *See* CCA Standards Adopting Release, *supra* note 13, at 70801; *see also* Randall S. Kroszner, Central Counterparty Clearing: History, Innovation, and Regulation, 30 Econ. Persp. 37, 39 (2006) (''[37, 39 (2006) (''[M]ore intense government regulation of CCPs may prove counterproductive if it creates moral hazard or impedes the ability of CCPs to develop new approaches to risk management.'').

may not appropriately address the needs and incentives of the direct or indirect participants or the broader financial market.

2. Ownership Limits

In 2010, the Commission proposed Regulation MC, which was ''designed to mitigate potential conflicts of interest . . . through conditions and structures related to ownership, voting, and governance.'' [229] Regulation MC proposed mitigating divergent incentives, especially between larger and smaller owners, by imposing maximum ownership limits. Specifically, Regulation MC proposed that security-based swap clearing agencies be required to choose one of two governance alternatives. The Voting Interest Alternative in part prevented any single participant from having more than 20 percent ownership or voting interest in a clearing agency, and limited total participant ownership or voting rights to no more than 40 percent. The Voting Interest Alternative also required that at least 35 percent of the board be independent directors.

The Governance Interest Alternative in part limited any participant to no more than 5 percent ownership or voting rights in the clearing agency, and required that at least 51 percent of the board be independent directors.

The Commission has not proposed ownership limits in the current proposal because (1) rules during the intervening time have significantly altered how clearing agencies must treat smaller participants [230] and (2) bright-line ownership limits are easy to manipulate, for example by obfuscating beneficial ownership or by getting extremely close to the limit.

3. Increase Shareholders' At-Risk Capital (''Skin in the Game'')

The proposed rules are intended, in part, to better manage divergent incentives of clearing agency owners and non-owner participants. One suggested cause of the incentive misalignment is owners' lack of at-risk capital (''skin in the game'').[231] Under the existing regulatory structure, for-profit clearing agencies can bifurcate risk from reward, sending the reward (*e.g.,* profits) to owners and requiring participants to hold disproportionate risks (*e.g.,* responsibility for non-default losses or participants' defaulted positions). Thus, it is reasonable to consider using skin in the game to correct the incentive alignment.[232]

The Commission is not currently proposing skin-in-the-game requirements. Instead, the Commission is proposing using governance requirements to help manage the divergent incentives of clearing agency shareholders and participants. The Commission believes that the improved management of misaligned incentives will help facilitate clearing agencies' ability to adopt policies, such as skin-in-the-game requirements, that can further ameliorate the divergent incentives of shareholders and participants.

4. Increase Public Disclosure

One of the purposes of the proposed rules is to increase transparency into board governance. Increased transparency could also be achieved by requiring clearing agencies to enhance their governance disclosures. For example, the Commission could require clearing agencies to publicly disclose, for each director, the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director. This requirement could include each director's affiliation with clearing agency participants. The Commission could require these disclosures to be submitted in a structured (*i.e.,* machine-readable) data language, which could augment any transparency benefits resulting from the disclosures by increasing the efficiency with which they are processed.

E. Request for Comment

The Commission requests comment on all aspects of this initial economic analysis, including the potential benefits and costs, all effects on efficiency, competition (including any effects on barriers to entry), and capital formation, and reasonable alternatives to the proposed rules. We request and encourage any interested person to submit comments regarding the proposed rules, our analysis of the potential effects of the proposed rules, and other matters that may have an effect on the proposed rules. We request that commenters identify sources of data and information as well as provide data and information to assist us in analyzing the economic consequences of the proposed rules and each reasonable alternative. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked, including those associated with each reasonable alternative. In addition, we are interested in comments on any other reasonable alternative, including any alternative that would distinguish registered clearing agencies based on certain factors, such as organizational structure or products cleared.

V. Paperwork Reduction Act

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[233] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[234] The title for the collection of information is: ''Clearing Agency Standards for Operation and Governance'' (OMB Control No. 3235–0695).[235] 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.

As discussed further below, proposed Rules 17Ad–25(b) through (d) and ((g) through (j) each contain collections of information. The collections in proposed Rules 17Ad–25(b) through (d) and (g) through (j) are mandatory. Respondents under these rules are registered clearing agencies, of which there are currently nine. The Commission estimates for purposes of the PRA that one additional entity may seek to register as a clearing agency in the next three years, and so for purposes of this proposal the Commission has assumed ten respondents.

A. Rule 17Ad–25(b)

The elements of proposed Rule 17Ad–25(b) are discussed in Part III.A.1. The purpose of the rule is to require either a majority or 34 percent of independent directors, depending on the circumstances set forth in the rule. Proposed Rule 17Ad–25(b)(2) would

[229] *See* Regulation MC Proposing Release, *supra* note 1, at 65882.

[230] *See supra* Part II.B. (discussing, in part, how the Commission has adopted rules to promote access to registered clearing agencies, including access for smaller participants).

[231] *See, e.g.,* Saguato, *supra* note 201, at 488 (''[There is] significant imbalance of the economic exposure of clearing members vis-à-vis clearinghouses and their holding groups. This imbalance . . . results in the misaligned incentives of members and share-holders, which creates agency costs between the firms' primary stakeholders that threaten clearinghouses' systemic resilience.'').

[232] *See* OCC, Order Approving Proposed Rule Change to Establish OCC's Persistent Minimum Skin-In-The-Game, Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861, 29863 (June 3, 2021) (''The Commission continues to regard skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.'').

[233] 44 U.S.C. 3502.

[234] 44 U.S.C. 3507.

[235] *Id.*

impose a collection of information requirement.

The Commission estimates that proposed Rule 17Ad–25(b)(2) would require respondent clearing agencies to incur a one-time burden of 44 hours [236] to memorialize information that has been gathered for the person(s) making the determination to consider prior to making it, as well as 5 hours [237] to document and preserve the records of the determination. The Commission estimates that the initial activities required by Rule 17Ad–25(b)(2) would impose an aggregate initial burden on respondent clearing agencies of 490 hours.[238] Due to the fact that board composition changes on occasion after elections or due to unexpected events such as restructuring, resignations, or deaths, the Commission estimates that respondent clearing agencies would incur an ongoing annual burden of 98 hours to repeat the above process of memorializing information and documenting a determination twice a year.[239] The Commission estimates that the ongoing activities required by Rule 17Ad–25(b)(2) would impose an aggregate ongoing burden on respondent clearing agencies of 980 hours.[240]

B. Rule 17Ad–25(c)

As discussed in Part III.B above, the Commission is proposing certain composition and process requirements for nominating committees of registered clearing agencies. As proposed, Rule 17Ad–25(c)(1) through (4) would add governance requirements regarding the nominating committee of the Board that do not appear in the existing requirements for governance arrangements in Rules 17Ad–22(d)(8) and 17Ad–22(e)(2).[241] Based on the Commission staff's review of relevant governance documents, the Commission understands that many registered clearing agencies currently have written governance arrangements broadly similar to the requirements for nominating committees in proposed Rule 17Ad–25(c)(1) through (4). Therefore, the Commission would expect that the PRA burden for a respondent clearing agency includes the incremental burdens of reviewing and revising existing governance documents and related policies and procedures, and creating new governance documents and related policies and procedures, as necessary, pursuant to the proposed rule. Accordingly, the Commission estimates that respondent clearing agencies would incur an aggregate one-time burden of approximately 800 hours to review and revise existing governance documents and related policies and procedures and to create new governance documents and related policies and procedures, as necessary.[242]

Proposed Rule 17Ad–25(c)(1) through (4) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities with respect to governance documents and related policies and procedures created in response to the proposed rule. The proposed rule would also require ongoing documentation activities with respect to the implementation of a written process for a nominating committee to evaluate board nominees, including those who would meet the definition of an independent director, pursuant to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[243] the Commission estimates that the ongoing activities required by proposed Rule 17Ad–25(c)(1) through (4) would impose an aggregate annual burden on respondent clearing agencies of 300 hours.[244]

C. Rule 17Ad–25(d)

Proposed Rule 17Ad–25(d)(1) would require a registered clearing agency to establish a risk management committee (or committees) to assist the board of directors in overseeing the risk management of the registered clearing agency. Under proposed Rule 17Ad–25(d)(1), each risk management committee would be required to reconstitute its membership on a regular basis and at all times include representatives from shareholders (or members) and participants of the registered clearing agency. Proposed Rule 17Ad–25(d)(2) would require each risk management committee, in the performance of its duties, to be able to provide a risk-based, independent, and informed opinion on all matters presented to it for consideration in a manner that supports the safety and efficiency of the registered clearing agency.[245]

The purpose of this collection of information is to promote sound risk management and governance arrangements at registered clearing agencies, to help ensure diversity of perspective across shareholders (or members) and participants in the oversight of registered clearing agencies' risk management practices, and to mitigate potential or existing conflicts of interest that could undermine the recommendations of risk management committees.

Proposed Rule 17Ad–25(d)(1) through (2) would add governance requirements regarding the risk management committee (or committees) of a registered clearing agency's board of directors that do not appear in the existing requirements for governance arrangements in Rules 17Ad–22(d)(8) and 17Ad–22(e)(2).[246] Based on the Commission staff's review of relevant governance documents, the Commission understands that many registered clearing agencies currently have written governance arrangements that largely conform to the requirements for risk management committees in proposed Rule 17Ad–25(d)(1) through (2). Therefore, the Commission would expect that the PRA burden for a respondent clearing agency includes the incremental burdens of reviewing and revising its existing governance documents and related policies and procedures and creating new governance documents and related policies and procedures, as necessary, pursuant to the proposed rule.[247] Accordingly, the Commission estimates that respondent clearing agencies would incur an aggregate one-time burden of approximately 80 hours to review and revise existing governance documents and related policies and procedures and to create new governance documents

[236] This figure is calculated as follows: ((Chief Compliance Officer for 4 hours) + (Compliance Attorney for 40 hours)) = 44 hours.

[237] This figure is calculated as follows: ((Chief Compliance Officer for 1 hours) + (Compliance Attorney for 4 hours)) = 5 hours.

[238] This figure is calculated as follows: 49 hours × 10 respondent clearing agencies = 490 hours.

[239] This figure is calculated as follows: ((Chief Compliance Officer for 10 hours) + (Compliance Attorney for 88 hours)) = 98 hours.

[240] This figure is calculated as follows: 98 hours × 10 respondent clearing agencies = 980 hours.

[241] 17 CFR 240.17Ad–22(d)(8), (e)(2).

[242] This figure is calculated as follows: ((Assistant General Counsel for 30 hours) + (Compliance Attorney for 50 hours)) = 80 hours × 10 respondent clearing agencies = 800 hours.

[243] *See* Clearing Agency Standards Adopting Release, *supra* note 8, at 66260–63; CCA Standards Adopting Release, *supra* note 13, at 70891–99.

[244] This figure is calculated as follows: (Compliance Attorney for 30 hours) × 10 respondent clearing agencies = 300 hours.

[245] *See supra* Part III.C.1 (discussing proposed Rule 17Ad–25(d)); *infra* Part VIII (providing the proposed rule text).

[246] *See* 17 CFR 240.17Ad–22(d)(8), (e)(2).

[247] Because the written governance arrangements at many registered clearing agencies already largely conform to the proposed requirements for risk management committees, the Commission believes that registered clearing agencies may need to make only limited changes to update their governing documents and related policies and procedures to help ensure compliance with proposed Rule 17Ad–25(d)(1) through (2).

and related policies and procedures, as necessary.[248]

Proposed Rule 17Ad–25(d)(1) through (2) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities with respect to the governance documents and related policies and procedures created in response to the proposed rule. The proposed rule would also require ongoing documentation activities with respect to the establishment of a risk management committee (or committees) pursuant to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[249] the Commission estimates that the ongoing activities required by proposed Rule 17Ad–25(d)(1) through (2) would impose an aggregate annual burden on respondent clearing agencies of 30 hours.[250]

D. Rule 17Ad–25(g)

Proposed Rule 17Ad–25(g)(1) would contain similar provisions to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2) in that they reference clear and transparent governance arrangements, but also adds additional requirements that do not appear in those rules. The Commission therefore would expect that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule, and the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rules 17Ad–22(d)(8) and 17Ad–22(e)(2), the Commission estimates that respondent clearing agencies would incur an aggregate one-time burden of approximately 80 hours to review and revise existing policies and procedures and to create new policies and procedures as necessary to help ensure compliance with proposed Rule 17Ad–25(g)(1).[251]

Rule 17Ad–25(g)(1) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2) and because the modifications to Rule 17Ad–25(g)(1) will require updating current policies and procedures or establishing new policies and procedures to help ensure compliance, the Commission estimates that the ongoing activities required by Rule 17Ad–25(g)(1) would impose an aggregate annual burden on respondent clearing agencies of 30 hours.[252]

Proposed Rule 17Ad–25(g)(2) would contain similar provisions to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2) in that they reference clear and transparent governance arrangements, but also adds additional requirements that do not appear in those rules. The Commission therefore would expect that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. The Commission recognizes that while registered clearing agencies may have existing policies and procedures to comply with proposed Rule 17Ad–25(g)(1), they may not have current policies and procedures designed specifically to mitigate and document the how the conflict of interest was mitigated, as required by Rule 17Ad–25(g)(2). Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rules 17Ad–22(d)(8) and 17Ad–22(e)(2), the Commission estimates that respondent clearing agencies would incur an aggregate one-time burden of approximately 50 hours to review and revise existing policies and procedures and to create new policies and procedures as necessary to help ensure compliance with proposed Rule 17Ad–25(g)(2).[253]

Rule 17Ad–25(g)(2) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2) and because the modifications to Rule 17Ad–25(g)(2) will require updating current policies and procedures or establishing new policies and procedures to help ensure compliance, the Commission estimates that the ongoing activities required by Rule 17Ad–25(g)(2) would impose an aggregate annual burden on respondent clearing agencies of 20 hours.[254]

E. Rule 17Ad–25(h)

Proposed Rule 17Ad–25(h) would contain similar provisions to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2) in that they reference clear and transparent governance arrangements, but also adds additional requirements that do not appear in those rules. The Commission therefore would expect that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rules 17Ad–22(d)(8) and 17Ad–22(e)(2), the Commission estimates that respondent clearing agencies would incur an aggregate one-time burden of approximately 20 hours to review and revise existing policies and procedures and to create new policies and procedures as necessary to help ensure compliance with proposed Rule 17Ad–25(h).[255]

Rule 17Ad–25(h) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2) and because the modifications to Rule 17Ad–25(h) will require updating current policies and procedures or establishing new

[248] This figure is calculated as follows: ((Assistant General Counsel for 3 hours) + (Compliance Attorney for 5 hours)) = 8 hours × 10 respondent clearing agencies = 80 hours.

[249] *See* Clearing Agency Standards Adopting Release, *supra* note 8, at 66260–63; CCA Standards Adopting Release, *supra* note 13, at 70891–99.

[250] This figure is calculated as follows: (Compliance Attorney for 3 hours) × 10 respondent clearing agencies = 30 hours.

[251] This figure is calculated as follows: ((Assistant General Counsel for 5 hours) + (Compliance Attorney for 3 hours)) = 8 hours × 10 respondent clearing agencies = 80 hours.

[252] This figure is calculated as follows: (Compliance Attorney for 3 hours) × 10 respondent clearing agencies = 30 hours.

[253] This figure is calculated as follows: ((Assistant General Counsel for 3 hours) + (Compliance Attorney for 2 hours)) = 5 hours × 10 respondent clearing agencies = 50 hours.

[254] This figure is calculated as follows: (Compliance Attorney for 2 hours) × 10 respondent clearing agencies = 20 hours.

[255] This figure is calculated as follows: ((Assistant General Counsel for 1 hours) + (Compliance Attorney for 1 hours)) = 2 hours × 10 respondent clearing agencies = 20 hours.

policies and procedures to help ensure compliance, the Commission estimates that the ongoing activities required by Rule 17Ad–25(h) would impose an aggregate annual burden on respondent clearing agencies of 10 hours.[256]

F. Rule 17Ad–25(i)

As discussed in Section III.F above, the Commission is proposing certain obligations of the board to oversee service providers for critical services to a registered clearing agency under proposed Rule 17Ad–25(i). Such obligation does not appear in the existing requirements for governance arrangements in Rules 17Ad–22(d)(8) and 17Ad–22(e)(2),[257] but certain aspects of the proposed rule may be addressed in existing requirements. For example, proposed rule 17Ad–25(i)(1) references the existence of a risk management framework but does not itself require the creation of such framework. Instead, maintenance of a risk management framework is already required for all currently registered clearing agencies under Rule 17Ad–22(e)(3)(i).[258] Additionally, as discussed above, there are existing requirements for managing operational risk under Rule 17Ad–22(d)(4) [259] and Rule 17Ad–22(e)(17).[260] Therefore, the Commission would expect that the PRA burden for a respondent clearing agency includes the incremental burdens of reviewing and revising its existing governance documents and related policies and procedures and creating new governance documents and related policies and procedures, as necessary, pursuant to the proposed rule. Accordingly, the Commission estimates that respondent clearing agencies would incur an aggregate one-time burden of approximately 800 hours to review and revise existing governance documents and related policies and procedures and to create new governance documents and related policies and procedures, as necessary.[261]

Proposed Rule 17Ad–25(i) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing documentation, monitoring, and compliance activities with respect to the governance documents and related policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[262] the Commission estimates that the ongoing activities required by Rule 17Ad–25(i) would impose an aggregate annual burden on respondent clearing agencies of 300 hours.[263]

G. Rule 17Ad–25(j)

Proposed Rule 17Ad–25(j) would require a registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in the clearing agency's governance and operations on a recurring basis.[264]

Proposed Rule 17Ad–25(j) contains similar provisions to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2) but would also impose additional governance obligations that do not appear in the existing requirements for governance arrangements in Rule 17Ad–22.[265] Therefore, the Commission would expect that a respondent clearing agency may have written rules, policies, and procedures similar to some of the requirements in the proposed rule and that the PRA burden includes the incremental burdens of reviewing and revising existing policies and procedures and creating new policies and procedures, as necessary, pursuant to the proposed rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rules 17Ad–22(d)(8) and 17Ad–22(e)(2),[266] the Commission estimates that respondent clearing agencies would incur an aggregate one-time burden of approximately 140 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[267]

Rule 17Ad–25(j) also imposes ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. The proposed rule would also require ongoing documentation activities with respect to the board's consideration of participants' and relevant stakeholders' views pursuant to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[268] the Commission estimates that the ongoing activities required by proposed Rule 17Ad–25(j) would impose an aggregate annual burden on respondent clearing agencies of 40 hours.[269]

H. Chart of Total PRA Burdens

Name of information collection	Type of burden	Number of respondents	Initial burden per entity (hours)	Ongoing burden per entity (hours)	Total annual burden per entity (hours)	Total industry burden (hours)
17Ad–25(b)	Recordkeeping	10	49	98	147	1,470
17Ad–25(c)	Recordkeeping	10	80	30	110	1,100
17Ad–25(d)	Recordkeeping	10	8	3	11	110
17Ad–25(g)	Recordkeeping	10	13	5	18	180
17Ad–25(h)	Recordkeeping	10	2	1	3	30
17Ad–25(i)	Recordkeeping	10	80	30	110	1,100
17Ad–25(j)	Recordkeeping	10	14	4	18	180

[256] This figure is calculated as follows: (Compliance Attorney for 1 hours) × 10 respondent clearing agencies = 10 hours.

[257] 17 CFR 240.17Ad–22(d)(8), (e)(2).

[258] 17 CFR 240.17Ad–22(e)(3)(i).

[259] 17 CFR 240.17Ad–22(d)(4).

[260] 17 CFR 240.17Ad–22(e)(17).

[261] This figure is calculated as follows: ((Assistant General Counsel for 30 hours) + (Compliance Attorney for 50 hours)) = 80 hours × 10 respondent clearing agencies = 800 hours.

[262] *See* Clearing Agency Standards Adopting Release, *supra* note 38, at 66260–63; CCA Standards Adopting Release, *supra* note 38, at 70891–99.

[263] This figure is calculated as follows: (Compliance Attorney for 30 hours) × 10 respondent clearing agencies = 300 hours.

[264] *See supra* Part III.F.2 (discussing proposed Rule 17Ad–25(j)); *infra* Part VIII (providing the proposed rule text).

[265] *See* 17 CFR 240.17Ad–22(d)(8), (e)(2).

[266] *See* Clearing Agency Standards Adopting Release, *supra* note 8, at 66260; CCA Standards Adopting Release, *supra* note 13, at 70891–92.

[267] This figure was calculated as follows: ((Assistant General Counsel for 8 hours) + (Compliance Attorney for 6 hours)) = 14 hours × 10 respondent clearing agencies = 140 hours.

[268] *See* Clearing Agency Standards Adopting Release, *supra* note 8, at 66260–63; CCA Standards Adopting Release, *supra* note 13, at 70891–99.

[269] This figure was calculated as follows: (Compliance Attorney for 4 hours) × 10 respondent clearing agencies = 40 hours.

I. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information shall have practical utility;

2. Evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information;

3. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

4. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

5. Evaluate whether the proposed rules would have any effects on any other collection of information not previously identified in this section.

Persons wishing to submit comments on the collection of information requirements should direct them to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and should also send a copy of their comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File Number S7–21–22. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–21–22 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is considered ''major'' where, if adopted, it results or is likely to result in (i) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effect on competition, investment, or innovation.[270] The Commission requests comment on the potential impact of proposed Rule 17Ad–25 on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[271] Section 603(a) of the Administrative Procedure Act,[272] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on ''small entities.'' [273] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant impact on a substantial number of small entities.[274]

A. Registered Clearing Agencies

Proposed Rule 17Ad–25 would apply to all registered clearing agencies. For the purposes of Commission rulemaking and as applicable to proposed Rule 17Ad–25, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year, (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[275]

Based on the Commission's existing information about the clearing agencies currently registered with the Commission,[276] the Commission believes that all such registered clearing agencies exceed the thresholds defining ''small entities'' set out above. While other clearing agencies may emerge and seek to register as clearing agencies with the Commission, the Commission believes that no such entities would be ''small entities'' as defined in Exchange Act Rule 0–10.[277]

B. Certification

For the reasons described above, the Commission certifies that proposed Rule 17Ad–25 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission requests comment regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact. Persons wishing to submit written comments should refer to the instructions for submitting comments in the front of this release.

VIII. Statutory Authority and Text of Proposed Rule

The Commission is proposing Rule 17Ad–25 under the Commission's rulemaking authority in the Exchange Act, particularly Section 17(a), 15 U.S.C. 78q(a), Section 17A, 15 U.S.C. 78q–1, Section 23(a), 15 U.S.C. 78w(a), Section 765 of the Dodd-Frank Act, and 805 of the Clearing Supervision Act, 15 U.S.C. 8343 and 15 U.S.C. 5464 respectively.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendment

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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[270] Public Law 104–121, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[271] *See* 5 U.S.C. 601 *et seq.*

[272] 5 U.S.C. 603(a).

[273] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' *See* 5 U.S.C. 601(b). The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10.

[274] *See* 5 U.S.C. 605(b).

[275] *See* 17 CFR 240.0–10(d).

[276] In 2021, DTCC processed $2.37 quadrillion in financial transactions. Within DTCC, DTC settled $152 trillion of securities and held securities valued at $87.1 trillion, NSCC processed an average daily value of $2.029 trillion in equity securities, and FICC cleared $1.4 quadrillion of transactions in government securities and $69 trillion of transactions in agency mortgage-backed securities. *See* DTCC, 2021 Annual Report, *https://www.dtcc.com/annuals/2021/*. ICE averaged daily trade volume of 5.97 million contracts and total revenues of $7.1 billion in 2021. *See* ICE, 2021 Annual Report, *https://s2.q4cdn.com/154085107/files/doc_financials/2021/ar/250217_009_Web_BMK-(1).pdf*. In addition, OCC cleared more than 7.5 billion contracts and held margin of $180 billion at the end of 2020. *See* OCC, 2020 Annual Report, *https://annualreport.theocc.com/*. These trade volumes exceed the $500 million threshold for small entities.

[277] *See* 17 CFR 240.0–10(d). The Commission based this determination on its review of public sources of financial information about registered clearing agencies.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Section 240.17Ad–25 is added to read as follows:

§ 240.17Ad–25 Clearing agency boards of directors and conflicts of interest.

(a) *Definitions.* All terms used in this section have the same meaning as in the Securities Exchange Act of 1934, and unless the context otherwise requires, the following definitions apply for purposes of this section:

Affiliate means a person that directly or indirectly controls, is controlled by, or is under common control with the registered clearing agency.

Board of directors means the board of directors or equivalent governing body of the registered clearing agency.

Director means a member of the board of directors or equivalent governing body of the registered clearing agency.

Family member means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person (other than a tenant or employee) sharing a household with the director or a nominee for director, a trust in which these persons (or the director or a nominee for director) have more than fifty percent of the beneficial interest, a foundation in which these persons (or the director or a nominee for director) control the management of assets, and any other entity in which these persons (or the director or a nominee for director) own more than fifty percent of the voting interests.

Independent director means a director of the registered clearing agency who has no material relationship with the registered clearing agency or any affiliate thereof.

Material relationship means a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director. A material relationship also includes a relationship that existed during a lookback period of one year counting back from making the initial determination in paragraph (b)(2) of this section.

Service provider for critical services means any person that is contractually obligated to the registered clearing agency for the purpose of supporting clearance and settlement functionality or any other purposes material to the business of the registered clearing agency.

(b) *Composition of the board of directors.* (1) A majority of the members of the board of directors of a registered clearing agency must be independent directors, unless a majority of the voting rights issued as of the immediately prior record date are directly or indirectly held by participants, in which case at least 34 percent of the members of the board of directors must be independent directors.

(2) Each registered clearing agency shall broadly consider all the relevant facts and circumstances, including under paragraph (g) of this section, on an ongoing basis, to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency, and is not precluded from being an independent director under paragraph (f) of this section, in order to qualify as an independent director. In making such determination, a registered clearing agency must:

(i) Identify the relationships between a director, the registered clearing agency, and any affiliate thereof and any circumstances under paragraph (f) of this section;

(ii) Evaluate whether any relationship is likely to impair the independence of the director in performing the duties of director; and

(iii) Document this determination in writing.

(c) *Nominating committee.* (1) Each registered clearing agency must establish a nominating committee and a written evaluation process whereby such nominating committee shall evaluate nominees for serving as directors.

(2) A majority of the directors serving on the nominating committee must be independent directors, and the chair of the nominating committee must be an independent director.

(3) The fitness standards for serving as a director shall be specified by the nominating committee, documented in writing, and approved by the board of directors. Such fitness standards must be consistent with the requirements of this section and include that the individual is not subject to any statutory disqualification as defined under Section 3(a)(39) of the Act.

(4) The nominating committee must document the outcome of the written evaluation process consistent with the fitness standards required under paragraph (c)(3) of this section. Such process shall:

(i) Take into account each nominee's expertise, availability, and integrity, and demonstrate that the board of directors, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives;

(ii) Demonstrate that the nominating committee has considered whether a particular nominee would complement the other board members, such that, if elected, the board of directors, taken as a whole, would represent the views of the owners and participants, including a selection of directors that reflects the range of different business strategies, models, and sizes across participants, as well as the range of customers and clients the participants serve;

(iii) Demonstrate that the nominating committee considered the views of other stakeholders who may be impacted by the decisions of the registered clearing agency, including transfer agents, settlement banks, nostro agents, liquidity providers, technology or other service providers; and

(iv) Identify whether each selected nominee would meet the definition of independent director in paragraphs (a) and (f) of this section, and whether each selected nominee has a known material relationship with the registered clearing agency or any affiliate thereof, an owner, a participant, or a representative of another stakeholder of the registered clearing agency described in paragraph (c)(4)(iii) of this section.

(d) *Risk management committee.* (1) Each registered clearing agency must establish a risk management committee (or committees) to assist the board of directors in overseeing the risk management of the registered clearing agency. The membership of each risk management committee must be reconstituted on a regular basis and at all times include representatives from the owners and participants of the registered clearing agency.

(2) In the performance of its duties, the risk management committee must be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the safety and efficiency of the registered clearing agency.

(e) *Committees generally.* If any committee has the authority to act on

behalf of the board of directors, the composition of that committee must have at least the same percentage of independent directors as is required for the board of directors, as set forth in paragraph (b)(1) of this section.

(f) *Circumstances that preclude directors from being independent directors.* In addition to how the definition of independent director set forth in this section is applied by a registered clearing agency, the following circumstances preclude a director from being an independent director, subject to a lookback period of one year (counting back from making the initial determination in paragraph (b)(2) of this section) applying to paragraphs (f)(2) through (6) of this section:

(1) The director is subject to rules, policies, or procedures by the registered clearing agency that may undermine the director's ability to operate unimpeded, such as removal by less than a majority vote of shares that are entitled to vote in such director's election;

(2) The director, or a family member, has an employment relationship with or otherwise receives compensation other than as a director from the registered clearing agency or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency;

(3) The director, or a family member, is receiving payments from the registered clearing agency, or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency, that reasonably could affect the independent judgment or decision-making of the director, other than the following:

(i) Compensation for services as a director on the board of directors or a committee thereof; or

(ii) Pension and other forms of deferred compensation for prior services not contingent on continued service;

(4) The director, or a family member, is a partner in, or controlling shareholder of, any organization to or from which the registered clearing agency, or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency, is making or receiving payments for property or services, other than the following:

(i) Payments arising solely from investments in the securities of the registered clearing agency, or affiliate thereof; or

(ii) Payments under non-discretionary charitable contribution matching programs;

(5) The director, or a family member, is employed as an executive officer of another entity where any executive officers of the registered clearing agency serve on that entity's compensation committee; or

(6) The director, or a family member, is a partner of the outside auditor of the registered clearing agency, or any affiliate thereof, or an employee of the outside auditor who is working on the audit of the registered clearing agency, or any affiliate thereof.

(g) *Conflicts of interest.* Each registered clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to:

(1) Identify and document existing or potential conflicts of interest in the decision-making process of the clearing agency involving directors or senior managers of the registered clearing agency; and

(2) Mitigate or eliminate and document the mitigation or elimination of such conflicts of interest.

(h) *Obligation of directors to report conflicts.* Each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.

(i) *Obligation of board of directors to oversee relationships with service providers for critical services.* Each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board of directors to:

(1) Confirm and document that risks related to relationships with service providers for critical services are managed in a manner consistent with its risk management framework, and review senior management's monitoring of relationships with service providers for critical services;

(2) Approve policies and procedures that govern the relationship with service providers for critical services;

(3) Review and approve plans for entering into third-party relationships where the engagement entails being a service provider for critical services to the registered clearing agency; and

(4) Through regular reporting to the board of directors by senior management, confirm that senior management takes appropriate actions to remedy significant deterioration in performance or address changing risks or material issues identified through ongoing monitoring.

(j) *Obligation of board of directors to solicit and consider viewpoints of participants and other relevant stakeholders.* Each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in its governance and operations on a recurring basis.

By the Commission.

Dated: August 8, 2022.

Vanessa A. Countryman,

Secretary.

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