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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC–22–0007]

RIN 0563–AC80

Walnut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is amending its walnut crop insurance regulations to remove the minimum acreage insurability requirement. This change will align the insurability requirements for walnut crop insurance with other tree nut insurance policies. Many walnut producers also grow other tree nut crops. Having different insurability requirements for crop insurance for similar crops has created additional work and confusion for producers and their Approved Insurance Providers (AIP). Much like other tree nut policies, the Walnut Crop Provisions will continue to require that the producer has a share in the orchard, the trees be adapted to the area, grown in an orchard acceptable to the AIP if inspected, and meet a minimum age requirement. The remaining insurability requirements have proven to be effective underwriting controls in the other tree nut policies to ensure the walnut crop insurance program remains actuarially sound with this change. In aligning the insurability requirements for walnuts and similar crops, this change is expected to make it easier for producers to obtain walnut crop insurance.

DATES: *Effective date:* This final rule is effective October 31, 2022.

Comment date: We will consider comments that we receive by the close of business December 27, 2022. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by going through the Federal eRulemaking Portal as follows:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–22–0007. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Throughout this rule, the terms ''Crop Provisions,'' ''Special Provisions,'' and ''policy'' are used as defined in the Common Crop Insurance Policy (CCIP) Basic Provisions in 7 CFR 457.8. Additional information and definitions related to Federal crop insurance policies are in 7 CFR 457.8.

The changes to the Walnut Crop Insurance Provisions (7 CFR 457.122) resulting from the amendments in this rule are applicable for the 2023 and succeeding crop years for crops with a contract change date on or after October 31, 2022.

Through this rule, FCIC amends the Walnut Crop Insurance Provisions (7 CFR 457.122) as follows:

FCIC is removing the minimum acreage requirement to align the insurability requirements with other tree nut policies. The minimum acreage requirement was originally established to prevent producers from insuring their backyard trees. The change in this rule will reduce the additional work and confusion that it causes producers, many of whom also farm other tree nuts and must annually request a waiver of the minimum acreage requirement to insure their walnuts.

FCIC is also making a number of clarifications, corrections, and updates as follows:

FCIC is removing the introductory sentence explaining the order of priority of policy provisions because the CCIP Basic Provisions includes the priority order of policy provisions. Therefore, in the Walnut Crop Provisions, FCIC is removing the introductory sentence explaining the order of priority of policy provisions because it is duplicative of the same order of priority included in the CCIP Basic Provisions.

FCIC is clarifying that the definition of harvest is the removal of mature walnuts from the orchard, by adding the word ''mature.''

FCIC is clarifying that the definition for ''interplanted'' overrides the definition in the CCIP Basic Provisions, by adding the statement, ''In lieu of the definition contained in section 1 of the Basic Provisions'' prior to the description. It will provide clear use of the definition and its application to the Crop Provisions.

FCIC is clarifying the definition for ''net delivered weight'' is dry, hulled, whole in-shell walnuts, by adding the word ''whole'' to match the description of walnuts in the definition for ''production guarantee (per acre).''

FCIC is clarifying that the definition for ''production guarantee (per acre)'' is additional to the definition contained in section 1 of the Basic Provisions and

that the number of pounds is dry, hulled, whole in-shell walnuts. It will provide clarity that the number of pounds is whole in-shell walnuts and will match the description of walnuts in the definition for ''net delivered weight.''

FCIC is replacing the term ''FSA farm serial number'' with ''FSA farm number'' because the term ''FSA farm serial number'' is obsolete. A similar change was already implemented in the CCIP Basic Provisions in 2017 when the definition was changed to remove the word ''serial.''

FCIC is revising the heading for section 3 to ''Insurance Guarantees, Coverage Levels, and Prices'' by removing the phrase at the end ''for Determining Indemnities.'' Removing this phrase will align the heading to match the corresponding section in the CCIP Basic Provisions. It also helps clarify that price is not exclusively used to determine indemnities; it is also used to establish the guarantee and determine the premium due for the producer.

FCIC is correcting the location of certain information (*e.g.,* price elections) from ''Special Provisions'' to ''actuarial documents.''

FCIC is clarifying the timing and method of yield adjustments, if circumstances occur that may reduce the yield potential, based on when the circumstance occurred. The current provision states that the AIP will reduce the yield used to establish the production guarantee but does not state when or how the adjustments may apply. These changes provide three scenarios that contain specific instructions for adjustments based on the timing of when the circumstance occurred that may reduce the yield potential and whether the producer notifies the AIP by the production reporting date.

If the circumstance occurs before the beginning of the insurance period and the producer notifies the AIP by the production reporting date, the provisions require the yield used to establish the production guarantee to be reduced for the current crop year regardless of whether the circumstance was due to an insured or an uninsured cause of loss.

If the circumstance occurs after the beginning of the insurance period and the producer notifies the AIP of the circumstance by the production reporting date, the provisions require the yield used to establish the production guarantee to be reduced for the current crop year only if the potential reduction in the yield used to establish the production guarantee is due to an uninsured cause of loss.

If the producer fails to notify the AIP of the circumstance by the production reporting date, regardless of whether the circumstance occurs before or after the beginning of the insurance period, the provisions require an amount equal to the reduction in the yield to be added to the production to count due to uninsured causes. In addition, the provisions require reduction of the yield used to establish the production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or the yield potential of the insured acreage.

These provisions are similar to provisions that FCIC has added to other perennial crop insurance policies, such as the Texas Citrus Fruit Crop Insurance Provisions, published in the **Federal Register** on June 13, 2016, (81 FR 38061–38067). Adding these provisions is intended to remove potential ambiguity regarding the consequences when circumstances occur that will reduce the yield potential and to promote consistency with administration of similar policies such as the Texas Citrus Crop Insurance Provisions.

FCIC is correcting punctuation in bulleted lists by adding a semi colon or adding ''and'' after the semi-colon.

FCIC is replacing the phrase ''growing season after being set out'' with ''leaf year.'' This changes the wording to be consistent with how the information is shown in the Special Provisions.

FCIC is simplifying the reference to the Special Provisions for exceptions to the end of insurance period by revising the phrase ''(Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions)'' to ''unless otherwise specified in the Special Provisions.'' The shorter phrase is more consistent with similar exceptions throughout other Crop Provisions.

FCIC is removing repetitive statements to ''the provisions of'' and parenthetical titles that reference the CCIP Basic Provisions for consistency. For example, this change deletes the reference to provisions and the parenthetical title (Insurance Period) in the sentence ''In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions.'' In other Crop Provisions, the reference to provisions and parenthetical titles do not appear. This change will make the Crop Provisions more consistent.

FCIC is updating prices and yields in settlement of claim examples, so they are more reflective of current values and potential indemnities.

FCIC is simplifying a statement about walnut production exceeding 30 percent mold damage, by revising the phrase ''walnut production that exceeds'' to ''if walnut production exceeds.'' The remainder of the statement is unchanged and provides that the unsold walnuts will have zero production to count.

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore, falls within that exemption. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule under 5 U.S.C. 553 or any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

For major rules, the Congressional Review Act requires a delay of the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on October 31, 2022.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant or economically significant.

The Office of Management and Budget (OMB) has designated this rule as not

significant under Executive Order 12866. Therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or Executive Order 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b). As specified in 7 CFR 1b.4(b)(4), FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Risk Management Agency (RMA) has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Assistance Listing,[1] to which this rule applies is No. 10.450—Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control number 0563–0053.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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[1] See *https://sam.gov/content/assistance-listings.*

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FCIC amends 7 CFR part 457, effective for the 2023 and succeeding crop years for crops with a contract change date on or after October 31, 2022, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.122:
■ a. In the undesignated introductory paragraph, by removing the year ''2008'' and adding ''2023'' in its place;
■ b. By removing the text between ''Walnut Crop Provisions'' and section 1 (Definitions);
■ c. In section 1:
■ i. In the definition of ''harvest,'' by removing the words, ''the walnuts'' and adding ''mature walnuts'' in their place;
■ ii. By revising the definition of ''Interplanted'';
■ iii. In the definition of ''net delivered weight'', by removing the words, ''hulled, in-shell'' and adding ''hulled, whole in-shell'' in their place; and
■ iv. By revising the definition of ''Production guarantee (per acre)'';
■ d. In section 2, by removing the word ''serial'' in the first sentence;
■ e. In section 3:
■ i. By revising the section heading;
■ ii. In paragraph (a), by removing the words, ''unless the Special Provisions provide'' and adding ''unless the actuarial documents provide'' in their place in the first sentence;
■ iii. In paragraph (b)(4), by removing the word, ''anytime'' and adding the words, ''any time'' in their place;
■ iv. By redesignating paragraph (c) as (d);
■ v. By designating the undesignated paragraph following paragraph (b)(5) as paragraph (c); and
■ vi. By revising newly designated paragraph (c);
■ f. In section 6:
■ i. In paragraph (c), by adding the word ''and'' at the end;
■ ii. In paragraph (d), by removing the words ''growing season after being set out'' and adding ''leaf year'' in their place; and
■ iii. By removing paragraph (e);
■ g. In section 7, by removing the words, ''Provisions (§ 457.8), that'' and adding ''Provisions (§ 457.8) that'' in their place;
■ h. In section 8:
■ i. In paragraph (a) introductory text, by removing the words ''the provisions of'';
■ ii. In paragraph (a)(1), by removing the words ''year, except that for'' and adding ''year except for'' in their place and by removing the words ''the 10 day period'' and adding ''the 10-day period'' in their place;
■ iii. By revising paragraph (a)(2);
■ iv. In paragraph (a)(4), by removing the words ''termination dates'' and adding ''termination dates,'' in their place; and
■ v. In paragraph (b) introductory text, by removing the words ''the provisions of section 11 (Insurance Period)'' and adding ''section 11'' in their place;
■ i. In section 9:
■ i. In paragraph (a) introductory text, by removing the words ''the provisions of''; and
■ ii. In paragraph (b), by removing the parenthetical phrase, ''(Causes of Loss)'';
■ j. In section 11:
■ i. By revising paragraph (b)(7); and
■ ii. In paragraph (d), by removing the words ''Walnut production that'' and adding ''If walnut production'' in their place.

The revisions read as follows:

§ 457.122 Walnut Crop Insurance Provisions.

* * * * *

1. Definitions

* * * * *

Interplanted. In lieu of the definition contained in section 1 of the Basic Provisions, acreage on which two or more crops are planted in any form of alternating or mixed pattern.

* * * * *

Production guarantee (per acre). In addition to the definition contained in section 1 of the Basic Provisions, the number of pounds is dry, hulled, whole in-shell walnuts.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices

* * * * *

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any circumstance that may reduce your yields from previous levels. Examples of these circumstances that may reduce yield may include but are not limited to: interplanted perennial crop; removal of trees; damage; and change in practices. If the circumstance occurred:

(1) Before the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the circumstance was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Before or after the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) of these Crop Provisions due to uninsured causes. We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or in the yield potential of the insured acreage.

* * * * *

8. Insurance Period

(a) * * *

(2) The calendar date for the end of the insurance period for each crop year is November 15, unless otherwise specified in the Special Provisions.

* * * * *

11. Settlement of Claim

* * * * *

(b) * * *

(7) Multiplying the result in section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of walnuts in the unit, with a guarantee of 2,500 pounds per acre and a price election of $0.90 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 2,500 pounds = 250,000 pound insurance guarantee;

(2 & 3) 250,000 pounds × $0.90 price election = $225,000 total value of insurance guarantee;

(4 & 5) 200,000 pounds production to count × $0.90 price election = $180,000 total value of production to count;

(6) $225,000 total value guarantee—$180,000 total value of production to count = $45,000 loss; and

(7) $45,000 × 100 percent share = $45,000 indemnity payment.

* * * * *

Marcia Bunger,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2022–23111 Filed 10–24–22; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

10 CFR Part 626

RIN 1901–AB56

Procedures for the Acquisition of Petroleum for the Strategic Petroleum Reserve

AGENCY: Office of Cybersecurity, Energy Security, and Emergency Response, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy Act of 2005 directed the Secretary of Energy to develop procedures for the acquisition of petroleum products for the Strategic Petroleum Reserve (''SPR''). Pursuant to that direction, in 2006, the Department of Energy (''DOE'' or the ''Department'') promulgated the Procedures for Acquisition of Petroleum for the Strategic Petroleum Reserve. Over the intervening 16 years, the existing regulations have become outdated due to changes in statutory authority, agency practice, and market dynamics. In this final rule, DOE is amending its regulations on the procedures for the acquisition of petroleum products for the SPR to: more closely align the regulatory language with the applicable statutory language; remove outdated procedures for acquisition under the royalty-in-kind program; add procedures for acquisition by exchange to better reflect petroleum product acquisition operations as conducted by the Office of Petroleum Reserves; and increase the Department's flexibility in structuring acquisitions.

DATES: This final rule is effective November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas McGarry, U.S. Department of Energy, Office of Petroleum Reserves, Office of Cybersecurity, Energy Security, and Emergency Response, Forrestal Building, Room 3G–024, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–8197, email: *thomas.mcgarry@hq.doe.gov;* or Mr. Edward Toyozaki, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–0126, email: *edward.toyozaki@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Introduction
II. Discussion of Final Rule and Response to Comments
A. Summary of the Final Rule
B. Response to Comments
III. Regulatory Review
IV. Congressional Notification
V. Approval of the Office of the Secretary

I. Background and Introduction

The SPR was established by the Energy Policy and Conservation Act (''EPCA''), (Pub. L. 94–163), to store petroleum products to diminish the impact of disruptions on petroleum supplies and to carry out the obligations of the United States under the International Energy Program. (42 U.S.C. 6231 *et seq.*) Section 160 of EPCA authorizes the Secretary of Energy to acquire petroleum products for the SPR. Subsequently, the Energy Policy Act of 2005, (Pub. L. 109–58), amended EPCA and directed the Secretary of Energy to develop, with the opportunity for public notice and comment, procedures for the acquisition of petroleum products for the SPR. (42 U.S.C. 6240) The principal method for acquiring SPR petroleum products is by purchase, but SPR petroleum may also be acquired via exchange. (42 U.S.C. 6240(a)) On November 8, 2006, and pursuant to EPCA, as amended by the Energy Policy Act of 2005, DOE established procedures for the acquisition of SPR petroleum at 10 CFR part 626. 71 FR 65376 (''2006 final rule''). The 2006 final rule included provisions regarding the direct purchase, exchange, and transfer of royalty oil from the Department of the Interior (''DOI'').

Subsequent to DOE promulgating the 2006 final rule, the Government Accountability Office and the DOI Inspector General published several reports between 2008 and 2009 on the shortcomings of and personnel misconduct related to the royalty-in-kind program, and, as a result, the DOI terminated its royalty-in-kind program in 2010. Then, in 2013, with section 306(a) of the Bipartisan Budget Act of 2013, (Pub. L. 113–67), Congress repealed DOE's authority to conduct SPR acquisitions under the royalty-in-kind program that was incorporated into the 2006 final rule.

Prior to this final rule, 10 CFR part 626 had not been updated since it was promulgated by DOE in the 2006 final rule, and, thus, did not reflect the intervening changes to the authorizing statutory authority. Additionally, over the last few decades, DOE has conducted numerous exchanges, mostly in an emergency exchange capacity; however, part 626 did not clearly outline those exchange procedures. Lastly, under the original iteration of part 626, the Department found itself less able to structure acquisition contracts in response to recent changing petroleum product market dynamics.

Accordingly, considering these circumstances, DOE has determined that a revision to these regulations to provide more clarity; better reflect the underlying statutory authorities, operational practices, and realities; and provide additional flexibility in structuring acquisitions is warranted.

On August 4, 2022, DOE published the notice of proposed rulemaking (''NOPR'' or ''proposed rule'') to amend its regulations at part 626. (87 FR 47652) Publication of the NOPR began a 30-day public comment period that ended on September 6, 2022. DOE received five comments: four of which were outside the scope of the proposed rule and a fifth that was in support of DOE's proposed rule. The NOPR and comments received on the NOPR can be accessed at: *https://www.regulations.gov/document/DOE-HQ-2022-0022-0001.*

II. Discussion of Final Rule and Response to Comments

A. Summary of the Final Rule

The final rule revises 10 CFR part 626 in several respects. First, the final rule updates language throughout part 626 to more closely align with the statutory language found in section 160 of EPCA. This includes updating the definitions for ''DOE'', ''Exchange'', and ''Strategic Petroleum Reserve'', while adding new definitions for ''Premium'', ''Requestor'', and ''Solicitation''. The definition pertaining to ''DOI'' is also struck. These changes provide more clarity and maintain continuity throughout the part while supporting other changes.

Second, because Congress repealed DOE's authority to acquire ''crude oil which the United States is entitled to receive in kind as royalties from production on Federal lands'' in 2013, all references to the royalty-in-kind program in part 626 have been removed. This includes removal of the procedures for acquisition under the royalty-in-kind program previously found at 10 CFR 626.7.

Third, the final rule codifies procedures for the exchange of petroleum products at the revised 10 CFR 626.7 and adds references to ''exchange'' throughout part 626, as appropriate. These changes are intended to reflect current operational practices of the SPR. Since 1996, in accordance with statutory authority in sections 159 and 160 of EPCA, DOE has conducted over a dozen emergency exchanges with private industry. In these emergency exchanges, upon request from refiners and verification of the request by DOE, the SPR provides emergency barrels of petroleum product to refiners; in return, the requesting refiners later provide the SPR the original number of barrels plus extra barrels called a ''premium.'' In

addition to the emergency exchanges by request, since 2000 and most recently in 2021, DOE has twice utilized the exchange authority to conduct solicitations for exchange, whereby the general public was permitted to bid to contract to accept barrels of SPR petroleum products in the present and return those barrels plus a premium in the future. DOE is now codifying these long-standing procedures into the acquisition regulations.

Fourth, the final rule amends 10 CFR 626.5 and 626.6 to increase flexibility for DOE to enter into contracts for the purchase of petroleum products, consistent with the requirements and objectives of section 160 of EPCA. These changes ensure that DOE continues to acquire petroleum products in accordance with the competitive principles of the Federal Acquisition Regulation and the DOE Acquisition Regulation, while providing DOE the flexibility to use either fixed-price or index-priced contracts for future petroleum product acquisitions. DOE is proposing these changes because the current acquisition regulations, including the requirement that DOE acquire oil in accordance with the Federal Acquisition Regulation and the requirement to use a price index to set purchase prices, unnecessarily restrict DOE's flexibility to procure petroleum products using fixed-price contracts, notwithstanding the fact that there may be circumstances in which a fixed-price acquisition would better meet the statutory objectives of EPCA.

Lastly, the final rule adds 10 CFR 626.9 to implement subsection (f) of section 160 of EPCA. (42 U.S.C. 6240(f)) This final change has been included because, while the Department has had the statutory authority to suspend previously announced or contracted acquisitions of petroleum products or divert the injection of petroleum products into the SPR when there is a perceived imminent severe energy supply interruption, until now, this authority has not been incorporated into any existing regulations.

B. Response to Comments

The Department received five comments on the proposed revisions to 10 CFR part 626. Of those, four comments were outside the scope of the proposed rule; the single responsive comment supported the proposed rule. The comments received on the NOPR can be accessed at: *https://www.regulations.gov/document/DOE-HQ-2022-0022-0001/comment.*

The single positive comment was submitted by Employ America. Employ America stated that given the negative impact that volatile oil prices have on inflation, ''the rule is an important step to reduce the volatility of oil prices over the short and medium term, improve our nation's energy security, and a necessary step to ensure that acquisition procedures more fully align with the [SPR]'s governing statute.'' Employ America indicated they ''urge the DOE to ensure the final rule allows [the Department] to utilize fixed-price contracts with sufficient flexibility to achieve the objectives and procedural needs defined in the SPR's governing statute.'' That said, Employ America noted that fixed-price contracts should not always be used, but ''given that the SPR must balance several objectives, it needs a toolkit that can be deployed as necessary to meet the entire set of objectives.'' Finally, Employ America concluded that ''[s]hould the proposed rule be finalized, the DOE will have the ability to realign its storage capabilities to better support and insure domestic producers against the risk of price crashes that have otherwise left them reluctant to invest.''

DOE has properly considered the comment and agrees with the intent and substance of the comment. Therefore, for the reasons discussed in the preamble and the proposed rule (87 FR 47652; Aug. 4, 2022), the Department is publishing the rulemaking as proposed.

III. Regulatory Review

A. Executive Order 12866

This final rule has been determined to not be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive order by the Office of Information and Regulatory Affairs (''OIRA'') of the Office of Management and Budget (''OMB'').

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (August 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. The Department has made its procedures and policies available on the Office of General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

The final rule updates the procedures DOE utilizes for the acquisition of petroleum products for the SPR, changes definitions, and removes references to the repealed royalty-in-kind program. DOE has reviewed the changes under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. These changes are procedural and not designed to set the terms or conditions of an acquisition and apply only to entities that are engaged in the sale of petroleum products to the Strategic Petroleum Reserve. Historically, Strategic Petroleum Reserve acquisitions have typically been large volume acquisitions, and usually filled by larger entities operating in the petroleum industry. Therefore, these procedures are unlikely to directly affect small businesses or other small entities. For these reasons, DOE certifies that this final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Paperwork Reduction Act of 1995

The final rule does not impose any new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

Per 10 CFR 1021.410(a), DOE has determined that promulgation of these regulations fall into a class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth under DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Furthermore, this rulemaking is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an EIS nor an EA is required.

E. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on 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. DOE examined this final rule and determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

F. Executive Order 13175

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249 (November 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175. Because this final rule will not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), 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; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies its 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 its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

H. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a) and (b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *www.energy.gov/gc/office-general-counsel*). DOE examined this final rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector. Accordingly, no further assessment or analysis is required under UMRA.

I. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed the final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 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 and OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule updates DOE's acquisition of petroleum product procedures for the SPR to align the regulatory language more closely with existing statutory language and current practice. Accordingly, the final rule also updates definitions, as appropriate, for the newly aligned regulatory language.

This final rule, therefore, does not meet any of the three criteria listed above and would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant regulatory action. Accordingly, DOE has not prepared a Statement of Energy Effects.

IV. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final rule prior to its effective date. The report will state that it has been determined that the final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 626

Government contracts, Oil and gas reserves, Strategic and critical materials.

Signing Authority

This document of the Department of Energy was signed on October 19, 2022, by Puesh Kumar, Director for Cybersecurity, Energy Security, and Emergency Response, 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 October 20, 2022.

Treena V. Garrett,

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

■ For reasons stated in the preamble, DOE revises part 626 in chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 626—PROCEDURES FOR ACQUISITION OF PETROLEUM FOR THE STRATEGIC PETROLEUM RESERVE

Sec.
626.1 Purpose.
626.2 Definitions.
626.3 Applicability.
626.4 General acquisition strategy.
626.5 Acquisition procedures—general.
626.6 Acquiring petroleum products by purchase.
626.7 Acquiring petroleum products by exchange.
626.8 Deferrals of contractually scheduled deliveries.
626.9 Suspension and pre-drawdown diversion.

Authority: 42 U.S.C. 6240(c); 42 U.S.C. 7101, *et seq.*

§ 626.1 Purpose.

This part establishes the procedures for acquiring petroleum products for, and deferring contractually scheduled deliveries to, the Strategic Petroleum Reserve. The procedures do not represent actual terms and conditions to be contained in the contracts for the acquisition of SPR petroleum products.

§ 626.2 Definitions.

Backwardation means a market situation in which prices are progressively lower in succeeding delivery months than in earlier months.

Contango means a market situation in which prices are progressively higher in the succeeding delivery months than in earlier months.

Contract means the agreement under which DOE acquires SPR petroleum products, consisting of the solicitation, the contract form signed by both parties, the successful offer, and any subsequent modifications, including those granting requests for deferrals.

Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings, including entering into sales contracts on behalf of the Government. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

DEAR means the Department of Energy Acquisition Regulation.

Deferral means a process whereby petroleum products scheduled for delivery to the SPR in a specific contract period is rescheduled for later delivery, outside of that period, and encompasses the future delivery of the originally scheduled quantity plus an in-kind premium.

DOE means the Department of Energy and includes any of its subsidiary offices, such as the Office of Petroleum Reserves (OPR) and the Strategic Petroleum Reserve Program Management Office.

Exchange means a process whereby petroleum products owned by or due to the SPR are provided to an entity or requestor in return for petroleum products of comparable quality plus a premium quantity of petroleum products (in barrels)—or another form of premium as permitted by law—delivered to the SPR in the future, or when SPR petroleum products are traded for petroleum products of a different quality preferred by DOE for operational reasons based on the relative values of the quantities traded.

FAR means the Federal Acquisition Regulation.

Government means the United States Government and includes DOE as its representative.

OPR means the Office of Petroleum Reserves within DOE, whose responsibilities include the operation of the Strategic Petroleum Reserve.

Petroleum products means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned, or contracted for, by DOE and in storage in any permanent SPR facility, or temporarily stored in other storage facilities.

Premium means the additional amount of petroleum product (in barrels)—or another form of payment as permitted by law—that must be delivered to the SPR above the principal amount of petroleum product owed to SPR in the case of an exchange or a deferred contractually scheduled delivery. The premium may include a calculation based on a rate set by DOE and duration of time until the SPR receives the petroleum product.

Requestor is an entity that makes an emergency request under § 626.7(b).

Secretary means the Secretary of Energy.

Solicitation means the written request by DOE for submission of offers or quotations to DOE for the acquisition of petroleum products.

Strategic Petroleum Reserve or *SPR* means the reserve for the storage of up to 1 billion barrels of petroleum products established by Title I, Part B, of the Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*

§ 626.3 Applicability.

The procedures in this part apply to the acquisition of petroleum products by DOE for the Strategic Petroleum Reserve through purchase or exchange, as well as to deferrals of contractually scheduled deliveries.

§ 626.4 General acquisition strategy.

(a) *Criteria for commencing acquisition.* DOE shall consider the following factors prior to commencing acquisition of petroleum products for the SPR:

(1) The current inventory of the SPR;

(2) The current level of private inventories;

(3) Days of net import protection;

(4) Current price levels for petroleum products and related commodities, the ability to minimize costs and avoid incurring excessive costs in acquisition, and the possible effect on consumer and market prices of any SPR acquisition;

(5) The outlook for international and domestic production levels;

(6) Existing or potential disruptions in supply or refining capability;

(7) The level of market volatility;

(8) Futures market price differentials for petroleum products and related commodities;

(9) The need to protect national security; and

(10) Any other factor the Secretary deems necessary or appropriate to consider.

(b) *Review of rate of acquisition.* DOE shall review the appropriate rate of petroleum product acquisition each time an open market acquisition has been suspended for more than three months.

(c) *Acquisition through other Federal agencies.* DOE may enter into arrangements with another Federal agency for that agency to acquire petroleum products for the SPR on behalf of DOE.

§ 626.5 Acquisition procedures—general.

(a) *Notice of acquisition.* (1) Except when DOE has determined there is good cause to do otherwise, DOE shall provide advance public notice of its intent to acquire petroleum products for the SPR. The notice of acquisition will, to the extent feasible, include the general terms and details of DOE's petroleum products acquisition and inform the public of DOE's overall fill goals.

(2) The notice of acquisition will generally include the:

(i) Manner of acquisition;

(ii) Time period for solicitations;

(iii) Quantity of petroleum products sought;

(iv) Minimum petroleum product quality requirements;

(v) Time period for delivery;

(vi) Acceptable delivery locations; and

(vii) Instructions for the offer process.

(b) *Manner of acquisition.* (1) DOE shall specify the manner of petroleum product acquisition, either purchase or exchange, in the notice of acquisition.

(2) DOE shall, to the greatest extent practicable, determine the manner of petroleum product acquisition after considering:

(i) The availability of appropriated funds;

(ii) Minimization of costs;

(iii) Minimization of the Nation's vulnerability to a severe energy supply interruption;

(iv) Minimization of the impact to supply levels and market forces;

(v) Whether the manner of acquisition would encourage competition in the petroleum industry; and

(vi) Other considerations DOE deems to be relevant.

(c) *Solicitation.* (1) To secure the economic benefit and security of a diversified base of potential suppliers of petroleum products to the SPR, DOE shall maintain a listing, developed through online registration, direct requests to DOE, and outreach to potential suppliers by DOE. Upon the issuance of a solicitation, DOE shall notify potential suppliers via their registered email addresses.

(2) DOE shall make the solicitation publicly available on the website of the OPR: *www.spr.doe.gov.*

(d) *Timing and duration of solicitation.* (1) DOE shall determine petroleum products requirements on nominal six-month cycles, and shall review and update these requirements prior to each solicitation cycle.

(2) Unless termination rights are explicitly waived by DOE, DOE may terminate any solicitations and contracts pertaining to the acquisition or exchange of petroleum products at the convenience of the Government, and in such event shall not be responsible for any costs incurred by suppliers, other than costs for petroleum products delivered to the SPR and for reasonable, customary, and applicable costs incurred by the supplier in the performance of a valid contract for delivery before the effective date of termination of such contract. In no event shall the Government be liable for consequential damages or the entity's lost profits as a result of such termination.

(e) *Quality.* (1) DOE shall define minimum petroleum product quality specifications for the SPR. DOE shall include such specifications in acquisition solicitations, and shall make them available on the website of the OPR: *www.spr.doe.gov.*

(2) DOE shall periodically review the quality specifications to ensure, to the greatest extent practicable, the petroleum product mix in storage matches the demand of the United States refining system.

(f) *Quantity.* In determining the quantities of petroleum products to be delivered to the SPR, DOE shall:

(1) Take into consideration market conditions and the availability of transportation systems; and

(2) Seek to avoid adversely affecting other market participants or petroleum product market fundamentals.

(g) *Offer and evaluation procedures.* (1) Each solicitation shall provide necessary instructions on offer format and submission procedures. The details of the offer, evaluation, and award procedures may vary depending on the method of acquisition.

(2) DOE may use relative values and time differentials to manage acquisition and delivery schedules to reduce acquisition costs.

(3) DOE may evaluate offers based on prevailing market prices of specific petroleum products, and shall award contracts on a competitive basis.

(4) Whether acquisition is by purchase or exchange, DOE may use a price index to account for fluctuations in absolute and relative market prices at the time of delivery to reduce market risk to all parties throughout the contract term.

(h) *Scheduling and delivery.* (1) Except as provided in paragraph (h)(4) of this section, DOE shall accept offers for petroleum products delivered to specified SPR storage sites via pipeline or as waterborne cargos delivered to the terminals serving those sites.

(2) Except as provided in paragraph (h)(4) of this section, DOE shall generally establish schedules that allow for evenly spaced deliveries of economically sized marine and pipeline shipments within the constraints of SPR site and commercial facilities receipt capabilities.

(3) DOE shall strive to maximize U.S. flag carrier utilization through the terms of its supply contracts.

(4) DOE reserves the right to accept offers for other methods of delivery if, in DOE's sole judgment, market conditions and logistical constraints require such other methods.

§ 626.6 Acquiring petroleum products by purchase.

(a) *General.* For the purchase of petroleum products, DOE shall, through certified contracting officers, conduct petroleum product acquisitions in accordance with the competitive principles of the FAR and the DEAR.

(b) *Acquisition strategy.* (1) DOE solicitations:

(i) May be either continuously open or fixed for a period of time; and

(ii) May provide either for immediate delivery or for delivery at future dates.

(2) DOE may alter the acquisition plan to take advantage of differentials in prices for different qualities of petroleum products, based on a consideration of factors, including the availability of storage capacity in the

SPR sites, the logistics of changing delivery streams, and the availability of ships, pipelines, and terminals to move and receive the petroleum products.

(3) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers or suspend the acquisition process on the basis of Government estimates projecting substantially lower petroleum product prices in the future than those contained in offers. If DOE determines there is a high probability that the cost to the Government can be reduced without significantly affecting national energy security goals, DOE may either contract for delivery at a future date or delay purchases to take advantage of the projected lower future prices. Conversely, DOE may increase the rate of purchases if prices fall below recent price trends or futures markets present a significant contango and prices offer the opportunity to reduce the average cost of petroleum product acquisitions in anticipation of higher future prices.

(4) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers, decrease the rate of purchase, or suspend the acquisition process if DOE determines acquisition will add significant upward pressure to prices either regionally or on a world-wide basis. DOE may consider recent price changes, private inventory levels, petroleum product acquisition by other stockpiling entities, the outlook for world petroleum products production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum product supply and demand.

(c) *Fill requirements determination.* DOE shall develop SPR fill requirements for each solicitation based on an assessment of national energy security goals, the availability of storage capacity, and the need for specific grades and quantities of petroleum products.

(d) *Market analysis.* (1) DOE shall establish a market value for each petroleum product to be acquired based on a market analysis at the time of contract award.

(2) DOE may consider prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools available to DOE to determine the most desirable purchase profile.

(3) DOE may also consider factors including recent price changes, private inventory levels, petroleum product acquisition by other stockpiling entities, the outlook for world petroleum product production, disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent relevant to the balance of petroleum product supply and demand.

(e) *Evaluation of offers.* (1) DOE shall evaluate offers using:

(i) The criteria and requirements stated in the solicitation; and

(ii) The market analysis under paragraph (d) of this section.

(2) DOE shall require financial guarantees from the contracting entity, in the form of a letter of credit or equivalent financial assurance.

§ 626.7 Acquiring petroleum products by exchange.

(a) *General.* DOE may, through certified contracting officers, conduct petroleum product acquisitions through the exchange of petroleum products. Exchanges are conducted through emergency requests or by solicitation.

(b) *Emergency requests.* (1) Notwithstanding the requirements of § 626.5, the requirements of this subsection shall control all exchanges by emergency request.

(2) At any point, in the event of an emergency, a requestor may request, in writing, for an exchange of petroleum product from the SPR.

(3) All requests shall include the following:

(i) A justification of need that describes:

(A) The emergency event,

(B) The emergency event's impact on the requestor, and

(C) The requestor's inability to acquire petroleum product from an alternative source;

(ii) The quantity of petroleum product (in barrels) requested;

(iii) The quality specifications of petroleum product requested; and

(iv) The anticipated duration of the emergency event.

(4) Upon receipt of an emergency request, DOE will verify the emergency, evaluate the need, and assess the market to ensure there is no alternative source of petroleum products available to the requester. DOE, in its sole discretion, may approve or disapprove any emergency request.

(5) Upon approval of an emergency request, DOE may enter into contract negotiations with the requestor.

(6) Repayment to the SPR for an exchange by emergency request shall be in the form of barrels of petroleum products, or another form of repayment as permitted by law, and shall include the following to be returned to the SPR by the contracted date:

(i) The principal amount of petroleum products provided to the requestor;

(ii) A premium; and

(iii) Costs incurred by DOE in conducting the emergency request.

(c) *Solicitation for exchange.* (1) A solicitation for exchange:

(i) May be either continuously open or fixed for a period of time;

(ii) Shall advertise the quantity and quality specification of petroleum product available for exchange;

(iii) May provide either for immediate delivery or for delivery at future dates to a bidding entity;

(iv) May, in DOE's sole discretion, include a rate table from which offerors may offer dates for repayment; and

(v) May require financial guarantees from offerors in the form of a letter of credit or equivalent financial assurance to accompany their bids.

(2) In conducting the bidding and selection process:

(i) Offerors shall follow the instructions to offerors included in the solicitation;

(ii) DOE shall evaluate and select bids that best support national energy security goals, the availability of petroleum products and storage capacity, and need for specific grades and quantities of petroleum products; and

(iii) Upon selection of a successful bid, DOE shall notify the apparently successful offeror.

(3) Repayment to the SPR for an exchange by solicitation shall be in the form of barrels of petroleum products or another form of repayment as permitted by law, and may be calculated based on any rate table, if applicable, and shall include the following:

(i) Principal amount of petroleum product owed to SPR in the case of an exchange or a deferred contractually scheduled delivery;

(ii) Costs incurred by DOE in conducting the exchange; and

(iii) A premium for each prospective date for repayment.

(4) Based on the market analysis described in paragraph (c)(5) of this section, DOE may refuse offers, decrease the rate of acquisition, or suspend the exchange process if DOE determines acquisition will add significant upward pressure to prices either regionally or on a worldwide basis. DOE may consider recent price changes, private inventory levels, petroleum product acquisition by other stockpiling entities, the outlook for world petroleum products production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum

products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum product supply and demand.

(5) Market analysis:

(i) DOE shall establish a market value for each petroleum product to be acquired based on a market analysis at the time of contract award.

(ii) DOE may consider prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools available to DOE to determine the most desirable purchase profile.

(iii) DOE may also consider factors including recent price changes, private inventory levels, petroleum product acquisition by other stockpiling entities, the outlook for world petroleum product production, disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent relevant to the balance of petroleum product supply and demand.

§ 626.8 Deferrals of contractually scheduled deliveries.

(a) *General.* (1) DOE prefers to take deliveries of petroleum products for the SPR at times scheduled under applicable contracts. However, in the event the market is distorted by disruption to supply or other factors, DOE may defer scheduled deliveries or consider deferral requests from awardees.

(2) An awardee seeking to defer scheduled deliveries of petroleum products to the SPR may submit a deferral request to DOE.

(b) *Deferral criteria.* DOE shall only grant a deferral request for negotiation under paragraph (c) of this section if it determines that DOE can receive a premium for the deferral and, based on DOE's deferral analysis, that at least one of the following conditions exists:

(1) DOE can reduce the cost of its petroleum products acquisition per barrel and increase the volume of petroleum products being delivered to the SPR by means of the premium barrels required by the deferral process;

(2) DOE anticipates private inventories are approaching a point where unscheduled outages may occur;

(3) There is evidence that refineries are reducing their run rates for lack of feedstock; or

(4) There is an unanticipated disruption to petroleum product supply.

(c) *Negotiating terms.* (1) If DOE decides to negotiate a deferral of deliveries, DOE shall estimate the market value of the deferral and establish a strategy for negotiating with suppliers the minimum percentage of the market value to be taken by the Government. During these negotiations, if the deferral request was initiated by DOE, DOE may consider any reasonable, customary, and applicable costs already incurred by the supplier in the performance of a valid contract for delivery. In no event shall such consideration account for any consequential damages or lost profits suffered by the supplier as a result of such deferral.

(2) DOE shall only agree to amend the contract if the negotiation results in an agreement to give the Government a fair and reasonable share of the market value.

§ 626.9 Suspension and pre-drawdown diversion.

Where the Secretary has found that a severe energy supply interruption may be imminent, the Secretary may suspend any previously announced or contracted acquisition of any petroleum product by the SPR or injection of petroleum products into the SPR; or sell any petroleum product acquired for injection into the SPR that has not yet been injected into the SPR.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0678; Project Identifier MCAI–2022–00067–T; Amendment 39–22147; AD 2022–17–09]

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) 2021–16–03, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–16–03 required an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks, and corrective action. This AD was prompted by in-production findings of missing or incorrect application of the lightning strike edge glow sealant protection at specific locations in the wing tanks and by the development of a modification to restore two independent layers of lightning strike protection on the wing upper cover. This AD continues to require the actions of AD 2021–16–03 and requires a modification to restore two independent layers of lightning strike protection, as specified in a European Union Aviation Safety Agency (EASA), which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 29, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 29, 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 *https://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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0678.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0678; 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: 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:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0011,

dated January 21, 2022 (EASA AD 2022–0011) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–16–03, Amendment 39–21665 (86 FR 47555, August 26, 2021) (AD 2021–16–03). AD 2021–16–03 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on June 16, 2022 (87 FR 36276). The NPRM was prompted by in-production findings of missing or incorrect application of the lightning strike edge glow sealant protection at specific locations in the wing tanks and by the development of a modification to restore two independent layers of lightning strike protection on the wing upper cover. The NPRM proposed to continue to require the actions of AD 2021–16–03 and to require a modification to restore two independent layers of lightning strike protection, as specified in EASA AD 2022–0011.

The FAA is issuing this AD to address missing or incorrectly applied sealant, which in combination with an undetected incorrect installation of an adjacent fastener and a lightning strike in the immediate area, could result in ignition of the fuel-air mixture inside the affected fuel tanks and loss of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the comment 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 2022–0011 specifies procedures for an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks (discrepancies), and corrective action. Corrective actions include applying sealant in areas where sealant was found to be missing or incorrectly applied. EASA AD 2022–0011 also specifies procedures for a modification to restore two independent layers of lightning strike protection on the wing upper cover.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–16–03	Up to 67 work-hours × $85 per hour = $5,695.	$0	Up to $5,695	Up to $153,765.
New actions (modification)	Up to 55 work-hours × $85 per hour = 4,675.	Up to 500	Up to 5,175	Up to $139,725.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

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 (AD) 2021–16–03, Amendment 39–21665 (86 FR 47555, August 26, 2021); and

■ b. Adding the following new AD:

2022–17–09 Airbus SAS: Amendment 39–22147; Docket No. FAA–2022–0678; Project Identifier MCAI–2022–00067–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 29, 2022.

(b) Affected ADs

This AD replaces AD 2021–16–03, Amendment 39–21665 (86 FR 47555, August 26, 2021) (AD 2021–16–03).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0011, dated January 21, 2022 (EASA AD 2022–0011).

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by in-production findings of missing or incorrect application of the lightning strike edge glow sealant protection at specific locations in the wing tanks and by the development of a modification to restore two independent layers of lightning strike protection on the wing upper cover. The FAA is issuing this AD to address missing or incorrectly applied sealant, which in combination with an undetected incorrect installation of an adjacent fastener and a lightning strike in the immediate area, could result in ignition of the fuel-air mixture inside the affected fuel tanks and loss 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 2022–0011.

(h) Exceptions to EASA AD 2022–0011

(1) Where EASA AD 2022–0011 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0011 refers to October 27, 2020 (the effective date of EASA AD 2020–0220), this AD requires using September 30, 2021 (the effective date of AD 2021–16–03).

(3) Where paragraph (1) of EASA AD 2022–0011 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after 27 October 2020 [the effective date of EASA AD 2020–0220],'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(3)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after September 30, 2021 (the effective date of AD 2021–16–03).

(ii) Within 12 months after September 30, 2021 (the effective date of AD 2021–16–03).

(4) Where paragraph (2) of EASA AD 2022–0011 refers to ''discrepancies,'' for this AD, discrepancies include missing or incorrectly applied sealant.

(5) Where paragraph (3) of EASA AD 2022–0011 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after the effective date of this [EASA] AD,'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(5)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after the effective date of this AD.

(ii) Within 12 months after the effective date of this AD.

(6) The ''Remarks'' section of EASA AD 2022–0011 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 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.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0011, dated January 21, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0011, 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 *https://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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 10, 2022.

Christina Underwood,

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

[FR Doc. 2022–22720 Filed 10–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1310; Project Identifier MCAI–2022–01261–A; Amendment 39–22220; AD 2022–22–05]

RIN 2120–AA64

Airworthiness Directives; NZSkydive Limited (Type Certificate Previously Held by Pacific Aerospace Ltd.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for NZSkydive Limited (type certificate previously held by Pacific Aerospace Ltd.) Model FBA–2C1, FBA–2C2, FBA–2C3, and FBA–2C4 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as a batch of aileron control chain sprockets being manufactured with a non-metallic sleeve insert in the sprocket bore, which can cause cracks to develop and affect the integrity of the aileron control chain sprockets. This AD requires inspecting the sprockets to determine if they have a non-metallic sleeve in the sprocket bore and replacing any sprocket found with a non-metallic sleeve in the sprocket bore with one with a metallic sleeve, and prohibits installation of aileron control chain sprockets with non-metallic sleeves in the sprocket bore. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2022.

The FAA must receive comments on this AD by December 9, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1310; 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 MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ‘‘Docket No. FAA–2022–1310; Project Identifier MCAI–2022–01261–A’’ at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ‘‘PROPIN.’’ The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Mike Kiesov, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106. 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 Civil Aviation Authority (CAA) of New Zealand, which is the aviation authority for New Zealand, has issued CAA of New Zealand AD DCA/FBA/5, dated September 23, 2022 (referred to after this as ‘‘the MCAI’’), to correct an unsafe condition on Pacific Aerospace (the type certificate holder on the FAA type certificate data sheet is NZSkydive Limited) Model FBA–2C1, FBA–2C2, FBA–2C3, and FBA–2C4 airplanes delivered after November 2012, fitted with an aileron control chain sprocket part number (P/N) C446 received and installed after November 2012, and sprockets with P/N C446 received after November 2012 as spare parts for all serial numbers. The MCAI states that it was prompted by reports of cracks found at the roll pin holes in an affected batch of sprockets having P/N C446 that were manufactured with non-metallic sleeve inserts in the sprocket bore. These cracks can affect the integrity of the aileron control chain sprockets and have the potential to produce binding of the aileron flight controls. The unsafe condition, if not addressed, could lead to loss of integrity of the aileron control chain sprockets with consequent loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1310.

Related Service Information

The FAA reviewed Pacific Aerospace Mandatory Service Bulletin PACSB/2C/002, Issue 1, dated September 20, 2022, which specifies inspecting the aileron control chain sprockets to determine if they have a non-metallic sleeve in the sprocket bore and replacing any aileron control chain sprocket found with a non-metallic sleeve in the sprocket bore with one with a metallic sleeve.

FAA's Determination

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

AD Requirements

This AD requires inspecting the aileron control chain sprockets to determine if they have a non-metallic sleeve in the sprocket bore and replacing any sprocket found with a non-metallic sleeve in the sprocket bore with one with a metallic sleeve. This AD also prohibits the installation of aileron control chain sprockets with non-metallic sleeves in the sprocket bore.

Differences Between This AD and the MCAI

The MCAI refers to the design approval holder as Pacific Aerospace, and this AD refers to the design approval holder as NZSkydive Limited because that is the name on the FAA type certificate.

The MCAI references dates of delivery for the aileron control chain sprockets (when the non-metallic sleeves were used) and this AD requires an inspection to determine if non-metallic sleeves in the sprocket bore are installed on all airplanes.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because aileron control chain sprockets with a non-metallic sleeve insert in the sprocket bore can develop cracks and affect the integrity of the aileron control chain sprockets. Because this condition can develop quickly and without advance warning and lead to loss of control of the airplane, immediate action must be done before further flight. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 3 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect aileron control chain sprockets for a non-metallic sleeve.	3 work-hours × $85 per hour = $255	Not applicable	$255	$765

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The agency has no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace aileron control chain sprocket(s).	3 work-hours × $85 per hour = $255.	$520 (If replacing all four sprockets).	$775 (If replacing all four sprockets).

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–22–05 NZSkydive Limited (type certificate previously held by Pacific Aerospace Ltd.): Amendment 39–22220; Docket No. FAA–2022–1310; Project Identifier MCAI–2022–01261–A.

(a) Effective Date

This airworthiness directive (AD) is effective November 9, 2022.

(b) Affected ADs

None.

(c) Applicability

All NZSkydive Limited (type certificate previously held by Pacific Aerospace Ltd.) Model FBA–2C1, FBA–2C2, FBA–2C3, and FBA–2C4 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2710, Aileron Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as a batch of aileron control chain sprockets being manufactured with a non-metallic sleeve insert in the sprocket bore, which can cause cracks to develop and affect the integrity of the aileron control chain sprockets. The FAA is issuing this AD to prevent cracks from forming in the aileron control chain sprockets due to non-metallic sleeves in the sprocket bore. These cracks can affect the integrity of the aileron control chain sprockets and have the potential to produce binding of the aileron flight controls. The unsafe condition, if not addressed, could lead to loss of integrity of the aileron control chain sprockets with consequent loss of control of the airplane.

(f) Compliance

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

(g) Action

(1) Before further flight after the effective date of this AD, remove the four aileron control chain sprockets in the control arm and yoke assembly and inspect the sprockets to determine if a non-metallic sleeve is fitted in the sprocket bore.

(2) If a non-metallic sleeve is found fitted in any aileron control chain sprocket bore, before further flight, replace the affected aileron control chain sprocket with a part that does not have a non-metallic sleeve.

(3) As of the effective date of this AD, do not install an aileron control chain sprocket part number C446, unless it has been inspected by following paragraph (g)(1) of this AD and found to have a metallic sleeve fitted in the sprocket bore.

Note to paragraph (g): Pacific Aerospace Mandatory Service Bulletin PACSB/2C/002, Issue 1, dated September 20, 2022, contains information related to this subject.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) 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, mail it to the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email.

(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.

(j) Additional Information

(1) Refer to Civil Aviation Authority (CAA) of New Zealand AD DCA/FBA/5, dated September 23, 2022, for related information. This CAA of New Zealand AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1310.

(2) For more information about this AD, contact Mike Kiesov, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; email: *mike.kiesov@faa.gov.*

(3) For service information identified in this AD that is not incorporated by reference, contact NZSkydive Limited, 333 Airport Road, Hamilton, New Zealand, 3282; phone: +64 7 843 6144; email: *pacific@aerospace.co.nz;* website: *aerospace.co.nz.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(k) Material Incorporated by Reference

None.

Issued on October 20, 2022.

Christina Underwood,

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

[FR Doc. 2022–23231 Filed 10–21–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0626]

RIN 1625–AA00

Safety Zone; Firework Event, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Willamette River. This action is necessary to provide for the safety of life on these navigable waters near Oaks Park, Portland, OR, during a fireworks display on October 31, 2022. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: This rule is effective from 6:30 to 8 p.m. on October 31, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0626 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Carlie Gilligan, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

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

II. Background Information and Regulatory History

On June 14, 2022, the Oaks Park Association notified the Coast Guard that it will be conducting a fireworks display from 7 to 7:30 p.m. on October 31, 2022. The fireworks are to be launched from a barge in the Willamette River offshore of Oaks Park, Portland, Oregon. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

In response, on August 11, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Firework Event, Willamette River, Portland, OR (87 FR 49568). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended September 12, 2022, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this October 31, 2022 display will be a safety concern for anyone within a 1,000 ft. radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 11, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The COTP is establishing a safety zone from 6:30 to 8 p.m. on October 31, 2022. The safety zone covers navigable waters within a 1,000 ft radius of a barge in the Willamette River located offshore of Oaks Park, Portland, OR. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7 to 7:30 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone created by this rule is designed to minimize its impact on navigable waters. This rule will prohibit entry into certain navigable waters of the Willamette River and is not anticipated to exceed two hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions, vessels may still transit through the safety zone when permitted by the COTP. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 1.5 hours that will prohibit entry within 1,000 ft. of a fireworks barge in the Willamette River in the vicinity of Oaks Park, Portland, OR. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T13–0626 to read as follows:

§ 165.T13–0626 Safety Zone; Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: All navigable waters of the Willamette River, from surface to bottom, in a 1,000 ft. radius from the fireworks barge off shore of Oaks Park, Portland, OR.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(d) *Enforcement period.* This section will be enforced from 6:30 to 8 p.m. on October 31, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: September 19, 2022.

M. Scott Jackson,

Captain, U.S. Coast Guard, Captain of the Port Sector Columbia River.

[FR Doc. 2022–23084 Filed 10–24–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0554; FRL–9187–02–R4]

Air Plan Approval; North Carolina; Miscellaneous Emission Control Standards Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of changes to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (NCDEQ), Division of Air Quality (DAQ), through a letter dated April 13, 2021. This SIP revision includes changes to a subset of NCDEQ's regulations regarding emission control standards. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective November 25, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2021–0554. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving certain changes to North Carolina's SIP that were provided to EPA by NCDEQ via a letter dated April 13, 2021, and are related to North Carolina's 15A North Carolina Administrative Code (NCAC) Subchapter 02D, Section .0500,

Emission Control Standards.[1] Specifically, EPA is approving changes to 15A NCAC 02D Sections .0516, *Sulfur Dioxide Emissions from Combustion Sources,* which include minor grammatical edits and remove references to outdated State-only rules; .0517, *Emissions from Plants Producing Sulfuric Acid,* which include minor typographical edits; .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emission,* which correct typographical errors and incorrect references, and are clarifying in natures; and .0533, *Stack Height,* which include minor grammatical and formatting changes that do not alter the meaning of the provision.[2] [3]

Through a notice of proposed rulemaking (NPRM), published on August 15, 2022, EPA proposed to approve the changes to North Carolina's SIP-approved Rule .0516, *Sulfur Dioxide Emissions from Combustion Sources;* .0517, *Emissions from Plants Producing Sulfuric Acid;* .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions;* and .0533, *Stack Height,* as submitted by NCDEQ on April 13, 2021. *See* 87 FR 50028. Additional details on North Carolina's April 13, 2021, SIP revision, as well as EPA's analysis of these changes, can be found in the August 15, 2022, NPRM. Comments on the August 15, 2022, NPRM were due on or before September 14, 2022. No comments were received on the August 15, 2022, NPRM, so EPA is now finalizing the approval of the changes as proposed.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of 15A NCAC Subchapter 02D, Rules .0516, *Sulfur Dioxide Emissions from Combustion Sources;* .0517, *Emissions from Plants Producing Sulfuric Acid;* .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions;* and .0533, *Stack Height,* all state effective on November 1, 2020. EPA has made, and will continue to make, these materials generally available through *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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

III. Final Action

As described in the August 15, 2022, NPRM, EPA is approving the April 13, 2021, SIP revision to incorporate various changes to a subset of North Carolina's emission control standards provisions into the SIP. Specifically, EPA is approving changes to 15A NCAC 02D Rules .0516, *Sulfur Dioxide Emissions from Combustion Sources;* .0517, *Emissions from Plants Producing Sulfuric Acid;* .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions;* and .0533, *Stack Height.*

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

[1] EPA notes that the April 13, 2021, submittal was received by EPA on April 14, 2021.

[2] EPA received several revisions to the North Carolina SIP through the same April 13, 2021, cover letter. This rulemaking only addresses the revisions identified within this notice. EPA may act on the remaining revisions, including certain 02D Section .0500 rules not considered in this action, through separate rulemakings.

[3] On February 22, 2022, and July 6, 2022, North Carolina submitted letters to EPA withdrawing the changes to Rule 15A NCAC 02D .0532 and .0527, respectively, from EPA's consideration. For this reason, EPA will not act on these changes to Rule .0532 or .0527. Both letters can be found in the docket for this action.

[4] *See* 62 FR 27968 (May 22, 1997).

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: October 14, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. In § 52.1770(c)(1), amend the table under ''Subchapter 2D Air Pollution Control Requirements,'' ''Section .0500 Emission Control Standards,'' by removing the entries for ''Section .0516,'' ''Section .0517,'' ''Section .0519,'' and ''Section .0533'' and adding in their places entries for ''Rule .0516,'' ''Rule .0517,'' ''Rule .0519,'' and ''Rule .0533'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
* * * * * * *				
Section .0500 Emission Control Standards				
* * * * * * *				
Rule .0516	Sulfur Dioxide Emissions from Combustion Sources.	11/1/2020	10/25/2022, [Insert citation of publication].	
Rule .0517	Emissions from Plants Producing Sulfuric Acid.	11/1/2020	10/25/2022, [Insert citation of publication].	
Rule .0519	Control of Nitrogen Dioxide and Nitrogen Oxides Emissions.	11/1/2020	10/25/2022, [Insert citation of publication].	
* * * * * * *				
Rule .0533	Stack Height	11/1/2020	10/25/2022, [Insert citation of publication].	
* * * * * * *				

[FR Doc. 2022–22724 Filed 10–24–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2011–0023; Amdt. No. 192–132]

RIN 2137–AF39

Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments

Correction

In Rule Document 2022–17031, appearing on pages 52224–52279, in the issue of Wednesday, August 24, 2022, make the following correction:

■ On page 52267, in the third column, paragraph ''(2)(i)'' is corrected to read as set forth below.

§ 192.3 Definitions. [Corrected]

* * * * *

(2)(i) If the length of the wrinkle bend cannot be reliably determined, then w*rinkle bend* means a bend in the pipe where (h/D)*100 exceeds 2 when S is less than 37,000 psi (255 MPa), where (h/D)*100 exceeds (47000—*S*)/10,000 +1 for psi [324—*S*)/69 +1 for MPa] when S is greater than 37,000 psi (255 MPa) but less than 47,000 psi (324 MPa), and where (h/D)*100 exceeds 1 when S is 47,000 psi (324 MPa) or more.

* * * * *

[FR Doc. C1–2022–17031 Filed 10–24–22; 8:45 am]

BILLING CODE 0099–10–P

Proposed Rules

Federal Register

Vol. 87, No. 205

Tuesday, October 25, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. 22–J–0011; AMS–SC–22–0010; SC22–981–1]

Marketing Order for Walnuts Grown in California; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision proposes amendments to Marketing Order No. 984 (Order), which regulates the handling of walnuts grown in California. The proposed amendments are based on the record of a public hearing held via videoconference technology on April 19 and 20, 2022. The California Walnut Board (Board), which locally administers the Order, recommended proposed amendments that would eliminate mandatory inspection and certification of inshell and shelled walnuts, and of shelled walnuts for processing; create a new mechanism for determining and collecting handler assessments; add authority to charge interest for late payments; establish an assessment rate of $0.0125 per inshell pound of walnuts; expand the definition of ''to handle'' to include ''receive''; and remove volume control authority. In addition, the Agricultural Marketing Service (AMS) proposed to make any such changes to the Order as may be necessary to conform to any amendment that may result from the hearing.

DATES: Written exceptions must be filed by November 25, 2022.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031–S, Washington, DC 20250–9200; Fax: (202) 720–9776 or via the internet at *https://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours or can be viewed at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202)308–2339 or Matthew Pavone, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Geronimo.Quinones@usda.gov* or *Matthew.Pavone@usda.gov.*

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing published in the April 1, 2022, issue of the **Federal Register** (87 FR 19020).

The recommendation is in conformance with the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175.

Notice of this rulemaking action was provided to tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to 7 CFR part 948 (hereinafter referred to as ''Marketing Order 984'' or the ''Order'') regulating the handling of walnuts grown in California and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Geronimo Quinones, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held via videoconference technology on April 19 and 20, 2022. Notice of this hearing was published in the **Federal Register** on April 1, 2022 (87 FR 19020). The notice of hearing contained five proposals submitted by the Board and one submitted by USDA.

The proposed amendments were recommended to the Secretary by the Board on October 28, 2021. After reviewing the proposals and other information submitted by the Board, USDA decided to schedule this matter for a hearing. The Board's proposed amendments to the Order would amend quality control provisions to remove inspection and certification requirements, create a new mechanism for determining and collecting handler assessments, add authority to charge interest for late payments, establish an assessment rate of $0.0125 per inshell pound of walnuts; expand the definition of ''to handle'' to include ''receive'', and remove volume control authority.

As proposed, inspection and certification of outbound walnuts would no longer be required, and handler assessments would be calculated based on a proposed assessment rate, recommended by the Board, and applied to handler's inbound walnuts receipts instead of outbound walnuts certified.

USDA proposed to make any such changes as may be necessary to the Order to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors.

Ten witnesses testified at the hearing. Nine witnesses represented walnut producers and handlers in the production area, as well as the Board, and one witness was from USDA. All nine industry witnesses supported the proposed amendments. The USDA witness remained neutral. After the notice of hearing was published in the **Federal Register**, AMS received a substantive email from the Board. In

accordance with § 900.16 of the Rules of Practice governing this proceeding (7 CFR 900.16), the email constituted an ex parte communication and was entered into the record but did not constitute testimony and was not considered in the drafting of this recommended decision.

Under the Order, quality control provisions require inspection and certification of outbound walnuts, volume regulation is stayed indefinitely, and the authority to charge for late payments does not exist. The Board's proposed amendments would eliminate the inspection and certification of outbound walnuts, remove volume authority, establish a new mechanism for the collection of assessments and provide authority to charge interest for late payments.

Currently, a moratorium on the enforcement of inspection is in effect, and while under the moratorium, the Board is unable to collect assessments. If implemented, the proposed amendments would allow the Board to resume the collection of assessments applied to walnuts received and to charge interest for late payments. Assessments would be determined by handler receipts for total walnuts received for the crop year, multiplied by the proposed new assessment rate of $0.0125, and billings would be staggered throughout the marketing year to allow handlers to pay in three installments.

Witnesses at the hearing explained that the proposed amendments are necessary to streamline the Order and would make the industry more efficient by eliminating redundancies in inspection, reducing costs and administrative burden to handlers and the Board, and providing a cost saving to growers. Therefore, proponents support the need to modernize the Order to better meet current and future industry needs.

As an indicator for the need to eliminate inspection and certification of outbound walnuts, witnesses stated that the moratorium issued by USDA on September 2, 2021, of mandatory inspections has not adversely affected the quality of California walnuts produced and handled. Witnesses testified that a common practice for the industry is to conduct quality assurance inspections on inbound shipments of walnuts and that the current regulations require inspections on the outbound walnuts. The end result of industry practice and regulatory requirements is two forms of inspection being conducted in the industry. Further, witnesses contended that significant investments and advancement in processing, storage, technology, and equipment have ensured better programs that are able to maintain higher walnut quality and condition that exceed the minimum grades and standards currently set forth in the Order.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of May 19, 2022, for the submission of corrections to the transcript, and June 23, 2022, as a deadline for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. The Board filed a brief in support of the proposed amendments.

Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether to modify § 984.50, Grade, quality, and size regulations, to remove quality and size regulations and include only the Board's authority and eliminate §§ 984.51 and 984.52 inspection and certification of inshell and shelled walnuts and shelled walnuts for processing. This includes revising: §§ 984.12, 984.32, 984.64, 984.69, 984.77, 984.459(a)(3), and 984.472(b) and removing: §§ 984.450(c), 984.451(a) and (b), 984.452, and 984.464(b) and (c).
2. Whether to revise § 984.69 by changing the calculation of assessments from kernelweight to inshell pound in paragraph (a) and revising paragraph (c) to include an authority to charge for late payments and/or interest as prescribed by the Board with approval from the Secretary. Corresponding changes would be made to §§ 984.37, 984.48, 984.69, and 984.347.
3. Whether to revise § 984.347 to establish an assessment rate of $0.0125 per inshell pound of walnuts.
4. Whether to modify the definition in § 984.13 of ''to handle'' to include ''receive''.
5. Whether to remove § 984.49, Volume regulation, reserve pool authority, and subsequent sections including provisions for volume control. This includes removing: §§ 984.23, 984.26, 984.33, 984.54, 984.56, 984.66, 984.69(b), 984.450(a) and (b), 984.451(c), 984.456, and 984.464(a) and revising: §§ 984.48 and 984.67.
6. Whether any conforming changes need to be made as a result of the above proposed amendments. Conforming changes may also include correction of non-substantive, typographical errors.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Grade, Quality, and Size Regulations and Inspection and Certification

Section 984.50 ''Grade, quality and size regulations'' should be amended to remove quality and size regulations and only the authority should remain. Removing quality and size regulations would remove the minimum grade and size requirements for shelled and inshell walnuts. Retaining the authority would allow the Board to recommend handling regulations and establish inspection and certification requirements if market conditions warrant regulations in the future, subject to the approval of the Secretary.

Sections 984.51 ''Inspection and certification of inshell and shelled walnuts'' and 984.52 ''Processing of shelled walnuts'' should be removed. Removing inspection and certification would eliminate mandatory outbound inspections for all varieties of walnuts, walnuts for processing, and inspections applied to walnuts imported into the United States under section 608e of the Act. In addition, multiple sections of the Order with provisions for quality, grade and size, and inspection and certification should be revised. This includes revising: §§ 984.12, 984.32, 984.64, 984.69, 984.77, 984.459(a)(3), and 984.472(b). Conforming changes would include removing §§ 984.450(c), 984.451(a) and (b), 984.452, and 984.464(b) and (c). Furthermore, a conforming change to completely remove the word ''merchantable'' from §§ 984.22, 984.72, and 984.472(a) and (c) is necessary to add clarity to the Order. This conforming change will be further discussed in Material Issue #6.

Currently, § 984.50 requires that handlers must meet minimum grade, quality, and size regulations and §§ 984.51 and 984.52 require that outbound walnuts must be inspected and certified. The outbound inspection is carried out by the Dried Fruit Association of California (DFA), the Board's inspection agency of record. DFA supplies to the Board inspection records used to calculate handler assessment obligations.

Witnesses at the hearing, either serving as Board members and/or as members of the Board's Marketing Order Revision Committee explained that the proposed amendments would modernize and align the Order with current market-driven practices. This would result in a more efficient industry. Witnesses further explained that advancements in processing and packaging technologies have improved product quality, consistency and shelf-life and if implemented, the proposed

amendments would remove redundancies, as well as reduce costs and administrative burden for both handlers and the Board. Evidence introduced at the hearing suggests that mandatory inspection and certification are no longer necessary to ensure orderly marketing; however, the authority should be retained in the Order in the event market conditions change and inspections and certification are deemed necessary to be reintroduced.

According to the hearing record, walnut production and sales have grown substantially over the past 73 years. The initial varieties regulated by the Order no longer exist and are not viable in either domestic or international markets. In addition, handlers have made significant investments in the technology and equipment necessary to maintain high quality walnuts that customers demand and that consumers expect. These investments helped to manage over 300,000 tons in increased production, according to a witness. Witnesses testified that current customer specifications exceed the grades and standards established when the Order was promulgated in 1948. The industry considers the minimum grade and size regulations as outdated and obsolete, and that the mandated outbound inspection has resulted in inefficient redundancies. The costs of the duplicative inspections outweigh their benefit to industry.

A moratorium of enforcement on mandatory inspection requirements is currently in effect. Under the moratorium, USDA's enforcement of mandatory inspection requirements under the Order are suspended. Accordingly, inspection and certification requirements for walnuts imported into the United States are also suspended. USDA exercised its discretion to issue the moratorium, effective September 1, 2021, following discussions with the Board. These discussions took place after the Board's Grades and Standards Committee recommended an action, subsequently passed by the Board, to request that USDA forego mandatory inspections in response to market disruptions associated with the Covid–19 pandemic, including labor and transportation interruptions, and ongoing tariff issues that have adversely affected market conditions across the California walnut industry. Witnesses explained that, in addition to external shipping constraints, DFA inspector shortages caused huge operational inefficiencies, because handlers cannot ship product that is not inspected, certified, and stamped. Further, eliminating outbound inspections would remove large expenditures by eliminating the duplicative inspections.

According to the record, mandated inspections identified as duplicative by witnesses cost the industry approximately $6 million annually (discussed further under Economic Impact of Eliminating Mandatory Inspection). Witnesses testified that the elimination of mandatory outgoing inspection would benefit all handlers immediately through lower expenditures and avoidance of shipping delays due to inspector unavailability. These handler benefits could also be passed on to producers and consumers.

According to the record, market demand for California walnuts continues to grow. Evidence introduced suggests that increased industry investments in infrastructure, as well as marketing and promotion, were in response to growing domestic and global walnut production. Over the past five years, increases in international production have affected U.S. market prices and net grower returns. Record evidence also indicates that total world production increased by over 235,000 metric tons from 2017/18 to 2021/22; however, California walnuts, even with increases in production, accounted for a smaller share of total world production, decreasing from 29 to 27 percent during the same time period. Other countries have experienced growth; most notably, China now accounts for 49 percent of world production compared to 42 percent in 2017/18. China's share of world trade has risen to 13 percent, a significant increase from 2 percent in 2016/17. Consequently, California walnuts account for a smaller share of world trade, falling from 68 to 54 percent between 2016/17 and 2020/21.

Hearing evidence included data from studies conducted by the University of California-Davis Cooperative Extension (UC Davis) that highlight changes in walnut farm profitability by comparing farm revenue per acre and cost of production. The UC Davis data, illustrated in Table 1, include two cost of production studies conducted in the 2011–2014 time period, and three studies between 2015 and 2018.

Table 1 shows the decline in walnut farm profitability by comparing two four-year periods with very different financial outcomes, 2011 to 2014 and 2015 to 2018. The average production cost per acre for 2011–2014 and 2015–2018 were $3,667 and $5,122, respectively, which appear in column (d) of Table 1. Average yields (1.83 and 2.01 tons per acre in the same time periods) appear in column(b) of Table 1. Producer gross returns per acre for each of the two four-year time periods column (c) were computed by multiplying average yield by average price. Subtracting cost of production in column (d) yields the producer net return in column (e).

TABLE 1—CALIFORNIA WALNUTS: PRODUCER GROSS RETURN, COST OF PRODUCTION, NET RETURN

Range of years	Season average producer price, $/ton [1] (a)	Average yield: tons per acre [2] (b)	Average producer gross return per acre (c) (a) * (b)	Total cost of production per acre [3] (d)	Producer net return per acre (gross return minus cost) (e) (c) − (d)
2011–2014	$3,245	1.83	$5,930	$3,667	$2,264
2015–2018	1,828	2.01	3,664	5,122	−1,458

[1] Source: National Agricultural Statistics Service (NASS), USDA.
[2] Four-year averages computed in Table 1, based on annual NASS yield data.
[3] Based on U. of California Extension cost of production studies. For 2011–2014, the cost of production per acre is a two-year average (2012, 2013). For 2015–2018, the cost per acre is a 3-year average (2015, 2017, 2018).

The two producer net return numbers in column (e) of Table 1 are the key results of this cost and return analysis. Four years of walnut farm profitability, represented by producer net return per acre of $2,264 for 2011–2014, were

followed by four years of difficult market conditions (2015–2018), with a negative average net return of (–$1,458). This analysis provides a numerical estimate that bears out witness testimony that emphasized a dramatic downward shift in their economic well-being.

The hearing record indicates that grower prices in 2019/20 and 2020/21, when compared to the cost of production in recent years shown in Table 1, indicate continuing negative net returns to California walnut growers, on average.

In 2020/21, walnut crop value fell to approximately $957 million, and the season average grower price of $1,220 per ton was the lowest since 2003/04. One witness testified that walnut farmers face challenging market conditions and that he does not foresee improvement in the current season (2021/22). Approximately, 80 percent of the Board's budget is allocated to domestic marketing; however, domestic consumption of walnuts has stayed the same for many years, at approximately one-half pound per person. Witnesses stated that handlers are struggling, and growers are losing their farms. Witnesses explained that if the proposal were implemented, the approximately $6 million in savings at the handler level could be distributed across the market through higher grower returns. Consumers are also expected to benefit through improved pricing.

According to the record, walnut varieties considered during the establishment of the Order no longer exist and are not viable in domestic and international markets. Evidence suggests that this is due to customer specifications that exceed the minimum grade, quality, and size regulations currently prescribed under the Order for shelled and inshell walnuts. Witnesses explained that consumers, especially in export markets, have high expectations due to the superior quality attributes of newer varieties. Production has declined for older varieties that do not contain the quality traits desired by consumers, notably those varieties that were considered when the Order was promulgated in 1948. Because they were based on lower quality walnuts, the minimum quality requirements prescribed under the Order are no longer consistent with current-day handling operations. In addition, witnesses testified that product packed to USDA minimum quality guidelines would most likely be rejected by their customers and result in complaints from consumers.

Increased demand for higher quality walnuts, both domestically and internationally, are driving the production of new varieties. One witness testified that over 90 percent of California walnut production is composed of three varieties, the Chandler, the Howard, and the Tulare. These varieties, notably the Chandler, which is 58 percent of total California walnut production, contains much less inedible material than previous varieties that were more susceptible to insect damage and low-quality kernels due to color and other factors.

According to the record, the harvest season generally begins in mid-September and concludes during the first week of November. Witnesses explained that when handlers receive harvested walnuts, they undertake an inbound inspection. Although the specific steps may vary between handlers, inbound inspection is considered a standard business practice. Evidence further suggests that due to consumer expectations and specifications, inbound inspection and quality control processes are much more stringent than the outbound inspection required under the Order. One witness testified that during the inbound inspection, the value of the product is assessed by taking an initial sample and testing for moisture, debris, and foreign material. Evidence suggests that this is a critical step in the inbound inspection process performed by almost all handlers. Witnesses testified that handlers either have a third-party perform the inbound inspection or conduct it themselves in-house, but the inspection process is routine within industry. Moisture testing has proven to be a key indicator of potential microbial growth, which can increase degradation rates, an important measurement of shelf-life.

Further evidence suggests that Board funding of research on behalf of the industry has contributed significantly to the quality advancements of walnuts produced and handled. According to the record, handlers consider product to be at ''equilibrium'' when moisture is below 8 percent. This is based on Board-funded research conducted by the UC Davis.

In addition, individual handler investments in technology and storage have also resulted in improved internal quality control across the industry. Evidence suggests that the evolution of inbound inspections and quality control processes are also due to higher customer specifications of quality. Both large and small handlers testified about the positive industry impact of adopting different methodologies that have been scientifically proven to reduce degradation, such as modified atmosphere storage, pasteurization, and fumigation. One witness testified that handlers employ their own quality assurance or quality control staff to inspect product, using quality specifications that exceed the USDA grade standards used by DFA in conducting inspections—inspections that the industry considers to be duplicative. The in-house quality control staff also conduct additional analytical tests for quality and condition, such as the moisture testing previously mentioned, microanalysis for microbial activity and measurement of peroxide and free fatty acid levels for rancidity. Additionally, investments in technology have facilitated advancements in electronic processing, such as laser or high-speed camera and x-ray machines that separate constituents on conveyor belts significantly reducing foreign material counts.

Witnesses explained that these advancements, coupled with highly trained quality assurance personnel, significantly increased walnut quality to a level that significantly exceeds USDA's minimum quality standards established in 1948. In addition, one handler witness that utilized both in-line (inspection prior to packing) and floor inspections (inspection after packing) offered by DFA, testified that both shelled and inshell walnuts rarely failed USDA inspection and that walnuts that do not meet the requirements of the Order accounted for a very small percent of total product processed. Therefore, the witness stated, handlers were only conducting outbound inspections to comply with the Order and to report the quantity of walnuts handled for the calculation of assessments as specified in § 984.69.

As evidenced by the record, walnut sales are driven by consumer demand for high quality product and marketplace competition, both domestically and internationally, which provide strong incentives to remove all substandard walnuts.

If implemented, the proposed amendment would result in greater cost efficiencies by eliminating inspection redundancy, significantly lowering cost and administrative burden for handlers and the Board.

For the reasons stated above, it is recommended that § 984.50 be amended to remove quality and size regulations and include only the Board's authority to recommend regulations in the future if market conditions warrant and eliminate §§ 984.51 and 984.52 inspection and certification of inshell and shelled walnuts and shelled walnuts for processing.

Material Issue Number 2—New Assessment Mechanism and Interest and/or Charges for Late Payments

Section 984.69 should be revised to change the calculation of assessments from kernelweight to inshell pound in paragraph (a), lift the stay for paragraph (b) and add authority to establish an initial assessment rate for the new assessment mechanism in a new paragraph (b), and include authority to charge for late payments and/or interest as prescribed by the Board with approval from the Secretary in paragraph (c). The preamble in the notice of hearing incorrectly identified paragraph (b) as the authority to charge for late payments and/or interest. The recommended decision and the proposed regulatory text correctly refer to paragraph (c). Corresponding changes should be made to §§ 984.37, 984.48, 984.69, and 984.347. Specifically, §§ 984.37, 984.48, and 984.347 should be revised to modify the measure of weight for assessments from kernelweight to inshell pound.

In addition to the proposed new assessment mechanism, the Board is also recommending an initial assessment rate of $0.0125 to go into effect at the conclusion of this rulemaking. This proposed amendment is summarized further under Material Issue No. 3.

According to the record, a new mechanism for determining and collecting handler assessments would need to be established if the proposed elimination of mandatory inspection and certification summarized under Material Issue No. 1 were implemented. Witnesses at the hearing expressed that the elimination of mandatory inspection and certification, or the outgoing inspection, disables the Board's ability to collect assessments. This is due to provisions in § 984.69 which states that each handler's pro rata share is the assessment rate per kernelweight pound multiplied by the kernelweight of walnuts certified. Therefore, the Order as currently written ties the calculation of assessments to inspection and certification.

According to the record, the new assessment mechanism would be based on walnuts received instead of walnuts certified which would allow the Board to resume collecting assessments. Under the proposed mechanism, the calculation of assessments would be based on receipts submitted to the Board. All nine witnesses testified their support for the proposed amendment, citing that it is an equitable change that would decrease the administrative burden for handlers and the Board.

Witnesses testified that California Walnut Board (CWB) Form No. 1, which is supplied to handlers by the Board in their annual season packets, would be the basis for the application of the assessment rate to be paid by handlers under the proposed new assessment mechanism, and since this report is already provided to the Board, it would ensure there is no additional burden placed on handlers. On CWB Form No. 1, handlers report walnut receipts by county and variety in inshell pounds, and therefore evidence suggests that the proposed amendment to change the calculation of assessments from kernelweight to inshell pounds is to reflect the new assessment mechanism that would be based on walnut receipts reported on CWB Form No. 1.

Under the Order, § 984.473 requires each handler to report to the Board walnut receipts from growers on or before January 15 of each marketing year. Handlers fill out CWB Form No. 1 or the Crop Acquisition Report to report all walnuts received during the crop year. Currently, the Board uses this information for the purpose of developing an annual report that shows total crop acquisition in aggregate for the marketing year.

Alternatives to CWB Form No. 1 were also discussed, such as the CWB Form No. 6, the Report of Merchantable Walnuts Received, Committed, and Shipped. This report also includes an acquisition total; however, witnesses testified that CWB Form No. 6 is a monthly report and it conflicts with the structure of the proposed new assessment mechanism which would stagger billing throughout the year. In addition, using CWB Form No. 1 reduces the administrative burden for handlers and the Board as it is an annual report.

Additionally, the new assessment mechanism is modeled after the assessment method applied by the California Walnut Commission (Commission). One witness explained that the Commission's process is also based on receipts, and that it is a self-reported system where handlers submit forms during the year on behalf of growers. The Commission's assessment process is also based on inshell weight received or acquired, and consideration was taken to ensure that the staggering of assessments did not match the Commission's. This further ensures any inadvertent undue burden is not place on handlers.

According to the record, for the first time for the 2021–2022 marketing year, the Board has included handler audits in its compliance plan. This is to ensure receipts reported on CWB Form No. 1 are accurate. Under the proposed assessment mechanism, the Board plans to audit handler receiving records, and one witness testified that receipt numbers can also be cross-checked with information shared between the Board and the Commission. This is within the authority of the Board as § 984.80 provides that each handler shall maintain records of walnuts received, held, or disposed of as prescribed by the Board, and such records shall be retained and be available for examination by the Board and Secretary for a period of two years. In addition, § 984.91 provides that the Board may deliberate, consult, cooperate and exchange information with the Commission, whose activities complement the Board.

Under the proposed new assessment mechanism, invoicing would not begin until after January 15 which is when CWB Form No. 1 is due, and billings would be staggered later in the year to allow handlers to pay in three installments. Billings would be generated in January, April, and July and as prescribed by the Board, payments would be due in February, May, and August. This is contrary to the current billing system where handlers are invoiced monthly. One witness testified that under the current system, approximately 48 percent of the total revenue for the year is invoiced by January and when compared to the proposed mechanism, only 33.33 percent of the total annual revenue would be billed in that same timeframe.

The following is a sample calculation showing how assessments would be determined under the new proposed mechanism. In the sample calculation, handler A reported receipts of 1 million inshell pounds on CWB Form No. 1 for the 2023 crop year. To calculate handler A's total annual assessment under the proposed new assessment mechanism, multiply the proposed initial assessment rate by the total pounds received for a result of $12,500 (1 million × $0.0125 = $12,500). To calculate handler A's assessment billings, multiply the total annual assessment by 33.33 percent for a result of $4,166.66 to be invoiced in January, $4,166.67 to be invoiced in April, and a final sum of $4,166.67 to be invoiced in July.

Sample Calculation for Assessments

Handler A reported acquisitions for 2023 marketing year = 1,000,000 pounds multiplied by $.0125 = $12,500

Assessments to be invoiced as follows:

Invoice 1—Jan—$12,500 multiplied by 33.33% = $4,166.66
Invoice 2—Apr—$12,500 multiplied by 33.33% = $4,166.67
Invoice 3—Jul—$12,500 multiplied by 33.33% = $4,166.67
Total invoiced: $12,500.00

During the hearing, USDA sought testimony on § 984.67 and specifically on exemptions from assessments and quality regulations. Currently, § 984.67(b)(1) in the Code of Federal Regulations references a list that is missing in error. In addition, § 984.67(b) is missing other exemptions from assessments and quality regulations—specifically for green walnuts and walnuts directed to noncompetitive outlets. Witnesses testified that § 984.67 provides stipulations for walnuts handled that are exempt from assessments and quality regulations under the Order such as for charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufactures pursuant to an authorized governmental diversion program. All industry witnesses testified in support of adding the missing text back to § 984.67(b) with some witnesses stating that they were unaware that the exemptions list was missing or incomplete, and that immediate reinsertion would benefit the industry as it would be unfair to penalize handlers for not paying assessments on product otherwise considered exempt.

A witness provided a sample calculation of how exemptions from assessments would be applied. In the hypothetical scenario illustrated below, handler A from the previous example reported that 10 thousand pounds was sold to USDA under section 32 of the Agricultural Adjustment Act Amendment of 1935. Handler A reported this after the first invoice for the marketing year was issued. To calculate handler A's exemption, multiply the total pounds exempt by the proposed assessment rate for an exempt amount of $125.00 (10,000 pounds × $0.0125 = $125). Subsequently, the next invoice billed to handler A (in this scenario it would be April) would show an adjusted assessment of $4,041.67 as a result of a $125.00 reduction due to exemptions.

Sample Calculation for Exemption Application

On March 31, Handler A reported 10,000 pounds sold to USDA for a Section 32 purchase.

10,000 pounds multiplied by $.0125 = $125

Assessments to be invoiced as follows:

Invoice 1—Jan—$12,500 multiplied by 33.33% = $4,166.66—was already invoiced
Invoice 2—Apr—$12,500 multiplied by 33.33% = $4,166.67 − $125.00—less exemption amount
Invoice 2 adjusted amount = $4,041.67—new invoice amount
Invoice 3—Jul—$12,500 multiplied by 33.33% = $4,166.67
Total invoiced: $12,375.00

According to the record, for exemptions that occurred after July, the last invoice in the marketing year, a refund check in the amount exempt would be issued by the Board to handlers. This ensures handlers receive a timely refund against current year assessments. Similarly, handlers that report adjustments to CWB Form No. 1 after January 15 of the marketing year would also receive a readjustment to their total annual assessments.

For the reasons stated above, it is recommended that § 984.67 be amended to add the text inadvertently omitted. Regarding the proposed amendment to revise § 984.69(c) to add the authority to charge for late payments and/or interest as recommended by the Board, subject to the approval of the Secretary, witnesses testified that if implemented, the proposal will enable the Board to further encourage compliance through the common business practice of assessing interest and late-payment charges.

According to the record, the industry has minimal issues with collection, but the standard business practice of interest and late payment charges is a tool that would help the Board execute the collection of assessments and administer the Order. One witness testified that currently under the Board's compliance plan a past-due notice is issued at 60 days, a second notice at 90 days, and then at 150 days outstanding the assessment is then referred to USDA. Under the proposed amendment, the Board may decide to not implement the authority; however, witnesses testified that the authority to recommend late-payment charges in the future would increase the equitability of the collection of assessments, as late fees would be applied equally across all handlers.

Additionally, the requirements of the new assessment mechanism and application of interest and late-payment charges as recommended by the Board and approved by the Secretary, would be communicated to handlers through their annual handler packets that are mailed at the beginning of each marketing year, and include a personalized cover letter for each handler, a copy of the annual handler regulations, a full set of Board forms, and a copy of the Order.

On February 24, 2022, the Board voted unanimously in favor of the proposed amendments recommended by the Executive Committee to create a new assessment mechanism and to add authority to charge for late payments to the Order. Board and Committee meetings are open to the public, and both large and small operations had an opportunity to provide input into the proposed amendments. In addition, newsletters were mailed to growers and the proposed changes were discussed at the annual grower meeting where Board staff provided presentations on all potential changes to the Order.

For the reasons stated above, it is recommended that § 984.69 be revised to change the calculation of assessments from kernelweight to inshell pound in paragraphs (a) and (c) be revised to include an authority to charge for late payments and/or interest as recommended by the Board, subject to the approval of the Secretary. It is also recommended that corresponding changes be made to §§ 984.37, 984.48, 984.69, and 984.347.

Material Issue No. 3—Initial Assessment Rate

Section 984.69(b) should be revised to include the authority to establish an initial assessment rate and § 984.347 should be amended to establish an initial assessment rate of $0.0125 per inshell pound of walnuts. The establishment of an initial assessment rate would allow the Board to resume the collection of assessments after the conclusion of this rulemaking and 30 days after the publication of the final rule in the **Federal Register**, if implemented.

As mentioned in several places throughout this recommended decision, the moratorium on the enforcement of mandatory inspections effective September 1, 2022, prevents the Board from collecting assessments due to § 984.69(a) which bases the calculation of assessments on walnuts certified. While the moratorium is in effect, Board activities and programs are sustained through the use of operational funding from the Board's existing but depleting financial reserve funds. Evidence suggests that the establishment of the initial assessment rate is to ensure the Board will have the ability to generate funds in the upcoming marketing year. Witnesses explained that the formal rulemaking process could take between 18 and 24 months, and during this time

the Board is operating entirely off its reserves. Therefore, the ability of the Board to assess upon implementation is important to be able to resume its full scope of activities.

According to the record, on November 19, 2021, the Marketing Order Revision Committee recommended the initial assessment rate to the Board. Witnesses testified that discussions were robust, and several alternatives were proposed. Rates as high as 2 cents or as low as zero were considered by the Board. Ultimately, the Board voted in favor of an initial assessment rate of $0.0125, 7 to 2. It was concluded that, without an established rate, programs would be limited and the Board would not be able to conduct business in the year the proposed amendments would take effect if implemented. Additionally, evidence suggests that due to low pricing further consideration was taken to ensure the proposed rate is reasonable and it does not appear as though the Board is trying to recapture years without assessments. Witnesses testified that the proposed rate of $0.0125 is lower than the rate originally proposed for the current season and is also lower than the rate for the last 4 out of the 5 years prior to the 2021/22 season. The Board decided that an initial assessment rate of $0.0125 would be reasonable for handlers and would allow the Board to cover operating costs and conduct the marketing activities needed for the domestic market.

The notice of hearing incorrectly had an assessment rate of $.125 in the regulatory text. The recommended decision corrects the assessment rate to reflect the Board's intent and testimony.

In addition, § 984.68 of the Order provides that the Board must file a proposed budget of expenses and a rate of assessment at the beginning of each marketing year and the determination of the initial rate would not supersede that.

For the reasons stated above, it is recommended that § 984.69(b) be revised to include the authority to establish an initial assessment rate which may be modified by the Secretary and § 984.347 be amended to establish the initial assessment rate of $0.0125 per inshell pound of walnuts.

Material Issue No. 4—The Definition of To Handle

Section 984.13 should be modified to include the word ''receive'' in the definition of ''to handle''. Modifying the definition would broaden its scope to include the receipt of either inshell or shelled walnuts (except as a common contract carrier or walnuts owned by another person) to be put into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower. This does not include sales and deliveries within the area of production by grower to handlers, or between handlers.

According to the record, expanding the definition would allow the Board to use the Acquisition Report, or CWB Form No. 1, required by each handler before January 15 of each marketing year, as the basis for the calculation of assessments to be collected under the proposed new assessment mechanism summarized in Material Issue No. 2.

Currently, handlers are assessed on product certified, and evidence suggests that the Board's intention for expanding the definition to include ''receive'' is to ensure all handlers that receive walnuts are assessed under the proposed new assessment mechanism and also to clearly tie assessments with walnuts received. Witnesses testified that the act of handling begins when a handler receives and takes possession of the product and therefore expanding the definition would ensure product does not slip through the system unassessed or unaccounted.

According to the record, this is a necessary change that is a result of the proposed elimination of inspections and certification that currently ties assessments with walnuts certified, and that modifying the definition would enable the alignment of the proposed amendments discussed in this recommended decision. Additionally, handlers are expected to benefit from the modified definition as it allows for the application of the proposed assessment mechanism which would reduce the administrative burden for both handlers and the Board.

For the reasons stated above, it is recommended that § 984.13 be modified to include the word ''receive'' in the definition of ''to handle''.

Material Issue No. 5—Volume Control Authority

Section 984.49 ''Volume regulation'', reserve pool authority, and subsequent sections including provisions for volume control should be removed. This includes removing: §§ 984.23, 984.26, 984.33, 984.54, 984.56, 984.66, 984.69(b), 984.450(a) and (b), 984.451(c), 984.456, and 984.464(a) and revising: §§ 984.48 and 984.67. Removing volume control authority would modernize the Order by eliminating regulations the industry considers no longer necessary to ensure orderly marketing.

Witnesses testified that the industry is fundamentally different than it was 30 years ago and does not foresee using volume regulation in the future. Currently, volume regulation is suspended indefinitely, effective May 7, 2020 (85 FR 27109). According to the record, volume regulations were suspended because they had not been used in over 30 years. As previously stated under Material Issue No. 1, witnesses argued that in the current economic environment, low pricing is a result of increases in global supply. Therefore, restricting sales of California walnuts would not be in the best interest of the industry which is primarily focused on increasing market demand through research and promotion.

For the reasons stated above, it is recommended that § 984.49 ''Volume regulation'' and reserve pool authority should be removed. Corresponding changes to subsequent sections including provisions for volume control should also be removed. This includes removing: §§ 984.23, 984.26, 984.33 984.54, 984.56, 984.66, 984.69(b), 984.450(a) and (b), 984.451(c), 984.456, and 984.464(a) and revising: §§ 984.48 and 984.67.

Material Issue No. 6—USDA's Conforming Changes

Based on record evidence, USDA is recommending the following conforming changes to the Order: adding language regarding exemptions to § 984.67; removing the reference to ''merchantable'' in § 984.22 and from the headings and paragraphs in §§ 984.72 and 984.472(a) and (c); revising the heading in § 984.21; revising §§ 984.69(e) and 984.89(b)(4) to replace the term ''fiscal period'' with ''marketing year''; and revising the figure in § 984.347.

As described above in Material Issue #2, USDA is recommending a conforming change to § 984.67 to add language inadvertently omitted in a prior rulemaking conducted in May 2020. Witnesses testified in support of adding exemptions that had been inadvertently omitted back to § 984.67.

A conforming change to remove the word ''merchantable'' from § 984.22 and from the headings and paragraphs in §§ 984.72 and 984.472(a) and (c) is necessary to add clarity to the Order. In § 984.11, ''merchantable walnuts'' are defined as ''walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50.'' If the proposed amendments described in Material Issue #1 are implemented, there would be no ''merchantable walnuts'' because there would be no

grade and size regulations in effect. Witnesses testified that this was their understanding of the effect of the proposed amendments described in Material Issued #1. Witnesses also testified in favor of removing numerous references to the term ''merchantable'' in various sections, including § 984.48. Similarly, witnesses testified to amendment of § 984.472(b) to ensure that reporting requirements for shipped walnuts would continue.

Accordingly, USDA proposes that references to ''merchantable'' be removed from other reporting requirements to ensure that such reporting requirements continue to be in place. USDA proposes that the reference to ''merchantable'' be removed from § 984.22 to ensure that the marketing policy in § 984.48 includes an estimate of trade demand. USDA proposes that the reference to ''merchantable'' be removed from the heading and text of § 984.72 to make clear that the authority for reports extends to walnuts rather than the subset of ''merchantable walnuts''. Similarly, USDA proposes conforming changes to remove references to the term ''merchantable'' in § 984.472(a) and (c). This would ensure that walnuts that are received and that are committed continue to be reported to the Board.

Section 984.50 would continue to provide authority for grade, quality, and size regulations in the event that such regulations are warranted in the future. If specific grade, quality, and size regulations are promulgated and implemented in the future, the term ''merchantable walnuts'' (''walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50'') would once again have meaning and effect. Accordingly, the definition for ''merchantable walnuts'' and similarly related sections that reference the word ''merchantable'' in the Order would not be affected by the proposed amendments. Specifically, §§ 984.11, 984.12, and 984.64 would continue to reference ''merchantable walnuts.''

In addition, as noted in the notice of hearing, the heading in § 984.21 would be revised to reflect the purpose of the provision. The provision defines handler inventory and accordingly, USDA proposes to rename the heading ''Handler inventory'' from ''Eligibility.''

USDA proposes to revise §§ 989.69(e) and 984.89(b)(4) to replace the term ''fiscal period'' with ''marketing year.'' ''Marketing year'' is already used in another provision of § 989.69. Moreover, ''marketing year'' is defined in and used throughout the Order.

Finally, as discussed in Material Issue #3 USDA notes that there was an error in § 984.347 in the notice of hearing, in which the assessment rate was listed as $.125. Witnesses testified that the assessment rate should be $.0125, and the recommended decision reflects this.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

During the hearing held April 19–20, 2022, interested parties were invited to present evidence on the probable regulatory impact on small businesses of the proposed amendments to the Order. The evidence presented at the hearing shows that the proposed amendments would not have a significant negative economic impact on a substantial number of small agricultural producers or handlers.

A small handler, as defined by the Small Business Administration (SBA) (13 CFR 121.201), is one that grosses less than $30 million annually. A small walnut producer is one that grosses less than $3.25 million annually.

Effective May 2, 2022, SBA issued a final rule updating small business size standards for agriculture (86 FR 18607). The tree nut farming (North American Industry Classification System (NAICS) code 111335) size standard changed from $1 million to $3.25 million. The witnesses that identified themselves as small producers did so using the SBA size standard in effect at the time of the hearing ($1.0 million); they are also small under the new standard of $3.25 million.

A total of nine witnesses testified at the hearing. Of the nine witnesses, seven appeared and offered testimony as growers or handlers. Five of these seven witnesses were growers and four of the growers were also handlers. Two of five grower witnesses testified that they were small walnut growers according to the former SBA definition of $1.0 million, and three were large.

Of the six handler witnesses, two were small and four were large. Of the four grower witnesses who were also handlers, one was a small handler, and three were large. There were two additional handler witnesses, one small and one large.

Of the remaining two witnesses, one provided testimony from the perspective of academia and the other witness provided testimony as a representative of the California Walnut Board.

All witnesses expressed their support for the proposed amendments and stated that they expected to see significant benefits (cost savings) from the amendments.

Walnut Industry Background and Overview

According to the hearing record there are approximately 4,500 producers and 85 handlers in the production area. Record evidence includes reference to a study showing that the walnut industry contributes 85,000 jobs to the economy, directly and indirectly.

Record evidence showed that approximately 82 percent of California's walnut handlers (70 out of 85) shipped merchantable walnuts valued under $30 million during the 2018–2019 marketing year and would therefore be considered small handlers according to the SBA definition.

Data in the hearing record from the 2017 Agricultural Census, published by USDA's National Agricultural Statistics Service (NASS), showed that 86 percent of the California farms growing walnuts had walnut sales of less than $1 million. In the 2017 Agricultural Census, the largest sales value size category for walnuts was $1.0 million.

To estimate the percentage of small walnut farms, using NASS data from the hearing record, the first step was computing a 3-year average crop value, which was $1.077 billion for the period 2018/19 to 2020/21. Average bearing acres over that same 3-year period were 372,500. Dividing crop value by acres yields a revenue per acre estimate of $2,892. Using these numbers, it would take approximately 1,124 acres ($3,250,000/$2,892) to yield $3,250,000 in annual walnut sales. The 2017 Agricultural Census data show that 94 percent of walnut farms in 2017 were below 1,000 acres. Therefore, 94 percent or more of California walnut farms would be considered small businesses according to the current SBA definition.

Hearing evidence showed that the period from walnut tree planting production ranges from 5 to 7 years, and that production levels each year are somewhat affected by the alternate bearing tendency. The pricing downturn that began in 2015 somewhat diminished the rate of new plantings, but about 36,000 previously planted

acres are expected to come into production in the next 3 years (2023 to 2026). These are high-yield varieties, and therefore the new acres will be more productive than the walnut acreage being removed.

According to the record, generally all domestic production of walnuts is grown in the Central Valley region, which includes the Sacramento Valley and the San Joaquin Valley. The San Joaquin Valley is one of only five major Mediterranean-type climates in the world that is ideal for growing nuts. Over the past 10 years, walnut acreage has migrated north for better water availability. Production in the northern part of the Central Valley is expected to grow significantly, and the proportion of total production in the south is expected to decline.

Walnut trees bloom in the spring and the harvest for early varieties starts in September. Harvesting for later varieties starts in October and sometimes continue into November. The Chandler variety is 58 percent of total walnut production. Three varieties (Chandler, Howard, and Tulare) make up eighty-five percent of total walnut volume. As soon as the nuts are harvested, they must be hulled (removal of the green husk) and dried. The hulled nuts have too high a moisture content for long-term storage, and they need to be dried quickly to preserve quality and to minimize mold and rancidity. Growers still own the nut at that point, according to hearing evidence.

The processor (handler) then buys the nuts based on the cleaned, hulled and dried weight. The handlers process and store them before and after the value-added steps, before shipping them into distribution channels.

Once received by the handler, the walnuts go into refrigerated or bulk storage, depending on the type of product that the handler intends to produce. Smaller lots (such as for minor varieties) are put into bin storage. Once the walnuts are warehoused and fumigated (to eliminate insects) a sample is taken to determine the value of the product to the producer. The walnuts are tested for kernel content, edible kernel content, defect levels, and color. The lighter the color, the greater the value. The three predominant colors are light, light amber and amber.

The shelling process removes most of the shell, typically leaving about 98 percent kernel and 2 percent shell. The resulting lot has nuts with a mixture of colors and approximately six different sizes, ranging from eight-of-an-inch square up to a half kernel.

Walnuts generally have a 12-month shelf life, which can be moderately increased through improved storage conditions and may be reduced if storage conditions are not ideal. Cold storage has facilitated year-round sales and marketing. Witnesses stated that advancements in processing and packaging technologies continue to improve product quality, consistency and shelf life.

Some packaging methods, including vacuum packing, will increase shelf life and help maintain quality. Walnuts can also be pasteurized to reduce pathogens. Modified atmosphere storage requires substantial capital, including automation of storage chamber loading and unloading because the low oxygen environment is dangerous for forklift drivers.

On the handler process lines, key pieces of equipment are laser sorters and optical camera sorters, which can sort by color and shape. Broad spectrum analyses (using infrared and ultraviolet) are increasingly effective at identifying defects. Mechanical air injection systems use jets of air to remove individual nuts identified as defective.

A key factor in quality improvement are new varieties, including Chandler, Howard, Pillory, Ivanhoe and Sawano. With these varieties, shell removal is much easier, leaving far fewer fragments and pieces. Recent technology improvements have also greatly reduced the incidence of foreign material and shell pieces to a level that is far below what is allowed under USDA standards, which were established decades earlier.

With the new varieties, the kernel color is much lighter, and the nuts are larger. In addition, advances in processing equipment produce a much higher percentage of ‘‘pristine halves’’. Witnesses testified that these three key characteristics yield more money to industry stakeholders but are not accounted for in USDA standards.

According to hearing evidence, prior to the inspection moratorium, large volume handlers typically had DFA staff working from a space close to their own quality assurance (QA) staff. DFA conducted quality tests from in-line samples with processes that largely paralleled those of the handler QA staff, but DFA applied the less stringent USDA standards. For smaller volume handlers, the DFA staff tested nuts based on samples from packaged products on the packing floor (floor inspection). For the mandatory outbound inspection, no product could leave the processing facility without USDA certification issued by DFA.

Before the inspection moratorium, operational inefficiencies for handlers included sometimes having to wait for qualified DFA inspection staff to show up to certify lots in a timely manner, adding to an already challenging shipping environment. Hearing evidence suggests that the elimination of mandatory inspection, and being able to self-certify according to customer specifications that are well above USDA standards, would be a significant benefit of the proposed changes to handlers of all sizes. Some handlers may continue to use DFA inspection service for quality control; however, hearing evidence shows industry is undergoing a transition away from the traditional practice of third party inspections for greater cost savings.

Witnesses reported that another improvement in operational efficiency, and reduced paperwork burden, that would result from the proposed amendments is changing from monthly handler assessments to three installments to be paid in February, May, and August.

In summary, hearing evidence points to major technological improvements in sorting, processing and storage, and adoption of new varieties, as key evidence of how current industry practices result in walnut quality that exceeds USDA standards, making mandatory outgoing inspection unnecessary.

Estimated Economic Impact of Eliminating Mandatory Inspection

A key economic impact of the marketing order amendment is the cost reduction to industry stakeholders of eliminating mandatory inspection. Hearing evidence showed that an estimate of the inspection cost is approximately $6 million per year. This cost reduction figure represents a key benefit to the industry of implementing these amendments.

Table 2 illustrates the inspection cost estimate. Multiplying the total quantity of California walnuts marketed in 2020 (783,500 tons) times the average inspection cost of $7.7024 per ton) yields the total annual mandatory inspection cost estimate of $6,034,830 shown in Table 2. These numbers represent the costs incurred by handlers for the inspection services supplied by DFA, the Board’s inspection agency of record.

The proportion of the crop marketed as inshell and shelled are 42 and 58 percent, respectively. These proportions are used to show how the $6.035 million inspection cost is allocated to the inshell and shelled portions of the total U.S. walnut market.

TABLE 2—ESTIMATED ANNUAL COST MANDATORY WALNUT INSPECTION [1]

	Inshell	Shelled	Total	Computational detail
Share of sales (%)	42%	58%	100%	A
Volume (tons)	329,070	454,430	783,500	B A * total volume.
Inspection Cost ($ per ton) [2]	$6.09	$8.87	$7.7024	C
Total inspection cost [2']	$2,004,036	$4,030,794	$6,034,830	D B * C.

[1] This table is based on Exhibit 16A of the walnut marketing order amendment hearing, which used data supplied by California Walnut Board.
[2] Total inspection cost of $6,034,830 in this table is the sum of the inshell and shelled cost and represents a slight upward adjustment from the total cost figure of $6,032,950 in hearing Exhibit 16A. This revised total cost figure was used to compute a revised inspection cost per ton of $7.7024, representing an average industry cost, combining inshell and shelled. This is slightly higher than the $7.70 cost figure presented in Exhibit 16A.

Hearing evidence also pointed to other benefits, such as lower indirect costs to handlers. Witnesses stated that handlers would benefit from reduced operational process redundancies, resulting in lower associated costs and administrative burdens. An additional efficiency for handlers is that the proposed new marketing order assessment mechanism utilizes the same process already in use by handlers for their payment to the California Walnut Commission.

In addition, producers may also benefit from higher grower returns through cost savings passed on from increased handler efficiencies.

The record shows that there would be no negative quality implications from implementing the proposed amendments, and consumers already benefit from California walnut quality that surpasses USDA grade standards. Consumers may also benefit from lower prices resulting from reduced handler costs. If the proposed amendments and accompanying conforming changes were implemented, both benefits and costs savings could be anticipated. For the reasons described above, it is determined that the benefits of eliminating mandatory inspection and certification of inshelled and shelled walnuts, and of shelled walnuts for processing; creating a new mechanism for determining and collecting handler assessments; adding authority to charge interest for late payments; establishing an assessment rate of $0.0125 per inshell pound of walnuts; expanding the definition of ''to handle'' to include ''receive'', and removing volume control authority would modernize and align the Order with current market-driven practices that would result in a more efficient industry.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California walnuts.

Board meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and the hearing to participate in Board deliberations on all issues. All Board meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Interested persons are invited to submit information on the regulatory impacts of this action on small businesses.

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

Paperwork Reduction Act

Current information collection requirements that are part of the Federal marketing order for California walnuts (7 CFR part 984) are approved under Office of Management and Budget (OMB) No. 0581–0178, Vegetables and Specialty Crops. No changes in these requirements are anticipated as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to the Order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of walnuts grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of walnuts grown in the production area; and

(5) All handling of walnuts grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written exceptions received within the comment period will be considered, and a producer referendum will be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 984 as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 984.12 to read as follows:

§ 984.12 Substandard walnuts.

Substandard walnuts means all walnuts (whether inshell or shelled) that do not meet the minimum standard prescribed for merchantable walnuts whenever regulations are in effect pursuant to § 984.50.

■ 3. Revise § 984.13 to read as follows:

§ 984.13 To handle.

To handle means to receive, pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower. However, sales and deliveries by a grower to handlers, hullers, or other processors within the area of production shall not, in itself, be considered as handling by a grower. The term ''to handle'' shall not include sales and deliveries within the area of production between handlers.

■ 4. In § 984.21, revise the section heading to read as follows:

§ 984.21 Handler inventory.

* * * * *

§ 984.22 [Amended]

■ 5. In § 984.22(a) and (b), remove the word ''merchantable''.

§§ 984.23 and 984.26 [Removed and Reserved]

■ 6. In §§ 984.23 and 984.26, lift the stays of May 7, 2020, and remove and reserve the sections.

■ 7. Revise § 984.32 to read as follows:

§ 984.32 To certify.

To certify means the issuance of a certification of inspection of walnuts in accordance with regulations issued pursuant to § 984.50.

§ 984.33 [Removed and Reserved]

■ 8. In § 984.33, lift the stay of May 7, 2020, and remove and reserve the section.

■ 9. In § 984.37, revise paragraphs (b) and (c)(4) to read as follows:

§ 984.37 Nominations.

* * * * *

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) * * *

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this paragraph (c)(4). However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this paragraph (c)(4) shall be the nominee for that position.

* * * * *

■ 10. In § 984.48:

■ a. Revise the introductory text of paragraph (a);

■ b. Remove the words ''merchantable and substandard'' in paragraph (a)(3);

■ c. Lift the stays of May 7, 2020, on paragraphs (a)(6) and (7) and remove both paragraphs; and

■ d. Redesignate paragraphs (a)(8) and (9) as paragraphs (a)(6) and (7), respectively.

The revision reads as follows:

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following:

* * * * *

§ 984.49 [Removed and Reserved]

■ 11. In § 984.49, lift the stays of August 7, 1995, and May 7, 2020, and remove and reserve the section.

■ 12. In § 984.50, lift the stay of May 7, 2020, on paragraph (e) and revise the section to read as follows:

§ 984.50 Grade, quality, and size regulations.

(a) The Board may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties or classifications of walnuts during any period;

(2) Establish different handling requirements and tolerance limits for particular grades, sizes, or qualities, or any combination thereof, for different market destinations;

(3) Establish different handling requirements for the processing of shelled walnuts and the handling thereof; and

(4) Establish inspection and certification requirements for the purposes of this paragraph (a) and paragraph (b) of this section.

(b) During any period regulations issued under this section are in effect, no handler shall handle or process walnuts into manufactured items or products unless they meet the applicable requirements under this section as evidenced by certification acceptable to the Board.

(c) Regulations issued under this section may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Board and approval by the Secretary, or other available information; or

(2) That regulations issued under this section no longer tend to effectuate the declared policy of the Act.

§§ 984.51 and 984.52 [Removed and Reserved]

■ 13. Remove and reserve §§ 984.51 and 984.52.

§§ 984.54 and 984.56 [Removed and Reserved]

■ 14. In §§ 984.54 and 984.56, lift the stays of May 7, 2020, and remove and reserve the sections.

■ 15. Revise § 984.64 to read as follows:

§ 984.64 Disposition of substandard walnuts.

During any period when regulations are in effect pursuant to § 984.50, substandard walnuts may be disposed of only for manufacture into oil livestock feed, or such others uses as the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets. Each handler shall submit, in such form and at such intervals as the Board may determine, reports of his production and holdings of substandard walnuts and the disposition of all substandard walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

§ 984.66 [Removed and Reserved]

■ 16. In § 984.66, lift the stay of May 7, 2020, and remove and reserve the section.

■ 17. In § 984.67:

■ a. Lift the stay of May 7, 2020, on paragraph (a) and remove the paragraph;

■ b. Redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively; and

■ c. Revise newly redesignated paragraph (a).

The revision reads as follows:

§ 984.67 Exemptions.

(a) *Exemptions from assessments and quality regulations*—(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his production free of the regulatory and assessment provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions:

(i) At roadside stands and farmers' markets;

(ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts of 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in paragraph (a)(1)(i) of the section); and

(iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

* * * * *

■ 18. In § 984.69, lift the stay of May 7, 2020, on paragraph (b) and revise the section to read as follows:

§ 984.69 Assessments.

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his or her pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per inshell pound of walnuts fixed by the Secretary times the pounds of walnuts received by him or her for his or her own account (except as to receipt from other handlers on which assessments have been paid). At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Assessment rate.* The assessment rate set out may be modified by the Secretary, based upon a recommendation of the Board or other available data.

(c) *Late payment.* If a handler does not pay assessments within the time prescribed by the Board, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Board with approval of the Secretary.

(d) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (d)(2) or (3) of this section, it shall be refunded to handlers from whom collected, and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year provided each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, that funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

(e) *Advanced assessments and commercial loans.* To provide funds for the administration of the provisions of this part during the part of a marketing year when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current

season's certifications are available, the Board may accept payment of assessments in advance or may borrow money from a commercial lending institution for such purposes.

(f) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

■ 19. Revise § 984.72 to read as follows:

§ 984.72 Reports of walnuts handled.

Each handler who handles walnuts, inshell or shelled, at any time during a marketing year shall submit to the Board in such form and at such intervals as the Board may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Board may specify.

■ 20. Revise § 984.77 to read as follows:

§ 984.77 Verification of reports.

For the purpose of verifying and checking reports filed by handlers or the operations of handlers, the Secretary and the Board through its duly authorized representatives shall have access to any premises where walnuts and walnut records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives shall be permitted to inspect any walnuts held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of both inshell and shelled walnuts. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Board or the Secretary. Each handler shall store all walnuts held by him or her in such manner as to facilitate inspection and shall maintain adequate storage records, which will permit accurate identification of respective lots and of all such walnuts held or disposed of theretofore. The Board, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

§ 984.89 [Amended]

■ 21. In § 984.89(b)(4), remove the term "fiscal period" and add in its place the term "marketing year".

■ 22. Revise § 984.347 to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2023, an assessment rate shall be fixed at $0.0125 per inshell pound of California walnuts.

§ 984.450 [Removed and Reserved]

■ 23. In § 984.450, lift the stays of May 7, 2020, on paragraphs (a) and (b) and remove and reserve the section.

§ 984.451 [Removed and Reserved]

■ 24. In § 984.451, lift the stay of May 7, 2020, on paragraph (c) and remove and reserve the section.

§ 984.452 [Removed and Reserved]

■ 25. Remove and reserve § 984.452.

§ 984.456 [Removed and Reserved]

■ 26. In § 984.456, lift the stay of May 7, 2020, and remove and reserve the section.

§ 984.459 [Amended]

■ 27. In § 984.459, remove and reserve paragraph (a)(3).

§ 984.464 [Removed and Reserved]

■ 28. In § 984.464, lift the stay of May 7, 2020, on paragraph (a) and remove and reserve the section.

■ 29. Revise § 984.472 to read as follows:

§ 984.472 Reports of walnuts, received, shipped, and committed.

(a) Reports of walnuts shipped during a month shall be submitted to the Board on California Walnut Board (CWB) Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts: the quantity shipped; whether they were shipped into domestic or export channels; and for exports, the quantity by country of destination. If a handler makes no shipments during any month he/she shall submit a report marked "None." If a handler has completed his/her shipments for the season, he/she shall mark the report "Completed," and he/she shall not be required to submit any additional CWB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased.

(c) Reports of walnuts on which handlers have made purchase commitments with buyers during the month, but which have not yet been shipped, shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were committed. Such reports shall show the quantity of walnuts committed in either inshell or shelled pounds. If the handler made no commitments during any month, he/she shall mark "None" in the "Purchase Commitments" section of CWB Form No. 6.

■ 30. Revise § 984.476 to read as follows:

§ 984.476 Report of walnut receipts produced outside California or the United States.

Each handler who receives walnuts from outside California or the United States shall file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–22806 Filed 10–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1306; Project Identifier AD–2022–01040–E]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pratt & Whitney (PW) PW1519G, PW1521G, PW1521G–3, PW1521GA, PW1524G, PW1524G–3, PW1525G, and PW1525G–3 model turbofan engines. This proposed AD was prompted by an uncommanded dual engine shutdown upon landing, resulting in compromised braking capability due to the loss of engine power and hydraulic systems. This proposed AD would require

replacement of electronic engine control (EEC) full authority digital engine control (FADEC) software with updated software. 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 December 9, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1306; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; email: *Mark.Taylor@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–2022–1306; Project Identifier AD–2022–01040–E’’ 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 Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. 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 was notified of an airplane that experienced an uncommanded dual engine shutdown upon landing, resulting in compromised braking capability due to the loss of engine power and hydraulic systems. A subsequent investigation determined that the sequence of the auto-throttle increasing throttle to maintain Mach number, immediately followed by pilot command to decrease throttle to idle, caused a transient disagreement between actual and commanded thrust. This disagreement triggered the thrust control malfunction (TCM) detection logic and resulted in dual engine shutdown once the weight on wheels signal was activated upon landing. The installed EEC FADEC software version latches the fault and allows the engine to continue operation as commanded but shuts down the engine upon landing. The manufacturer identified the situations that could trigger the TCM logic erroneously and updated the EEC FADEC software. This software update makes corrective improvements to the TCM logic, including revised criteria for triggering the TCM logic and establishing criteria that permit the TCM logic to unlatch during flight. This condition, if not addressed, could result in runway excursion.

FAA's Determination

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

Related Service Information

The FAA reviewed PW Service Bulletin (SB) PW1000G–A–73–00–0054–00A–930A–D, Issue No. 002, dated June 20, 2022. This service information specifies procedures for replacing or modifying the EEC to incorporate FADEC software version V2.11.14.

Proposed AD Requirements in This NPRM

This proposed AD would require removal from service of certain EEC FADEC software versions and replacement with a software version eligible for installation.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 147 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Upgrade EEC FADEC Software	2 work-hours × $85 per hour = $170	$0	$170	$24,990

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. FAA–2022–1306; Project Identifier AD–2022–01040–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 9, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney PW1519G, PW1521G, PW1521G–3, PW1521GA, PW1524G, PW1524G–3, PW1525G, and PW1525G–3 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by an uncommanded dual engine shutdown upon landing, resulting in compromised braking capability due to the loss of engine power and hydraulic systems. The FAA is issuing this AD to prevent compromised braking capability due to uncommanded dual engine shutdown upon landing. The unsafe condition, if not addressed, could result in runway excursion.

(f) Compliance

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

(g) Required Actions

For affected engines with installed electronic engine control (EEC) full authority digital engine control (FADEC) software version earlier than V2.11.14.1, within 12 months after the effective date of this AD, remove the EEC FADEC software and replace with EEC FADEC software version eligible for installation.

(h) Definitions

For the purpose of this AD, ''EEC FADEC software version eligible for installation'' is EEC FADEC software version V2.11.14.1 or later.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD and email to: *ANE-AD-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.

(j) Related Information

For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; email: *Mark.Taylor@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on October 14, 2022.

Christina Underwood,

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

[FR Doc. 2022–22761 Filed 10–24–22; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB15

Energy Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Federal Trade Commission (FTC or Commission) seeks public comment on potential amendments to the Energy Labeling Rule (Rule), including energy labels for several new consumer product categories, and other possible amendments to improve the Rule's effectiveness and reduce unnecessary burdens.

DATES: Comments must be received on or before December 27, 2022.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Energy Labeling Rule ANPR, Matter No. R611004'' on your comment, and file your comment online at *https://www.regulations.gov/,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202–326–2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Overview

The Commission seeks comment on amendments to its existing Energy Labeling Rule at 16 CFR part 305. As discussed below, the Commission specifically seeks comment on whether it should add new consumer product categories to the labeling program, increase the availability of online labels and other energy information, and streamline existing requirements. The Commission also seeks comment on

whether any Rule changes are necessary to ensure the Rule's labeling provisions are consistent with current consumer shopping behavior. Finally, the ANPR seeks comment on whether the Commission should amend the Rule to: (1) modify its label content and format, (2) require links to online Lighting Facts labels consistent with current EnergyGuide requirements, (3) update the electricity cost figure on the Lighting Facts and ceiling fan labels, (4) update the refrigerator and clothes washer labels to remove dated information about test procedures, and (5) ensure the Rule's consistency with Department of Energy (DOE) requirements.

II. Background

The Commission issued the Energy Labeling Rule in 1979,[1] pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).[2] The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room and portable air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three main disclosures: estimated annual energy cost, a product's energy consumption or energy efficiency rating as determined by DOE test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. The Rule requires marketers to use national average costs for applicable energy sources (*e.g.,* electricity, natural gas, or oil), as calculated by DOE in all cost calculations. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements.[3]

III. Potential Rule Improvements

A. Potential Labels for New Product Categories

The Commission seeks comment on whether to add several new product categories to the energy labeling program. Under EPCA, FTC has broad authority to require energy labels for consumer products. Specifically, in addition to products named in the statute or designated by DOE under that agency's authority, FTC may require labels pursuant to 42 U.S.C. 6292(a)(6) for any consumer product as long as a label ''is likely to assist consumers in making purchasing decisions.''[4] The Commission seeks comment on potential new labels for (1) the product categories listed below, and (2) any other consumer products that may be appropriate for energy labels. The Commission has not made any final determination regarding whether energy labels are warranted for any of the products discussed below at III.A.2.

In considering the product types listed below or other potential products, commenters should address any issues relevant to whether the Commission should require labeling for specific product categories. Typically, energy labels are most likely to help consumers when the underlying products use a substantial amount of energy and exhibit a range of annual energy costs across competing similar models. In addition to requiring energy use figures, the Commission has authority to require disclosures of additional information relating to energy consumption, including instructions for maintenance, use, or repair. 42 U.S.C. 6294(c)(5). If no DOE test procedure exists for a particular product type, commenters should address whether competent and reliable test procedures exist that will yield adequate, consistent estimated energy use disclosures on the labels.

1. Questions About New Labels

The Commission invites commenters to provide information and views on the following issues for the products listed below, as well as any other consumer products that may warrant energy labels. Where appropriate, commenters should provide evidence to support their views:

—Whether labels will assist consumers in their purchasing decisions, and why;

—The typical energy use and energy efficiency of various models on the market;

—Whether, and how, potential market changes will affect label benefits (*e.g.,* expected changes in future models);

—The annual energy costs differences between similarly sized or otherwise competing models for each product category;

—What, if any, test procedures are or will likely be available to measure the estimated annual energy costs (or another useful energy metric) for the product category;

—What, if any, particular labeling burdens would apply to these products that are larger or different from currently labeled products;

—Any estimates (*e.g.,* hours per year) for consumers' typical annual use of the product (*i.e.,* ''duty cycle'') that can provide a basis for an annual energy cost estimate;

—Whether and how the energy use varies among similarly sized (or otherwise competing) models;

—Typical methods by which these products are sold (*e.g.,* in retail stores packed in boxes, in stores displayed out of the boxes, online, through professional installers, etc.);

—How consumers typically shop (*i.e.,* make purchasing decisions) for the products, and whether they shop online, in stores, or through some other means (*e.g.,* discussions at home with installers);

—What, if any, subgroupings are appropriate for product categories by size, configuration, fuel used, or type (please provide specific information);

—Whether and why range information would be useful on the label and, if so, whether such range data is available;

—Whether and why labels for the product should appear on boxes, the products themselves, or through some other location or means;

—Any particular burdens associated with labeling specific product categories; and

—Whether the labels should provide any other available information about those products relevant to their energy consumption and consumer use.

[1] 44 FR 66466 (Nov. 19, 1979).

[2] 42 U.S.C. 6294. EPCA also requires the Department of Energy (DOE) to develop test procedures that measure how much energy appliances use, and to determine the representative average cost a consumer pays for different types of energy.

[3] 16 CFR 305.12.

[4] 42 U.S.C. 6294(a)(6); *see* 42 U.S.C. 6291(1) (defining ''consumer product''). For additional FTC labeling authority, see 42 U.S.C. 6292(a)(1)–(5). For new product categories that DOE classifies as ''covered'' pursuant to 42 U.S.C. 6292(b), the FTC may prescribe labeling under 42 U.S.C. 6294(a)(3) if (1) the Commission determines labeling will assist purchasers in making purchasing decisions, (2) DOE has prescribed test procedures for the product class, and (3) the Commission concludes labeling for the class is economically and technologically feasible.

2. List of Potential New Product Categories

Clothes Dryers: EPCA designates clothes dryers as covered products in 42 U.S.C. 6292. In 1979, the Commission declined to require labels for clothes dryers after finding models on the market had a limited range of energy use.[5] In 2014, the Commission reconsidered clothes dryer labels, and again declined to require them, concluding that dryer information continued to suggest that model efficiency varied little across available models.[6] However, the Commission recognized that electric dryers using emerging heat pump technology had lower annual energy costs compared to conventional models. At that time, few, if any, such models were available in the U.S. Now, however, heat pump models appear to be more prevalent. For example, the U.S. Environmental Protection Agency (EPA) ENERGY STAR website (*www.energy.gov*) lists about two dozen heat pump models as qualifying under that program. This current data suggests the Commission should revisit requiring labels for clothes dryers.

Air Cleaners (''Air Purifiers''): Air purifiers use significant amounts of energy and exhibit a substantial range of energy use. In addition, in January 2022, DOE published a Request for Information on possible test procedures and conservation standards for these products.[7] In July 2022, DOE determined that that consumer air cleaners qualify as a ''covered product'' under EPCA.[8] Furthermore, the ENERGY STAR program covers room air cleaners and requires participating manufacturers to test the operating mode power of their models using ''ANSI/AHAM AC–1–2015: Method of Measuring the Performance of Portable Household Electric Room Air Measurement of Operating Power Cleaners.'' Recent data compiled by the ENERGY STAR program shows models rated for room sizes between 150 and 299 square feet range in annual energy use from about 50 kWh/yr to 360 kWh/yr, resulting in an estimated annual energy cost difference of more than $30 per year in energy costs (assuming $0.14/kWh).[9]

Finally, media reports suggest there are ongoing concerns in the market about the consistency of advertised flow rate or capacity claims (*e.g.,* recommended room sizes).[10] FTC labeling requirements mandating specific test procedure requirements would ensure consumers have uniform information about competing models.

Miscellaneous Refrigerator Products: DOE has designated miscellaneous refrigerators (MREFs) as covered products under EPCA. The category includes coolers (*e.g.,* wine chillers) and combination cooler refrigeration products (*i.e.,* products with warm and cool compartments). Within this category, some similarly sized models appear to exhibit a significant range of energy use. For example, recent DOE data indicates freestanding compact cooler models between 3 and 7 cubic feet range in annual energy use between about 100 to 205 kWh/yr.[11] DOE currently has test procedures and standards for these products.[12]

Additional Lamps (Light Bulbs): The Rule does not currently require labels for all types of lower-brightness lamps (*i.e.,* light bulbs). However, these products can consume a significant amount of energy. Specifically, the current coverage does not include lamps lower than 310 lumens and 30 watts. This leaves certain lamp types, particularly 25-watt incandescent bulbs, uncovered. A single such incandescent bulb can cost consumers more than $3 per year in electricity costs, which can add up if multiple bulbs are used in a home. The LED equivalent for such bulbs, however, has an annual energy cost of about 50 cents. These products are not currently covered by DOE standards. However, the FTC has authority to require labeling for them under 42 U.S.C. 6294(a)(6). In addition to the general questions listed above, commenters should address whether the Commission should amend the Rule's coverage to include such lower brightness bulbs or any other lighting products (*e.g.,* full color ''tunable'' lamps with adjustable color and CCT).[13]

Residential Ice Makers: Consumers can purchase residential icemakers in various configurations, including portable, non-portable, uncooled storage, and non-portable, cooled storage units. Residential models generally produce fewer than 50 pounds of ice per hour. There are currently no DOE standards or test procedure requirements specifically for these models. DOE tested these products in 2014 and found tested models used significant energy. The DOE data also suggested a significant range of energy consumption may exist among models offered in the market.[14] Although DOE developed and applied a test procedure for ice makers for research purposes, it ultimately did not publish a test procedure for these products.

In addition to the general questions listed above, the Commission seeks comment on which capacity categories should apply to consumer (residential) models for labeling purposes, and whether DOE's test procedure for commercial icemakers can be used as a basis for EnergyGuide labels for residential models.

Humidifiers: Consumers use residential humidifiers, including portable and whole-house devices, either to increase or maintain the humidity levels in all or parts of the home or to ease illness symptoms.[15] There are currently no DOE standards or test procedures for these products. A 2012 EPA ENERGY STAR report suggested differences in energy consumption among competing humidifiers, particularly for whole-

[5] 44 FR 66466, 66469. Under EPCA, the Commission must prescribe labels for dryers unless it finds labeling would not be technologically or economically feasible. 42 U.S.C. 6294(a)(1). In initially promulgating the Rule in 1979, the Commission, after examining the statute and statutory history, concluded ''that Congress['s] intent was to permit the exclusion of any product category, if the Commission found that the costs of the labeling program would substantially outweigh any potential benefits to consumers.'' 44 FR 66466, 66467–68.

[6] 79 FR 34642, 34659 (June 18, 2014).

[7] 87 FR 3702 (Jan. 26, 2022). In March 2022, DOE reopened the comment period. 87 FR 11326 (Mar. 1, 2022).

[8] 87 FR 42297 (July 15, 2022).

[9] *See, e.g., https://www.energystar.gov/productfinder/product/certified-room-air-cleaners/results.* EPCA does not include air cleaners in its list of covered products, but the Commission has authority under 42 U.S.C. 6294(a)(3) to require labeling if DOE designates them as ''covered products.'' 42 U.S.C. 6292. Additionally, regardless of DOE's efforts, the Commission has authority to require labels for room air cleaners pursuant to its general labeling authority under 42 U.S.C. 6294(a)(6) if it determines that labeling ''is likely to assist consumers in making purchasing decisions.''

[10] *See, e.g., https://www.allergybuyersclub.com/learning/air-filter-seven-sins.html* and *https://www.bobvila.com/articles/best-air-purifier-for-smoke/.*

[11] *See* DOE Compliance Certification Management System, *https://www.regulations.doe.gov/ccms.*

[12] Pursuant 42 U.S.C. 6294(a)(3), the Commission has authority to require labels on MREFs that DOE designates as covered products pursuant to 42 U.S.C. 6292(b). DOE issued final test procedures and standards for MREFs in 2016. 81 FR 46768 (July 18, 2016) (test procedure); 81 FR 75194 (Oct. 28, 2016) (standards); *see also* 79 FR 78736, 78737 (Dec. 31, 2014) (FTC request for comments following proposed DOE test procedure).

[13] In the past, the Commission has looked beyond DOE's specific lamp definitions, which generally cover products subject to DOE's efficiency standards, to include products designated as ''specialty consumer lamps'' using its general labeling authority at 42 U.S.C. 6294(a)(6). 80 FR 67285 (Nov. 2, 2015).

[14] *See* Preliminary Technical Support Document EERE–2011–BT–STD–0043–0024, Section 7.2.3 and Table 7.2.4, DOE, *https://beta.regulations.gov/document/EERE-2011-BT-STD-0043-0024.*

[15] *See* 42 U.S.C. 6294(a)(6) (general labeling authority). For dehumidifiers, EPCA contains a specific prohibition for an ''Energy Guide'' label requirement. 42 U.S.C. 6294(a)(5)(c).

house models.[16] The report also stated there is ''very little, if any, correlation between humidification capacity (in square feet) and watt rating.'' The report concluded, by choosing energy-efficient humidifiers, consumers could collectively save an estimated 3.4 terawatts of electricity over the lifetime of these products, equating to nearly $400,000,000. However, the report indicated there was no standard test procedure for measuring the energy consumption of portable models.

Miscellaneous Gas Products (''Hearth Products''): In February 2022, DOE tentatively determined that miscellaneous gas products, which are comprised of decorative hearths and outdoor heaters, qualify as covered products under EPCA.[17] These products include fireplaces, fire pits, and other similar products that have decorative purposes, but can also provide heat. DOE proposed to define ''decorative hearth product'' as gas-fired appliances that: simulate a solid-fueled fireplace or present a flame pattern; include products designed for indoor and/or outdoor use; are not designed to be operated with a thermostat; are not designed to provide space heating to the indoor space in which they are installed; and are not designed to provide heat proximate to the unit. DOE estimates indicate that these products can consume substantial energy.[18] In addition to the general questions above, the Commission requests comment on whether the Commission should consider labeling for related products outside of DOE's current proposal (*e.g.,* electric models) and whether test procedures are or are likely to be available for such products.[19]

Cooking Tops: EPCA lists ''kitchen ranges and ovens'' as covered products.[20] In 1979, the Commission decided not to require labels for cooking tops, as well as ranges and ovens, citing the small variability of energy use between models.[21] More recent information from DOE, however, suggests the Commission should revisit the issue. Specifically, DOE research found that energy consumption for gas cooking top models may vary significantly depending on burner and grate design. DOE also noted energy consumption among similar electric cooking top models can vary depending on whether the product employs induction or resistance heating or has smooth or coil elements.[22]

In August 2020, DOE withdrew its test procedure for these products,[23] citing concerns about whether the procedure yielded representative results for average use.[24] In February 2021, DOE listed the cooking products test procedure withdrawal as one of thirteen rulemakings the agency would reconsider pursuant to Executive Order 13990.[25] In July 2022, DOE reestablished a test procedure for conventional cooking tops.[26]

In addition to questions regarding whether labeling cooking tops would help consumers in their purchasing decisions, the Commission seeks comment on whether there is an alternative test procedure the agency could use for EnergyGuide labels.

Electric Spas: In February 2022, DOE published a tentative determination that portable electric spas qualify as a covered product under EPCA and followed up with a final coverage determination in September 2022.[27] DOE estimated more than 3 million households in the U.S. operate portable electric spas regularly, using approximately and an estimated average energy consumption of 1,699 kWh per year per household (~$238/yr).

B. Matching Label Format and Location to Consumer Shopping Patterns

The Commission also seeks comment on whether any Rule changes are necessary to ensure current labeling requirements are consistent with current consumer shopping behavior. For several product categories (*e.g.,* refrigerators, clothes washers, dishwashers, and televisions), the Rule currently requires manufacturers to affix labels to units themselves. However, of the millions of units produced each year, only a tiny fraction are actually displayed on a showroom floor. For products typically displayed in packaging (*e.g.,* room air conditioners, lighting, ceiling fans, and lighting products), the Rule requires manufacturers to incorporate the label on the packaging. For products sold online, the Rule requires retail sellers to include label information on product pages. To aid retailers with this function, manufacturers must make their EnergyGuide labels available on a website and report that website to the FTC, which they can do via the DOE Compliance Certification Management System (CCMS).

Under EPCA, the Commission must ''require that each covered product in the type or class of covered products to which the rule applies bear a label'' disclosing energy use information. 42 U.S.C. 6294(c)(1). However, EPCA provides flexibility for the Commission to determine the placement of labels in a manner likely to assist consumers in making purchasing decisions.[28] In addition, the statute gives FTC authority to require retailers to provide labels and other disclosures for consumers, both on websites and in stores.[29]

Pursuant to this authority, the Commission seeks comment on whether it should amend the current approach in light of contemporary retail and consumer practices. Specifically, the

[16] ENERGY STAR Market & Industry Scoping Report Residential Humidifiers October 2012. *https://www.energystar.gov/sites/default/files/asset/document/ENERGY_STAR_Scoping_Report_Residential_Humidifiers.pdf.*

[17] 87 FR 6786 (Feb. 7, 2022).

[18] For example, DOE estimated the calculated per household weighted average ignition energy of use of outdoor heaters to be 0.7 MMBtu/yr and the weighted burner energy use to be 2.2 MMBtu/yr, for total outdoor heater household energy use of 2.9 MMBtu/yr (859 kWh/yr), and estimated the weighted average (indoor and outdoor products) per-household energy use of a miscellaneous gas product to be 4.1 MMBtu/yr (1,211 kWh/yr). 87 FR at 6792. DOE also discussed these general issues in 2013. 78 FR 79638, 79640 (Dec. 31, 2013). There is currently no DOE test procedure for these products.

[19] The Commission also seeks comment on whether the Rule should contain any affirmative energy disclosures or labels for furnace fans, which are components of products already labeled under the Rule. *See* 79 FR 38129 (July 3, 2014) (DOE standards for furnace fans).

[20] 42 U.S.C. 6292(a)(10).

[21] 44 FR 66466, 66469 (Nov. 19, 1979) (''Since the substantial costs of a labeling requirement would not produce corresponding consumer benefits, the Commission has determined that labeling of kitchen ranges and ovens would not be economically feasible.'').

[22] 81 FR 60784, 60800–60802 (Sept. 2, 2016).

[23] 85 FR 50757 (Aug. 18, 2020).

[24] In December 2020, DOE also sought comments on revised standards for these products. 85 FR 80982 (Dec. 14, 2020).

[25] *See https://www.energy.gov/sites/prod/files/2021/02/f82/eere_eo13990_memo_1.pdf.*

[26] *See https://www.energy.gov/sites/default/files/2022-07/cookingproducts-tp-fr.pdf*; 86 FR 60974 (Nov. 4, 2021) (results of round robin testing).

[27] 87 FR 8745 (Feb. 16, 2022); 87 FR 54123 (Sept. 2, 2022).

[28] 42 U.S.C. 6294(c)(3) (''A rule under this section shall require that the label be displayed in a manner that the Commission determines is likely to assist consumers in making purchasing decisions and is appropriate to carry out this part.'').

[29] EPCA authorizes the Commission to prescribe labeling rules under this section applicable to all covered products, including rules governing label disclosures at the point of sale. *See* 42 U.S.C. 6294(c)(3) and (c)(4) (''(4) A rule under this section applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product''); *see also* 42 U.S.C. 6298 (authorizing the Commission to issue rules it ''deems necessary to carry out'' the law's provisions). The Rule already contains affirmative obligations for retailers to display labels to customers for particular product categories. *See, e.g.,* 16 CFR 305.22(b)(2)(ii) (requiring retailers to show consumers the labels for covered central air conditioners, heat pumps, or furnaces prior to purchase); 16 CFR 305.26 (requiring retailers to make written disclosures at point-of-sale). In 2014, the Commission sought comment on whether it should require retailers to affix labels on units they display in their showrooms. 79 FR 34642, 34658 (June 18, 2014).

Commission solicits comments on alternatives to the current ''showroom-ready'' approach. Such changes could include requiring retailers to affix showroom labels (provided by the manufacturer) for the small number of units that are displayed, allowing manufacturers to include labels on or in product packaging (*e.g.,* on product boxes, literature packs, instruction manuals, and through QR codes) in lieu of affixing labels separately to every unit itself, and/or requiring retailers to provide label information in some other method or location. The Commission additionally requests any recent research or data demonstrating when and where consumers typically make purchasing decisions for the types of products covered by the Rule. Examples of relevant information include:

—What percentage of consumers rely solely on showroom visits to obtain information about their purchases, particularly for products that currently bear a label directly on the unit (*e.g.,* refrigerators)?
—What percentage of consumers research and compare models online before their purchases?
—Should the Commission eliminate requirements for manufacturers to place labels directly on products typically displayed in showrooms (*e.g.,* refrigerators, clothes washers, dishwashers, and televisions), and require manufacturers to provide the labels with the product in a different way (*e.g.,* on packaging, instruction manuals, or literature bags)?
—Should the Rule require retailers to display the EnergyGuide label for those individual units they choose to display out of packages in their showrooms?

C. Repair Instructions

The Commission also seeks comment on potential requirements related to repair instructions. Under EPCA (42 U.S.C. 6294(c)(5)), the Commission has authority to require manufacturers to provide consumers with ''additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product'' if the Commission finds such information would assist with purchase decisions or in the use of the product, and would not be unduly burdensome to manufacturers. The Commission seeks comment on whether, for any product covered, the Rule should require manufacturers to provide consumers with access to repair instructions (with updates). Specifically, comments should address whether lack of access to repair instructions for covered products is an existing problem for consumers; whether providing such information would assist consumers in their purchasing decisions or product use; whether providing such information would be unduly burdensome to manufacturers; and any other relevant issues.

D. General Label Content and Format Requirements

The Commission also seeks comment on whether it should consider changes to the Rule's label content and format requirements. Specifically, commenters should consider:

—Are there any prescriptive requirements (*e.g.,* type size and style, label size, number of picas, paper weight, and label attachment provisions) in the Rule that are unnecessarily burdensome? If so, would elimination of such requirements create inconsistencies in the label appearance that would reduce consumer confidence in the label, or reduce its utility and use?
—Are there any improvements the Commission could make to the content of the information on labels (or other locations such as product manuals or websites) to help consumers with their purchasing decisions? [30]
—Is there a role that QR codes may play in conveying useful information to consumers?
—Are there any improvements to the format, size, or layout of the labels that would help consumers with their purchasing decisions?

E. Requiring Links to Online Lighting Facts Labels

The Commission also seeks comment on whether the Rule should require lamp manufacturers to include information regarding their Lighting Facts labels with their data reports required by the DOE. The Rule already requires manufacturers of other covered consumer products to provide a website address linking to their EnergyGuide labels as part of their required data reports, which manufacturers submit through the DOE reporting system.[31] The Commission did not extend this requirement to Lighting Facts labels in 2016 given appropriation restrictions at the time placed on DOE spending related to light bulbs. Instead, the Commission stated it would revisit the issue at ''a later date should circumstances warrant.'' [32] The DOE prohibition no longer exists. Accordingly, the Commission seeks comment on applying the requirements in section 305.11(a)(5) to Lighting Facts labels.

F. Updating Cost Figures for Lighting Facts and Ceiling Fan Labels

The Commission also seeks comment on whether it should update the electricity cost disclosure on the Lighting Facts and ceiling fan labels to reflect recent DOE national estimates. Currently, the Lighting Facts label uses 11 cents per kWh, while the ceiling fan label uses 12 cents. The current (2022) DOE national estimate for electricity (rounded) is 14 cents per kWh.[33] The Commission seeks comment on whether it should update these numbers and, if so, when the change should become effective to allow manufacturers to incorporate such changes into routine package updates and thus minimize any burden associated with such changes.

G. Phasing Out Transitional Language for Refrigerator and Clothes Washer Labels

The Commission also seeks comment on whether it should phase out language on refrigerator and clothes washer labels that the Commission added in 2013 to help distinguish models tested with the current DOE procedure from those tested with an older version.[34] This language, which advises consumers to ''Compare ONLY to other labels with yellow numbers,'' is now obsolete and crowds the label with irrelevant information. The Commission seeks comment on when and how to smoothly transition back to the conventional label.

H. Consistency With DOE Requirements

The Commission also seeks comment on whether any changes or updates are necessary to the Rule's requirements (*e.g.,* definitions, product coverage, capacity descriptions, etc.) to ensure consistency, where necessary, with DOE requirements.

G. Bilingual Label Guidance

The Rule at 16 CFR 305.23(b)(6) and 16 CFR 305.23(c)(4) currently offers guidance to manufacturers who choose to use bilingual labels for Lighting Facts, including guidance on label content and format. Should the Rule offer similar guidance on bilingual labels for the other consumer products covered by the

[30] *See, e.g.,* National Propane Gas Association recent comments related to full-fuel cycle impacts. FTC–2022–0032–0007 (Jul. 11, 2022) (*https://www.regulations.gov/comment/FTC-2022-0032-0007*).

[31] 81 FR 63634 (Sept. 15, 2016); 16 CFR 305.11 (FTC reporting requirements).

[32] 81 FR 63634, 63636.

[33] 87 FR 12681 (Mar. 7, 2022).

[34] 78 FR 43974 (July 23, 2013).

Rule? Are there other improvements that could be made to the Rule that would help non-English speaking or multilingual consumers with their purchasing decisions?

IV. Comment Submissions

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before December 27, 2022. Write ''Energy Labeling Rule ANPR, Matter No. R611004'' on your comment. Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. As a result, we strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on that website.

If you file your comment on paper, write ''Energy Labeling Rule ANPR, Matter No. R611004'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 27, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Secretary.

Note: The following statements will not appear in the Code of Federal Regulations:

Statement of Chair Lina M. Khan

Today, the Commission voted to issue an advance notice of proposed rulemaking seeking comment on proposed improvements to the Energy Labeling Rule. Among other areas, the Notice asks whether consumers and independent repair shops would benefit from repair information being more widely available on energy labels. As I noted when the Commission issued its *Policy Statement on Right to Repair* in July 2021, I believe it is vital that the Commission use every tool available to it to vindicate Americans' right to repair their own products,[1] and I am pleased that we are continuing to follow through on that commitment here.

The Energy Policy and Conservation Act of 1975 gives the Commission clear statutory authority to require manufacturers to provide consumers with ''additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product'' if the Commission finds such information would assist with purchasing decisions or in the use of the product.[2] For the first time, the Commission is deploying this tool to ask whether consumers and independent repair shops would benefit from having repair information more widely available on energy labels. Such a provision could help consumers more easily repair everything from refrigerators and dishwashers to washing machines, air conditioners, water heaters, and televisions—products currently covered under the Rule—as well as new products that the Commission is considering adding to the Rule, including clothes dryers, air purifiers, humidifiers, hearths and outdoor heaters, cooking tops, and electric spas.

As the FTC's work has documented,[3] companies routinely use a wide array of practices to restrict Americans from repairing their own products. These restrictions can raise costs for consumers, stifle innovation, close off business opportunity for independent repair shops, create unnecessary electronic waste, delay timely repairs, and undermine resiliency.[4] Today's action demonstrates the Commission's commitment to using every tool it has available to advance Americans' ability to access independent repair. It builds on the *Policy Statement on Right to Repair* that the Commission issued in July 2021, affirming our intent to root

[1] Remarks of Chair Lina M. Khan Regarding the Proposed Policy Statement on Right to Repair (July 21, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1592358/p194400khanremarksrighttorepair.pdf.*

[2] 42 U.S.C. 6294(c)(5).

[3] In July 2019, the Commission held a workshop and a call for research on the prevalence and impact of manufacturers' repair restrictions. Nixing the Fix: A Workshop on Repair Restrictions, Fed. Trade Comm'n (July 2019), *https://www.ftc.gov/news-events/events/2019/07/nixing-fix-workshop-repair-restrictions.* In May 2021, the Commission issued a report to Congress that identified various types of repair restrictions and explored how the Commission could best address repair restriction concerns. Fed. Trade Comm'n, Nixing the Fix: An FTC Report to Congress on Repair Restrictions (May 2021), *https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.*

[4] Remarks of Chair Lina M. Khan Regarding the Proposed Policy Statement on Right to Repair, *supra* note 1.

out illegal repair restrictions.[5] The Commission has since brought numerous right to repair cases, addressing unlawful repair restrictions affecting a variety of products, including motorcycles and outdoor electric power generators.[6]

I thank our staff for their work on this important matter and look forward to hearing from the public during this rulemaking proceeding.

Concurring Statement of Commissioner Christine S. Wilson

Seventh time's a charm.

Today the Commission issues an advance notice of proposed rulemaking (ANPR) seeking comment on possible revisions to the Energy Labeling Rule. Specifically, the ANPR asks whether the Commission should add consumer products to the labeling program, whether the label location and other requirements should be updated to reflect current shopping patterns, and whether the label content should be revised to reduce unnecessary burdens. The document also addresses issues related to reporting and refrigerator labels.

Since 2018, I have urged the Commission to seek comment on the more prescriptive aspects of this Rule.[1] The Commission has a statutory mandate to issue a labeling Rule. I strongly believe, however, that this mandate does not require the Rule to include the highly detailed and prescriptive requirements in the current Rule. For example, the Rule specifies the trim size dimensions for labels, including the precise width (between 5¼″ to 5½″) and length (between 7⅜″ and 7⅝″); the number of picas for the copy set (between 27 and 29); the type style (Arial) and setting; the weight of the paper stock on which the labels are printed (not less than 58 pounds per 500 sheets or equivalent); and a suggested minimum peel adhesive capacity of 12 ounces per square inch.

In 2020, the Commission sought comment on some of these prescriptive provisions and received some helpful and thoughtful comments. Unfortunately, the Commission did not make changes based on those comments but instead chose to make only required conforming changes at that time.[2] I applaud the decision today to seek comment on the Rule more broadly, to ask specifically about these highly prescriptive requirements, and to consider making changes to streamline the Rule. I look forward to reviewing the comments.

[FR Doc. 2022–23063 Filed 10–24–22; 8:45 am]

BILLING CODE 6750–01–P

[5] Press Release, Fed. Trade Comm'n, FTC to Ramp Up Law Enforcement Against Illegal Repair Restrictions (July 21, 2021), *https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions.*

[6] Press Release, Fed. Trade Comm'n, FTC Takes Action Against Harley-Davidson and Westinghouse for Illegally Restricting Customers' Right to Repair (June 23, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-action-against-harley-davidson-westinghouse-illegally-restricting-customers-right-repair-0*; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Weber for Illegally Restricting Customers' Right to Repair (July 7, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-against-weber-illegally-restricting-customers-right-repair.*

[1] *See* Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018) (expressing my view that the Commission should seek comment on the prescriptive labeling requirements), *https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed*; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Oct. 22, 2019) (urging the Commission to seek comment on the labeling requirements), *https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf*; Concurring Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Mar. 20, 2020) (commending the Commission decision to seek comment on some of the more prescriptive rule requirements), *https://www.ftc.gov/system/files/documents/public_statements/1569815/r611004_wilson_statement_energy_labeling.pdf*; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 22, 2020) (dissenting due to the Commission's decision not to make changes to the Rule requirements in response to the March 2020 publication), *https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf*; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Amendments to the Energy Labeling Rule (Oct. 6, 2021) (urging again seeking comment on the rule requirements), *https://www.ftc.gov/system/files/documents/public_statements/1597166/commission_wilson_dissenting_statement_energy_labeling_rule_2021-10-04_final.pdf.*; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking to the Energy Labeling Rule (May 11, 2022) (encouraging the Commission to seek comment on the more prescriptive requirements of the Rule), *https://www.ftc.gov/system/files/ftc_gov/pdf/Commission%20Wilson%20Dissenting%20Statement%20Energy%20Labeling%20Rule%205.11.22%20FINAL.pdf.*

[2] *See* Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 22, 2020) (dissenting due to the Commission's decision not to make changes to the Rule requirements in response to the March 2020 publication), *https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf.*

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2022–5]

Termination Rights and the Music Modernization Act's Blanket License

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding the applicability of the derivative works exception to termination rights under the Copyright Act to the new statutory mechanical blanket license established by the Music Modernization Act. The Office invites public comments on this proposed rule.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on November 25, 2022. Written reply comments must be received no later than 11:59 p.m. Eastern Time on December 27, 2022.

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

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Orrin G. Hatch-Bob Goodlatte Music Modernization Act (the ''MMA'') substantially modified the compulsory ''mechanical'' license for reproducing and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[1] It did so by switching from a song-by-song licensing system to a blanket licensing regime that became available on January 1, 2021 (the ''license availability date''),[2]

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] 17 U.S.C. 115(e)(15).

administered by a mechanical licensing collective (the ''MLC'') designated by the Copyright Office (the ''Office'').[3] Digital music providers (''DMPs'') are able to obtain this new statutory mechanical blanket license (the ''blanket license'') to make digital phonorecord deliveries of nondramatic musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity'' where such activity qualifies for a blanket license), subject to various requirements, including reporting obligations.[4] DMPs also have the option to engage in these activities, in whole or in part, through voluntary licenses with copyright owners.

The MMA did not address or amend the Copyright Act's rules governing termination or derivative works. The Copyright Act permits authors or their heirs, under certain circumstances and within certain windows of time, to terminate the exclusive or nonexclusive grant of a transfer or license of an author's copyright in a work or of any right under a copyright.[5] The statute, however, contains an exception with respect to ''derivative works.'' A derivative work is ''a work based upon one or more preexisting works, such as a . . . musical arrangement, . . . sound recording, . . . or any other form in which a work may be recast, transformed, or adapted.'' [6] The derivative works exception (the ''Exception'') states that ''[a] derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.'' [7] The Second Circuit observed that:

> [The] Exception reflects Congress's judgment that the owner of a derivative work should be allowed to continue to use the derivative work after termination, both to encourage investment by derivative work proprietors and to assure that the public retains access to the derivative work. Without the Exception, the creator of a derivative work (and, indeed, the public at large) could be held hostage to the potentially exorbitant demands of the owner of the copyright in the underlying work.[8]

A question has arisen regarding the application of the Exception in the context of the blanket license when a songwriter exercises her right to terminate her agreement with a music publisher. Because the statute is silent on this issue and no court has addressed it, the Office is engaging in a rulemaking to ensure that there is a full airing of the issue and development of the relevant facts. The Office is undertaking this rulemaking to provide definitive guidance regarding the appropriate application of the Exception to the blanket license and to direct the MLC to distribute royalties consistent with the Office's guidance.

II. Procedural Background

On September 17, 2020, as a part of its work to implement the MMA, the Office issued an interim rule adopting regulations concerning reporting requirements under the blanket license (the ''September 2020 Rule'').[9] During proceedings to promulgate the September 2020 Rule,[10] the MLC submitted comments and a regulatory proposal directly implicating the Exception. The MLC proposed to require DMPs to report the date on which each sound recording is first reproduced by the DMP on its server. The MLC reasoned that, as a result of the new blanket licensing system, the server fixation date is ''required to determine which rights owner is to be paid where one or more grants pursuant to which a musical work was reproduced in a sound recording has been terminated pursuant to Section 203 or 304 of the [Copyright] Act.'' [11]

As the MLC explained it, ''because the sound recording is a derivative work, it may continue to be exploited pursuant to the 'panoply of contractual obligations that governed pre-termination uses of derivative works by derivative work owners or their licensees.' '' [12] The MLC took the position that the new blanket license can be part of this ''panoply,'' and therefore, if the blanket license ''was issued before the termination date, the pre-termination owner is paid. Otherwise, the post-termination owner is paid.'' [13] The MLC further explained that ''under the prior NOI regime, the license date for each particular musical work was considered to be the date of the NOI for that work,'' but ''[u]nder the new blanket license, there is no license date for each individual work.'' [14] The MLC believed that ''the date that the work was fixed on the DMP's server—which is the initial reproduction of the work under the blanket license—is the most accurate date for the beginning of the license for that work.'' [15]

The MLC's proposal attracted significant attention from groups representing songwriter interests, who were concerned with protecting termination rights and ensuring that those rights were not adversely affected by anything in the rulemaking proceeding or any action taken by the MLC.[16] For example, the Recording Academy voiced concerns that the MLC's proposal ''*would* diminish termination rights'' and urged that the ''rulemaking should not imply or assume that a terminated party

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[3] As permitted under the MMA, the Office also designated a digital licensee coordinator (the ''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (the ''CRJs'') and the Office, to serve as a non-voting member of the MLC, and to carry out other functions. 84 FR 32274 (July 8, 2019).

[4] 17 U.S.C. 115(d).

[5] *Id.* at 203, 304(c).

[6] *Id.* at 101. A derivative work does not need to be the same type of work as the original work. For example, a movie is frequently a derivative work of a novel. If someone were to make a derivative work from a musical work, the new work could be another musical work, a sound recording, or other type of work (*e.g.,* a music video).

[7] *Id.* at 203(b)(1), 304(c)(6)(A).

[8] *Fred Ahlert Music Corp.* v. *Warner/Chappell Music, Inc.,* 155 F.3d 17, 22 (2d Cir. 1998) (internal quotation marks and citations omitted).

[9] 85 FR 58114 (Sept. 17, 2020).

[10] That proceeding involved multiple rounds of public comments through a notification of inquiry (NOI), 84 FR 49966 (Sept. 24, 2019), a notice of proposed rulemaking (NPRM), 85 FR 22518 (Apr. 22, 2020), and an *ex parte* communications process. Guidelines for *ex parte* communications, along with records of such communications, including those referenced herein, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* All rulemaking activity, including public comments, as well as educational material regarding the MMA, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization.* References to public comments are by party name (abbreviated where appropriate), followed by ''NOI Initial Comments,'' ''NOI Reply Comments,'' ''NPRM Comments'' or ''*Ex Parte* Letter,'' as appropriate.

[11] MLC NOI Reply Comments at 19; *see also* MLC NOI Initial Comments at 20; MLC *Ex Parte* Letter at 6–7 (Feb. 26, 2020); MLC *Ex Parte* Letter at 6–7 (Apr. 3, 2020).

[12] MLC NOI Reply Comments at 19 (quoting *Woods* v. *Bourne Co.,* 60 F.3d 978, 987 (2d Cir. 1995)); *see also* MLC *Ex Parte* Letter at 6–7 (Feb. 26, 2020); MLC *Ex Parte* Letter at 6–7 (Apr. 3, 2020). The ''panoply'' concept is discussed in greater detail below.

[13] *See* MLC *Ex Parte* Letter at 6–7 (Feb. 26, 2020); MLC *Ex Parte* Letter at 6–7 (Apr. 3, 2020).

[14] MLC *Ex Parte* Letter at 6–7 (Apr. 3, 2020). In this context, ''NOI'' is referring to notices of intention to obtain a statutory mechanical license under section 115. Under the pre-MMA song-by-song statutory licensing regime, DMPs needed to serve an NOI on a copyright owner (or file one with the Office, in certain situations) to obtain a statutory mechanical license for a musical work. *See* 37 CFR 201.18 (2017).

[15] MLC *Ex Parte* Letter at 6–7 (Feb. 26, 2020).

[16] *See, e.g.,* SONA & MAC NPRM Comments at 8–12; Recording Academy NPRM Comments at 3; MAC *Ex Parte* Letter (June 26, 2020); Recording Academy *Ex Parte* Letter (June 26, 2020); Songwriters Guild of America *Ex Parte* Letter (June 26, 2020); SONA *Ex Parte* Letter (June 26, 2020); Nashville Songwriters Association International *Ex Parte* Letter (June 26, 2020).

necessarily continues to benefit from the blanket license after termination.'' [17] Songwriters of North America (''SONA'') and Music Artists Coalition (''MAC'') jointly expressed ''serious reservations about [the MLC's] approach, which would seemingly redefine and could adversely impact songwriters' termination rights.'' [18] The Office shared those concerns and sought to account for them in its September 2020 Rule.

There, the Office adopted reporting requirements for DMPs, including the sound recording's ''server fixation date,'' ''street date,'' and ''estimated first distribution date.'' [19] However, the Office explained that it was requiring DMPs to provide such information to the MLC because the record suggested that the transition to the blanket license represented a significant change to the status quo that may eliminate certain dates, such as NOI dates, that may have historically been used in post-termination activities, such as the renegotiation and execution of new agreements between the relevant parties to continue their relationship on new terms.[20] The Office further made clear that it was not adopting or endorsing a specific proxy for a grant date with respect to termination.[21] As the Office explained, ''[t]he purpose of this rule is to aid retention of certain information that commenters [including groups representing songwriter interests] have signaled may be useful in facilitating post-termination activities, such as via inclusion in letters of direction to the MLC, that may not otherwise be available when the time comes if not kept by the DMPs.'' [22]

In adopting the September 2020 Rule, the Office did not expressly address the question of how the blanket license interacts with the statutory termination provisions. There was no need to offer the Office's interpretation because that particular proceeding was focused on DMP reporting requirements rather than termination issues. The Office stressed that it was not making any substantive judgment about the proper interpretation of the termination provisions, the Exception, or their application to section 115. Nor was the Office opining on how the Exception, if applicable, may operate in the context of the blanket license, including with respect to what information may or may not be appropriate to reference in determining who is entitled to royalty payments.[23]

At the same time, the Office cautioned the MLC that it was not convinced of the need for a default process for handling termination matters.[24] Rather, the Office agreed with other commenters that ''it seems reasonable for the MLC to act in accordance with letters of direction received from the relevant parties, or else hold applicable royalties pending direction or resolution of any dispute by the parties.'' [25] The Office explained that having a default method of administration for terminated works in the normal course ''might stray the MLC from its acknowledged province into establishing what would essentially be a new industry standard based on an approach that others argue is legally erroneous and harmful to songwriters.'' [26] Additionally, as requested by several commenters representing songwriter interests, the Office adopted express limiting language in the regulations to make clear that nothing in the related DMP reporting requirements should be interpreted or construed as affecting termination rights in any way or as determinative of the date of the relevant license grant.[27]

In 2021, the MLC adopted a dispute policy concerning termination that does not follow the Office's rulemaking guidance. Instead, its policy established a default method for determining the recipient of post-termination royalties in the ordinary course where there is no resolution via litigation or voluntary agreement.[28] Declining to heed the Office's warning, the MLC's policy assumes that the Exception applies to the blanket license and uses various proxy dates to determine who to pay under the blanket license.[29] In meetings with the Office, the MLC described its policy as a middle ground and explained that the policy was intended, in part, to avoid circumstances where parties' disputes could cause blanket license royalty payments to be held, pending resolution of the dispute, to the disadvantage of both songwriters and publishers. The Office appreciates the MLC's interest in advancing the overarching goal of ensuring prompt and uninterrupted royalty payments. But, having reviewed the MLC's policy, the Office is concerned that it conflicts with the MMA, which requires that the MLC's dispute policies ''shall not affect any legal or equitable rights or remedies available to any copyright owner or songwriter concerning ownership of, and entitlement to royalties for, a musical work.'' [30]

Because the MLC's policy embodies a legal interpretation of the Exception that conflicts with the Office's prior guidance, it is necessary to revisit the termination issue more directly and to squarely resolve the unsettled question of how termination law intersects with the blanket license. Specifically, the Office seeks to provide clarity concerning the application of the Exception to the blanket license. Doing so would provide much needed business certainty to music publishers and songwriters. It would enable the MLC to appropriately operationalize the distribution of post-termination royalties in accordance with existing law. Moreover, without the uniformity in application that a regulatory approach brings, the Office is concerned that the MLC's ability to distribute post-termination royalties efficiently would be negatively impacted. The Office appreciates that the MLC ''welcomes guidance from the Office on the interpretation of the law [of termination]'' [31] and hopes this proceeding will resolve the uncertainty surrounding this issue.

III. The Copyright Office's Regulatory Authority

The Office believes that it is properly within its authority under the MMA and section 702 of the Copyright Act to resolve this unsettled question of law. To carry out the MMA's new blanket licensing regime, Congress invested the Office with ''broad regulatory

[17] Recording Academy *Ex Parte* Letter at 2 (June 26, 2020).

[18] SONA & MAC NPRM Comments at 8–11.

[19] 37 CFR 210.27(m)(3) and (4); *see* 85 FR 58134–35.

[20] 85 FR 58133.

[21] *Id.* at 58134.

[22] *Id.* at 58133–34.

[23] *Id.* at 58132.

[24] *Id.*

[25] *Id.*

[26] *Id.* (further explaining that the information that may be relevant in administering termination rights may not be the same as what the MLC may be able to most readily obtain and operationalize); *see id.* at 58133 (observing that ''while the MLC does not see its function as enforcing termination rights or otherwise resolving disputes over terminations or copyright ownership, stating repeatedly that it takes no position on what the law should be and that it is not seeking to change the law, its position on the proposed rule may unintentionally be in tension with its stated goals,'' and concluding that ''it does not seem prudent to incentivize the MLC to make substantive decisions about an unsettled area of the law on a default basis'').

[27] *See* 37 CFR 210.27(m)(5); 85 FR 58132.

[28] *See* The MLC, Notice and Dispute Policy: Statutory Terminations (Sept. 2021, revised Aug. 2022), *https://www.themlc.com/dispute-policy*.

[29] *Id.* at Ex. A.

[30] *See* 17 U.S.C. 115(d)(3)(K)(iii); *see also* Recording Academy *Ex Parte* Letter at 1–2 (June 26, 2020) (''Despite stating repeatedly that the MLC has no interest in altering, changing, or diminishing the termination rights of songwriters, it was clearly conveyed that one of the primary reasons for seeking this data is to determine the appropriate payee for the use of a musical work that is the subject of a termination. The Academy's view is that using the data in this way *would* diminish termination rights.'').

[31] MLC *Ex Parte* Letter at 2 (June 26, 2020).

authority'' [32] to ''conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the blanket license].'' [33] The Office is to exercise this authority ''in a manner that balances the need to protect the public's interest with the need to let the [MLC] operate without over-regulation.'' [34] As Congress anticipated, ''[a]lthough the legislation provides specific criteria for the [MLC] to operate, it is to be expected that situations will arise that were not contemplated by the legislation. The Office is expected to use its best judgment in determining the appropriate steps in those situations.'' [35]

Under the MMA, the MLC is to adopt (and has adopted) various policies and procedures in connection with its administration of the blanket license. Congress ''expected that such policies and procedures will be thoroughly reviewed by the Register to ensure the fair treatment of interested parties in such proceedings given the high bar in seeking redress'' under the MLC's limitation on liability contained in section 115(d)(11)(D).[36] In entrusting the Office with express authority to fill statutory gaps in connection with the blanket license, Congress recognized that ''[t]he Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and . . . assistance . . . during the drafting of [the MMA].'' [37]

While this proposed rule is primarily focused on termination issues, this rulemaking ultimately reflects the Office's oversight and governance of the MLC's reporting and payment obligations to copyright owners. The Office has previously promulgated regulations regarding the MLC's reporting and distribution of royalties to copyright owners.[38] In doing so, the Office observed that ''[t]he accurate distribution of royalties under the blanket license to copyright owners is a core objective of the MLC'' and concluded that ''it is consistent with the larger goals of the MMA to prescribe specific royalty reporting and distribution requirements through regulation[and] that the Register of Copyrights has the authority to promulgate these rules under the general rulemaking authority in the MMA.'' [39]

Beyond the MMA, the Office also has relevant authority under section 702 of the Copyright Act to ''establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under [title 17].'' [40] Courts have concluded that the Office has both authority to ''issue regulations necessary to administer the Copyright Act'' and ''interpret the Copyright Act,'' and its interpretations of the Copyright Act have been granted deference.[41] The Office's authority to interpret title 17 in the context of statutory licenses in particular has long been recognized and courts routinely defer to the Office's interpretations.[42]

IV. Legal Background

A. The Copyright Act's Termination Provisions

The current termination provisions were adopted as part of the Copyright Act of 1976 and grew out of frustration with the prior law's attempted protections against inadequate author remuneration. Those earlier provisions provided that, after an initial twenty-eight-year copyright term, the copyright in a work could be extended by the author or their heirs for a renewal term, if they complied with certain formalities.[43] As the Office had noted, these earlier provisions ''largely failed to accomplish the purpose of protecting authors and their heirs against improvident transfers, and has been the source of much confusion and litigation.'' [44] This was, in part, because it was ''a common practice for publishers and others to take advance assignments of future renewal rights'' at the time of the original license.[45]

The aim of the revisions made by the 1976 Copyright Act ''was to protect authors against unremunerative transfers and to get rid of the complexity, awkwardness, and unfairness of the renewal provision.'' [46] In particular, Congress sought to address problems stemming from ''the unequal bargaining position of authors and from the impossibility of determining a work's value until it has been exploited.'' [47] The current termination

[32] H.R. Rep. No. 115–651, at 5–6 (2018); S. Rep. No. 115–339, at 5 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 4 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.'').

[33] 17 U.S.C. 115(d)(12)(A).

[34] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[35] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12; *see Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 165 (2007) (''We have previously pointed out that the power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.'') (quotations omitted) (quoting *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 843 (1984)); *Nat'l Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 980 (2005) (discussing an agency's congressionally delegated authority and stating that ''ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion'').

[36] H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4.

[37] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[38] 37 CFR 210.29; *see* 85 FR 58160 (Sept. 17, 2020); 85 FR 22549 (Apr. 22, 2020).

[39] 85 FR 22550–52 (''There appears to be no dispute regarding the propriety or authority of the Office to promulgate regulations related to royalty statements issued by the MLC.'').

[40] 17 U.S.C. 702.

[41] *Motion Picture Ass'n of Am., Inc.* v. *Oman,* 750 F. Supp. 3, 6 (D.D.C. 1990) (''The Copyright Office has authority to interpret the Copyright Act, and its interpretations of the act are due deference.''), *aff'd,* 969 F.2d 1154 (D.C. Cir. 1992); *see SoundExchange, Inc.* v. *Muzak, LLC,* 854 F.3d 713, 718–19 (D.C. Cir. 2017) (''[S]ince we have held that a Register's opinion is entitled to deference under *Chevron,* it is conceivable that should this exact issue come up during a rate proceeding, the Register might legitimately differ with us.'') (citations omitted).

[42] *See, e.g., Bonneville Int'l Corp.* v. *Peters,* 347 F.3d 485, 490 (3d Cir. 2003) (deferring to the Office's interpretation of the section 114 sound recording license); *Fox Tel. Stations, Inc.* v. *Aereokiller, LLC,* 851 F.3d 1002, 1012–15 (9th Cir. 2017) (deferring to the Office's interpretation of the section 111 cable license); *WPIX, Inc.* v. *ivi, Inc.,* 691 F.3d 275, 283–84 (2d Cir. 2012), *cert. denied,* 568 U.S. 1245 (2013) (same); *Satellite Broad. & Commc'ns Ass'n of Am.* v. *Oman,* 17 F.3d 344, 345, 347–48 (11th Cir. 1994), *cert. denied,* 513 U.S. 823 (1994) (same and stating that ''[a]lthough the new regulations conflict with our interpretation . . . , they are neither arbitrary, capricious, nor in conflict with the clear meaning of the statute'' and ''[t]hey are therefore valid exercises of the Copyright Office's statutory authority to interpret the provisions of the compulsory licensing scheme, and are binding on this circuit''); *Cablevision Sys. Dev. Co.* v. *Motion Picture Ass'n of Am., Inc.,* 836 F.2d 599, 602, 607–12 (D.C. Cir. 1988), *cert. denied,* 487 U.S. 1235 (1988) (deferring to the Office's interpretation of the section 111 cable license and stating that ''[t]he Copyright Office certainly has greater expertise in such matters than do the federal courts'').

[43] 17 U.S.C. 24 (1975).

[44] Copyright Law Revision, *Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law* 92 (Comm. Print 1961), *https://www.copyright.gov/history/1961_registers_report.pdf.*

[45] *Id.* at 53.

[46] U.S. Copyright Office, *General Guide to the Copyright Act of 1976,* ch. 6:1 (1977), *https://www.copyright.gov/reports/guide-to-copyright.pdf.*

[47] *Id.; see* H.R. Rep. No. 94–1476, at 124 (1976) (''The provisions of section 203 are based on the premise that the reversionary provisions of the present section on copyright renewal . . . should be eliminated, and that the proposed law should substitute for them a provision safeguarding authors against unremunerative transfers. A provision of this sort is needed because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's value until it has been exploited.''); *id.* at 140 (''The arguments for granting rights of termination are even more persuasive under section 304 than they are under section 203; the extended term represents a completely new property right, and there are strong reasons for giving the author, who is the fundamental beneficiary of copyright under the Constitution, an opportunity to share in it.'').

provisions that resulted were the subject of much debate prior to their enactment.[48] When adopting the new provisions, Congress explained that the termination provisions ''reflect[ ] a practical compromise that will further the objectives of the copyright law while recognizing the problems and legitimate needs of all interests involved.'' [49] The Supreme Court would later comment on Congress's purpose in creating a termination right, stating:

> [T]he concept of a termination right itself, [was] obviously intended to make the rewards for the creativity of authors more substantial. More particularly, the termination right was expressly intended to relieve authors of the consequences of ill-advised and unremunerative grants that had been made before the author had a fair opportunity to appreciate the true value of his work product. That general purpose is plainly defined in the legislative history and, indeed, is fairly inferable from the text of [the statute] itself.[50]

B. Application of the Exception by the Courts

While the application of the Exception can often be straight-forward (*e.g.,* ''a film made from a play could continue to be licensed for performance after the motion picture contract had been terminated but any remake rights covered by the contract would be cut off'' [51]), there are instances where the Exception's operation is less clear. Few courts have addressed the Exception and, to the Office's knowledge, no court has dealt directly with the application of the Exception to a statutory license either before or after the passage of the MMA. Instead, the cases address the termination of voluntary licenses.

The most notable case addressing the Exception is the 1985 decision by the Supreme Court in *Mills Music, Inc.* v. *Snyder.*[52] In this case, a songwriter (Snyder) had assigned his copyright in a musical work to a publisher (Mills Music) and the publisher, pursuant to that grant, had then issued voluntary mechanical licenses to record companies. The sound recordings embodying the musical work prepared by the record companies pursuant to these mechanical licenses were the relevant derivative works. The songwriter's heirs timely terminated his grant to the publisher. In a 5–4 decision, the divided Court found that, under its interpretation of the Exception, the publisher was entitled to continue receiving royalties from the record companies under the voluntary mechanical licenses even after the songwriter's heirs terminated the underlying assignment with the publisher. The Court concluded that Congress did not intend for the Exception only to apply where there is a single direct grant (*e.g.,* from songwriter to publisher) and not to apply where there is a chain of successive grants (*e.g.,* from songwriter to publisher to record company). Rather, the Court reasoned that, where a derivative work had been prepared, the statute should be read ''to preserve the total contractual relationship.'' [53]

The Court elaborated that, with respect to the particular facts in the case, defining the relevant ''terms of the grant'' as ''the entire set of documents that created and defined each licensee's right to prepare and distribute derivative works'' meant preserving not only the record companies' right to prepare and distribute the derivative works, but also their corresponding duty to pay the publisher any due royalties and the publisher's duty to pay the songwriter's heirs any due royalties.[54] The Court surmised that if the underlying assignment from the songwriter to the publisher is not included as part of the relevant ''terms of the grant'' preserved under the Exception, then there would be no contractual or statutory obligation on the publisher or record companies to pay the songwriter's heirs any royalties.[55] The Court also explained that the Exception is defined by both the terms of the grant and when the derivative work was prepared.[56]

The *Mills Music* dissent would not have interpreted the Exception to permit the publisher to continue to benefit from the terminated grant (*i.e.,* continuing to collect its share of the royalties due from the record companies under their licenses with the publisher).[57] The dissent reasoned that the Copyright Act's termination right ''encompasses not only termination of the grant of copyright itself, but also termination of the grant of 'any right under' that copyright,'' which in this case, included the right ''to share in royalties paid by [the record company] licensees.'' [58]

In support of its conclusion, the dissent noted, among other points, that the majority's analysis of the Exception was inconsistent with the statutory mechanical license, observing that statutory mechanical license royalties are ''payable to the current owner of the copyright,'' who ''[i]n this case, as all agree, . . . are the [songwriter's heirs].'' [59] The majority opinion responded to this critique by explaining that no statutory license was at issue in the case.[60] It is noteworthy in connection with the current rulemaking that the majority did not disagree with the dissent's reasoning as it applies to the statutory mechanical license.[61] In discussing such licenses, the majority calls them ''self-executing'' and distinguishes them from the voluntary mechanical licenses at issue in the case.[62]

In reviewing the Copyright Act's termination provisions and *Mills Music,* the Nimmer copyright treatise agrees with the Court that because the statutory mechanical license ''is executed by operation of law,'' rather than ''by the consent of the author or his successors,'' it is ''not subject to termination.'' [63] Nimmer observes that because a songwriter who terminates an

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[48] U.S. Copyright Office, *General Guide to the Copyright Act of 1976,* ch. 6:1 (1977), *https://www.copyright.gov/reports/guide-to-copyright.pdf* (''It is generally acknowledged that during the early stages of the revision effort, 'the most explosive and difficult issue' concerned a provision for protecting authors against unfair copyright transfers.''); U.S. Copyright Office, *Second Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law,* ch. XI, at 10 (1975) (explaining that ''[t]he subject is inherently complex, and the bargaining over individual provisions was very hard indeed,'' and that ''[t]he result is an extremely intricate and difficult provision'').

[49] H.R. Rep. No. 94–1476, at 124.

[50] *Mills Music, Inc.* v. *Snyder,* 469 U.S. 153, 172–73 (1985).

[51] H.R. Rep. No. 94–1476, at 127.

[52] 469 U.S. 153 (1985).

[53] *Id.* at 163–64, 169.

[54] *Id.* at 166–69.

[55] *Id.* (''[A]lthough the termination has caused the ownership of the copyright to revert to the [songwriter's heirs], nothing in the statute gives them any right to acquire any contractual rights that the Exception preserves. The [songwriter's heirs'] status as owner of the copyright gives them no right to collect royalties by virtue of the Exception from users of previously authorized derivative works . . . . [T]he licensees . . . have no direct contractual obligation to the new owner of the copyright. The licensees are merely contractually obligated to make payments of royalties under terms upon which they have agreed. The statutory transfer of ownership of the copyright cannot fairly be regarded as a statutory assignment of contractual rights.'').

[56] *Id.* at 164 (''[T]he boundaries of that Exception are defined by reference to the scope of the privilege that had been authorized under the terminated grant and by reference to the time the derivative works were prepared.'').

[57] *Id.* at 178 (White, J., dissenting).

[58] *Id.* at 178–79 (White, J., dissenting) (citing 17 U.S.C. 304(c)).

[59] *Mills Music,* 469 U.S. at 185 n.12 (White, J., dissenting) (citing 17 U.S.C. 115(c)(1) (1985)).

[60] *Mills Music,* 469 U.S. at 168 n.36.

[61] The majority expressly agrees that ''the termination has caused the ownership of the copyright to revert to the [songwriter's heirs].'' *Id.* at 167–68. With respect to the implication for a section 115 license, the majority merely says that the dissent is ''incorrect because it seems to assume that the case involves self-executing compulsory licenses.'' *Id.* at 168 n.36.

[62] *Id.*

[63] Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright sec. 11.02 n.121 (2022).

assignment to a publisher becomes the ''copyright owner'' of the musical work and the publisher's copyright ownership ''would cease'' at the point of termination, statutory mechanical license royalties would then ''be payable solely to'' the terminating songwriter.[64] Goldstein's treatise takes a similar view.[65]

In a subsequent appellate case, *Woods* v. *Bourne Co.,* the Second Circuit stated that ''[t]he effect of *Mills Music,* then, is to preserve during the post-termination period the panoply of contractual obligations that governed pre-termination uses of derivative works by derivative work owners or their licensees.'' [66] *Woods* involved a more complicated series of agreements, but as with *Mills Music,* the preparation of the derivative work began with a grant in a musical work from a songwriter to a publisher that was terminated by the songwriter's heirs. The court ultimately found that the publisher was entitled to continue to receive a share of royalties from post-termination performances of the musical work embodied within pre-termination audiovisual derivative works that were prepared pursuant to synchronization licenses issued by the publisher. The court explained that ''[u]nder our reading of *Mills Music,* the 'terms of the grant' include the provisions of the grants from [the publisher] to ASCAP and from ASCAP to television stations. This pair of licenses is contemplated in the grant of the synch licenses from [the publisher] to film and television producers,'' the terms of which ''required the television stations performing the audiovisual works to obtain a second grant from either [the publisher] or ASCAP, licensing the stations to perform the Song contained in the audiovisual works.'' [67]

V. Analysis

A. The Exception Does Not Apply in the Context of the Blanket License

1. The Blanket License Cannot Be Terminated Under Section 203 or 304 of the Copyright Act

To be subject to termination, a grant must be executed by the author or the author's heirs.[68] The blanket license, however, is not executed by the author or the author's heirs. As a type of statutory license, the blanket license is ''self-executing,'' such that it cannot be terminated.[69] If a blanket license cannot be terminated, then it cannot be subject to an exception to termination; the license simply continues in effect according to its terms.[70]

The plain language of the statute is in accord. The Exception refers to ''the grant before its termination,'' ''the grant after its termination,'' and ''the terminated grant.'' [71] Thus, the ''grant'' referenced in the statute is a terminated grant. Because the blanket license cannot be terminated, it cannot be the terminated ''grant'' referenced in the text to which the Exception applies.

2. No Derivative Work Is Generally Prepared Pursuant to the Blanket License

Section 115's blanket licensing regime is premised on the assumption that DMPs are not preparing derivative works pursuant to their blanket licenses. Instead, the statute envisions that DMPs operating under the blanket license are obtaining and licensing sound recording derivatives [72] from record companies or other sound recording licensors.[73] In this standard situation, DMPs would generally have two distinct sets of licenses: one to use the sound recordings offered through their service and another to use the underlying musical works.

If no derivative work is prepared ''under authority of the grant,'' then the Exception cannot apply. Proponents of the Exception's application to the blanket license might argue that the blanket license should be construed as being included within a so-called ''panoply'' of grants pursuant to which a pre-termination derivative work of the musical work was prepared. However, the only panoply to which the blanket license could theoretically belong would be the grant (or chain of successive grants) emanating from the songwriter and extending to the record company (or other person) who prepared the sound recording derivative licensed to the DMP.

It is the Office's view that where no sound recording derivative is prepared pursuant to a DMP's blanket license, that blanket license is not part of any preserved grants that make the Exception applicable. The Exception, as interpreted by *Mills Music,* should not be read as freezing other grants related to, but outside of, the direct chain of successive grants providing authority to utilize the sound recording derivative, such as the musical work licenses obtained by DMPs.

First, any changes in, or even the loss of, a DMP's musical work licenses post-termination should not have any direct effect on a record company's authorization to continue utilizing a sound recording derivative under the terms of the preserved chain of pre-termination sound recording-related grants. While such a change or loss could affect a *DMP's* ability to utilize the sound recording—because it cannot make use of sound recording derivatives without the relevant musical work licenses—there does not appear to be any indication that the Exception is meant to preserve a *DMP's* ability to do so.[74]

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[64] *Id.* (citing *Mills Music,* 469 U.S. at 168 n.36; *id.* at 185 n.12 (White, J., dissenting)).

[65] Paul Goldstein, Goldstein on Copyright sec. 5.4.1.1.a (3d ed. 2022) (''The requirement that, to be terminable, a grant must have been 'executed' implies that compulsory licenses, such as section 115's compulsory license for making and distributing phonorecords of nondramatic musical works, are not subject to termination.'').

[66] *Woods* v. *Bourne Co.,* 60 F.3d 978, 987 (2d Cir. 1995) (''*Mills Music* appears to require that where multiple levels of licenses govern use of a derivative work, the 'terms of the grant' encompass the original grant from author to publisher and each subsequent grant necessary to enable the particular use at issue.'').

[67] *Id.* at 987–88. Another Second Circuit case emphasized the importance of the actual terms of the grant. *Fred Ahlert Music Corp.,* 155 F.3d at 24–25 (concluding that where the co-authors of a musical work had made a grant to a publisher and the publisher, pursuant to that grant, authorized a record company to prepare a sound recording derivative of the musical work and release it as ''Record No. SP 4182,'' the inclusion of the recording in a film soundtrack and soundtrack album were not covered by the Exception because the terms of the grant from the publisher to the record company did not authorize additional releases or inclusion in a film soundtrack, even if the grant from the songwriters to the publisher may have).

[68] 17 U.S.C. 203(a) (''executed by the author''), 304(c) (''executed . . . by any of the persons designated by subsection (a)(1)(C) of this section'').

[69] *Mills Music,* 469 U.S. at 168 n.36; *see* Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright sec. 11.02 n.121 (2022); Paul Goldstein, Goldstein on Copyright sec. 5.4.1.1.a (3d ed. 2022).

[70] Although the blanket license cannot be terminated, as discussed below, that does not mean that entitlement to royalties is fixed. It travels with ownership of the copyright.

[71] 17 U.S.C. 203(b)(1), 304(c)(6)(A).

[72] Some sound recordings of musical works may not even necessarily be derivative works within the meaning of the Copyright Act. For example, where preparation of the musical work and sound recording are concurrent, the musical work is not a ''preexisting work[ ]'' that the sound recording is ''based upon.'' *See* 17 U.S.C. 101.

[73] *See, e.g.,* 17 U.S.C. 115(a)(1)(A)(ii)(II) (in describing one of the eligibility criteria, stating that ''the sound recording copyright owner, or the authorized distributor of the sound recording copyright owner, has authorized the digital music provider to make and distribute digital phonorecord deliveries of the sound recording''); *id.* at 115(d)(4)(A)(ii)(I)(bb) (requiring DMPs to report certain information ''to the extent acquired by the digital music provider in the metadata provided by sound recording copyright owners or other licensors of sound recordings''); *id.* at 115(d)(4)(B) (requiring DMPs to ''engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings'' certain information).

[74] *See Mills Music,* 469 U.S. at 173 (''The purpose of the Exception was to 'preserve the right of *the owner* of a derivative work to exploit it, notwithstanding the reversion.'' ') (quoting Copyright Law Revision Part 4: Further Discussions and Comments on Preliminary Draft for Revised

Second, if the grants authorizing utilization of a sound recording derivative are separately preserved, then the major concern in *Mills Music,* regarding the continuity of contractual royalty obligations, is not present. Under the terms of the preserved chain of sound recording-related grants, a publisher would still be entitled to continue to be compensated by a record company and a songwriter would still be entitled to continue to then be compensated by the publisher for the record company's post-termination uses of a sound recording derivative. A DMP's musical work licenses would not need to be preserved to keep these sound recording-related contractual obligations intact post-termination.

Last, the Exception's language does not support the inclusion of a DMP's musical work licenses within a panoply of preserved sound recording-related grants where the DMP is not the derivative work preparer. As noted above, the word ''grant'' is used three times in the Exception and, according to the Supreme Court, all three references should be given a ''consistent meaning.'' [75] While some might contend that the third reference, to ''the terminated grant,'' could refer to at least some types of DMP musical work licenses (*e.g.,* a direct grant from a songwriter to the DMP), the other two references cannot.

The Exception's first use of ''grant'' is to a ''derivative work prepared under authority of the grant.'' Here, the relevant derivative work triggering the Exception (*i.e.,* the sound recording) was not prepared pursuant to any authority under the DMP's musical work licenses (in contrast to the direct chain of sound recording-related grants that did authorize the sound recording's preparation). Thus, the first use of ''grant'' cannot be referring to the DMP's musical work licenses pursuant to which no derivative work was prepared. The second use, permitting the continued utilization of the derivative work ''under the terms of the grant,'' also cannot refer to a DMP's musical work licenses for the same reason.[76]

3. Applying the Exception to the Blanket License Would Lead to an Extreme Result

Finally, the Office has an additional significant concern with the application of the Exception to the blanket license. If it applies, then it is not clear why it would only apply to the payee, as the MLC's prior rulemaking comments seem to suggest. In *Mills Music,* the Court emphasized that the statute ''refers to '*the* terms of the grant'—not to *some* of the terms of the grant.'' [77] Consequently, the Office believes that if the Exception applies, then it must apply to all of the blanket license's terms. This would be extremely far reaching, as it would freeze in time everything from DMP reporting requirements and MLC royalty statement requirements to the rates and terms of royalty payments for using the license set by the CRJs. Any post-termination changes made by Congress to section 115 (without also abrogating the effect of the Exception) or by the Office or CRJs to related regulations would seem to be a nullity with respect to an applicable work, for DMPs, the MLC, copyright owners, and songwriters alike. It is improbable that Congress intended such an extreme result *sub silentio.* Such a construction of the Exception would also be directly at odds with Congress's clearly expressed intent for the CRJs to be empowered to adjust the rates and terms of the blanket license every five years.[78] Moreover, as a practical matter, the Office is concerned about how the MLC could effectively administer a license that may need to be treated differently for each one of millions of works across nearly 50 different DMPs.

B. Even if the Exception Applies to the Blanket License, a Terminated Publisher Is Not Entitled to Post-Termination Blanket License Royalties

Mills Music makes clear that what matters most under the Exception are ''[t]he 'terms of the grant' as existing at the time of termination.'' [79] Here, the terms of the blanket license are the applicable text of section 115 and related regulations, which simply refer to paying the ''copyright owner,'' [80] who can change over time.[81] Thus, whenever a change is effectuated, whether via a contractual assignment or by operation of a statutory termination, the new owner becomes the proper payee entitled to royalties under the blanket license.[82] It is not clear why the statute or the case law should be read as making one particular copyright owner the permanent recipient because it happened to be the owner immediately before termination occurred. Such a construction of the Exception would read something into the terms of the blanket license that is not present: the identification of a specific named individual or entity to be paid.[83]

VI. Proposed Rule

The Office believes that the statute is ambiguous, as it does not directly speak to how the Exception operates in connection with the blanket license. It is not always clear from the plain meaning of the text which grants fall into the Exception, as demonstrated by divisions on the Supreme Court in *Mills Music.*[84] Additionally, the significantly different nature of DMP blanket licenses, as compared to the record company voluntary licenses at issue in *Mills Music,* raises questions about how both the Exception and *Mills Music'*s interpretation should apply.

Based on the foregoing analysis of the statute, Congress's intent, and the above-discussed authorities, the Office concludes that the MLC's termination dispute policy is inconsistent with the law. Whether or not the Exception applies to a DMP's blanket license (and the Office concludes that the Exception does not), the statute entitles the current copyright owner to the royalties under the blanket license, whether pre- or post-termination. In other words, the post-termination copyright owner (*i.e.,* the author, the author's heirs, or their successors, such as a subsequent publisher grantee) is due the post-termination royalties paid by the DMP to the MLC. Consequently, the Office is proposing a rule to clarify the

U.S. Copyright Law, 88th Cong., 2d Sess., at 39 (H. Judiciary Comm. Print 1964) (statement of Barbara A. Ringer, U.S. Copyright Office)) (emphasis added).

[75] *See Mills Music,* 469 U.S. at 164–66. For reference, the Exception reads as follows: ''A derivative work prepared under authority of the *grant* before its termination may continue to be utilized under the terms of the *grant* after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated *grant.*'' 17 U.S.C. 203(b)(1), 304(c)(6)(A) (emphasis added).

[76] If a DMP actually did prepare a derivative work pursuant to the authority of a blanket license, so that the above analysis is inapplicable, the Exception still would not apply. As discussed in the previous section, a blanket license cannot be terminated; it simply continues in effect under its terms. Practically, however, the continued effect of a blanket license in this context is that the ability of the DMP to continue utilizing the relevant derivative work that it prepared remains preserved.

[77] *Mills Music,* 469 U.S. at 167 n.35.

[78] *See* 17 U.S.C. 115(c)(1)(E)–(F), 804(b)(4); *see also id.* at 803(c)(4) (providing the CRJs with continuing jurisdiction to ''issue an amendment to a written determination'' under certain circumstances).

[79] *Mills Music,* 469 U.S. at 174, 177.

[80] *See, e.g.,* 17 U.S.C. 115(d)(3)(G)(i)(I)–(III), (d)(3)(I).

[81] *Id.* at 201(d)(1) (''The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law.'').

[82] *See Mills Music,* 469 U.S. at 185 n.12 (White, J., dissenting); Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright sec. 11.02 n.121 (2022).

[83] *See Mills Music,* 469 U.S. at 169 (''The contractual obligation to pay royalties survives the termination and identifies the parties to whom the payment must be made.'').

[84] *Id.* at 180–85 (White, J., dissenting) (stating that Congress ''phrased the statutory language . . . ambiguously'').

appropriate payee under the blanket license to whom the MLC must distribute royalties following a statutory termination.

The Office proposes a rule with two parts. The first part would make clear that the copyright owner of the musical work as of the end of the monthly reporting period is the one who is entitled to the royalties and any other related amounts (*e.g.,* interest), including any subsequent adjustments, for the uses of the work during that period. The proposal provides that by ''uses,'' the Office means the covered activities engaged in by DMPs under blanket licenses as reported to the MLC. The proposed rule would also caveat that entitlement to royalties is subject to section 115(d)(3)(J), which requires the MLC, under certain circumstances, to make market-share-based distributions of unclaimed royalties for which the copyright owners are unknown.

The Office believes that the appropriate moment in time when a copyright owner becomes entitled to royalties is when the use of the relevant musical work by a DMP under a blanket license occurs.[85] In line with the monthly reporting scheme set up by the MMA and the Office's regulations, and in an effort to make the rule reasonably administrable for the MLC, the Office proposes using the last day of the relevant monthly reporting period instead of requiring the MLC to manage day-to-day ownership changes occurring mid-month. The Office seeks comments on this proposed approach, including whether some other point in time might be appropriate.

To avoid any doubt, the proposed rule would also explicitly provide that the Exception does not apply to blanket licenses. It would also provide that no one may claim that by virtue of the Exception they are the copyright owner of a musical work used pursuant to a blanket license.

The second part of the proposed rule would require the MLC to distribute royalties in accordance with the Office's legal conclusions under the first part. The proposal includes an exception when the MLC is directed in writing to distribute the royalties in some other manner by the copyright owner identified under the first part or by the mutual written agreement of the parties to an ownership dispute. Letters of direction are commonly used in the music industry and the Office believes the proposed rule should accommodate such arrangements. More specifically, the Office appreciates and understands the MLC's interest in avoiding circumstances where the existence of a dispute causes songwriters' income streams to be interrupted. Under the proposed rule, the Office believes that it would be appropriate for the MLC to implement a policy that allows blanket license royalties to continue to be paid to an existing claimant (including a pre-termination copyright owner), despite the presence of an ownership dispute, if the parties to the dispute jointly submit a mutually agreed-to letter of direction requesting the continued payment subject to subsequent adjustment upon resolution of the dispute.

Because the MLC's termination dispute policy is contrary to the Office's interpretation of current law, the proposed rule would require the MLC to immediately repeal its policy in full. If the issue surrounding the Exception is resolved, it is not clear to the Office at this time why the MLC would need a separate dispute policy specifically for handling terminations that is different from its policy for other ownership disputes. The proposed rule would then also require the MLC to adjust any royalties distributed under the policy, or distributed in a similar manner if not technically distributed pursuant to the policy, within 90 days. The Office proposes this adjustment to make copyright owners whole for any distributions the MLC made based on an erroneous understanding and application of current law.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the U.S. Copyright Office proposes amending 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Amend § 210.29 by adding paragraph (b)(4) to read as follows:

§ 210.29 Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.

* * * * *

(b) * * *

(4)(i) Subject to 17 U.S.C. 115(d)(3)(J), the copyright owner of a musical work (or share thereof) as of the last day of a monthly reporting period in which such musical work is used pursuant to a blanket license is entitled to all royalty payments and other distributable amounts (*e.g.,* accrued interest), including any subsequent adjustments, for the uses of that musical work occurring during that monthly reporting period. As used in the previous sentence, the term *uses* means all covered activities engaged in under blanket licenses as reported by blanket licensees to the mechanical licensing collective. The derivative works exception contained in 17 U.S.C. 203(b)(1) and 304(c)(6)(A) does not apply to any blanket license and no individual or entity may be construed as the copyright owner of a musical work (or share thereof) used pursuant to a blanket license based on such exception.

(ii) The mechanical licensing collective shall not distribute royalties in a manner inconsistent with paragraph (b)(4)(i) of this section, unless directed to do so in writing by the copyright owner identified in paragraph (b)(4)(i) of this section or by the mutual written agreement of the parties to an ownership dispute. The mechanical licensing collective shall immediately repeal its ''Notice and Dispute Policy: Statutory Terminations.'' No later than [90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the mechanical licensing collective shall adjust all royalties and other amounts distributed pursuant to that policy or in a similar manner so as to be consistent with paragraph (b)(4)(i) of this section.

* * * * *

Dated: October 19, 2022.

Suzanne V. Wilson,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2022–23204 Filed 10–24–22; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0841; EPA–HQ–OAR–2021–0663; FRL–10291–01–R4]

Air Plan Disapproval; AL; Interstate Transport Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

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[85] *See* 17 U.S.C. 115(c)(1)(C) (providing that payable royalties are for ''every digital phonorecord delivery of a musical work made''). *Cf. id.* at 501(b) (''The legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for any infringement of that particular right *committed while he or she is the owner of it.*'') (emphasis added).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or Agency) is proposing to disapprove the State Implementation Plan (SIP) submittal from Alabama dated June 21, 2022, regarding the interstate transport requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS or standard). The ''Good Neighbor'' or ''Interstate Transport'' provision of the Act requires that each State's implementation plan contain adequate provisions to prohibit emissions from within the State from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of ''infrastructure'' requirements, which are designed to ensure that the structural components of each State's air quality management program are adequate to meet the State's responsibilities under the CAA. If EPA finalizes this disapproval, the Agency will continue to be subject to an obligation to promulgate a Federal Implementation Plan (FIP) for Alabama to address the relevant interstate transport requirements, which was triggered by a finding of failure to submit published on June 22, 2022. Disapproval does not start a mandatory sanctions clock.

DATES: Written comments must be received on or before November 25, 2022.

ADDRESSES: You may submit comments, identified by Docket No. EPA–R04–OAR–2021–0841, through the Federal eRulemaking Portal at *https://www.regulations.gov* following the online instructions for submitting comments.

Instructions: All submissions received must include the Docket No. EPA–R04–OAR–2021–0841 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. The EPA Docket Office can be contacted at (202) 566–1744, and is located at EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. For further information on EPA Docket Center services and the current hours of operation at the EPA Docket Center, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009, or via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION: *Public Participation:* Submit your comments, identified by Docket No. EPA–R04–OAR–2021–0841, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system).

There are two dockets supporting this action, EPA–R04–OAR–2021–0841 and EPA–HQ–OAR–2021–0663. Docket No. EPA–R04–OAR–2021–0841 contains information specific to Alabama, Mississippi, Tennessee, and Kentucky,[1] including this notice of proposed rulemaking. Docket No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 8-hour ozone NAAQS which are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket No. EPA–R04–OAR–2021–0841. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The indices to Docket No. EPA–R04–OAR–2021–0841 and Docket No. EPA–R04–OAR–2021–0663 are available electronically at *www.regulations.gov.* While all documents in each docket are listed in their respective index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

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I. Background

The following provides background for EPA's proposed action related to the interstate transport requirements for the 2015 8-hour ozone NAAQS for Alabama.

A. Description of Statutory Background

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 8-hour ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[2] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).[3] One of these applicable

[1] EPA previously proposed action related to another Alabama SIP submission addressing the 2015 ozone interstate transport requirements in a notice of proposed rulemaking that included Mississippi's and Tennessee's SIP submissions addressing these same requirements. EPA is using that same docket for the proposed action related to Alabama's June 21, 2022, submittal addressing the 2015 ozone interstate transport requirements. EPA is not reopening for public comment the notice of proposed rulemaking published in the **Federal Register** at 87 FR 9545 on February 22, 2022.

[2] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[3] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2)

Continued

requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''good neighbor'' or ''interstate transport'' provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called ''prongs'' within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another State (prong 1) or interfere with maintenance of the NAAQS in another State (prong 2). EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).[4]

B. Description of EPA's Four Step Interstate Transport Regulatory Process

EPA is using the 4-step interstate transport framework (or 4-step framework) to evaluate the SIP submittal from the Alabama Department of Environmental Management (ADEM or Alabama) addressing the interstate transport provision for the 2015 8-hour ozone NAAQS. EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,[5] and the Cross-State Air Pollution Rule Update (CSAPR Update)[6] and the Revised CSAPR Update, both of which addressed the 2008 ozone NAAQS.[7]

Through the development and implementation of the CSAPR rulemakings and prior regional rulemakings pursuant to the interstate transport provision,[8] EPA, working in partnership with states, developed the following 4-step interstate transport framework to evaluate a State's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.,* nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in other (*i.e.,* downwind) states sufficiently such that the states are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state's significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

C. Background on EPA's Ozone Transport Modeling Information

In general, EPA has performed nationwide air quality modeling to project ozone design values which are used in combination with measured data to identify nonattainment and maintenance receptors. To quantify the contribution of emissions from specific upwind states on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors, EPA performed nationwide, State-level ozone source apportionment modeling for 2023. The source apportionment modeling provided contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in individual upwind states.

EPA has released several documents containing projected ozone design values, contributions, and information relevant to evaluating interstate transport with respect to the 2015 8-hour ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) in which the Agency requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.[9] In the NODA, EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 8-hour ozone NAAQS.[10] On October 27, 2017, EPA released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address interstate transport obligations for the 2008 ozone NAAQS.[11] On March 27, 2018, EPA issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 8-hour ozone NAAQS at Step 1 of the 4-step interstate transport framework.[12] The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 8-hour ozone NAAQS under Step 2 of the 4-step interstate transport framework.[13] EPA subsequently issued

of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

[4] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–11 (D.C. Cir. 2008).

[5] *See* Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[6] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

[7] In 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin* v. *EPA,* 938 F.3d 303, 313 (DC Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the ''CSAPR Close-Out,'' 83 FR 65878 (December 21, 2018), in *New York* v. *EPA,* 781 F. App'x 4 (D.C. Cir. 2019).

[8] In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the ''NO_X SIP Call,'' 63 FR 57356 (October 27, 1998), and the ''Clean Air Interstate Rule'' (CAIR), 70 FR 25162 (May 12, 2005).

[9] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[10] *See* 82 FR 1733, 1735.

[11] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017 (''October 2017 memorandum''), available in Docket ID No. EPA–HQ–OAR–2021–0663 or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[12] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (''March 2018 memorandum''), available in Docket ID No. EPA–HQ–OAR–2021–0663 or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[13] The March 2018 memorandum, however, provided, ''While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.''

two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework.[14]

Since the release of the modeling data shared in the March 2018 memorandum, EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.,* 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/State collaborative project.[15] This collaborative project was a multi-year joint effort by EPA, MJOs, and states to develop a new, more recent emissions platform for use by EPA and states in regulatory modeling as an improvement over the dated 2011-based platform that EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the Notice of Proposed Rulemaking for the Revised CSAPR Update, EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.[16] Although the Revised CSAPR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform are also useful for identifying downwind ozone problems and linkages with respect to the 2015 8-hour ozone NAAQS.[17]

Following the Revised CSAPR Update final rule, EPA made further updates to the 2016 emissions platform to include mobile emissions from EPA's Motor Vehicle Emission Simulator (MOVES3) model[18] and updated emissions projections for electric generating units (EGUs) that reflect the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other sector trends. The construct of the updated emissions platform, 2016v2, is described in the emissions modeling technical support document (TSD) included in the docket for this proposed rulemaking.[19] EPA performed air quality modeling of the 2016v2 emissions using the most recent public release version of the Comprehensive Air Quality Modeling with Extensions (CAMx) photochemical modeling, version 7.10.[20] EPA proposes to primarily rely on modeling based on the updated and newly available 2016v2 emissions platform in evaluating these submissions with respect to Steps 1 and 2 of the 4-step interstate transport framework. By using the updated modeling results, EPA is using the most recently available and technically appropriate information for this proposed rulemaking. Section III of this document and the Air Quality Modeling TSD for 2015 Ozone NAAQS Transport SIP Proposed Actions included in Docket No. EPA–HQ–OAR–2021–0663 contain additional detail on the modeling performed using the 2016v2 emissions modeling.

In this document, EPA is accepting public comment on this updated 2023 modeling, which uses the 2016v2 emissions platform. Comments on EPA's air quality modeling should be submitted in Docket No. EPA–R04–OAR–2021–0841. Comments are not being accepted in Docket No. EPA–HQ–OAR–2021–0663.

States may have chosen to rely on the results of EPA modeling and/or alternative modeling performed by states or MJOs to evaluate downwind air quality problems and contributions as part of their submissions. In Section III of this document, EPA evaluates how Alabama used air quality modeling information in their submission.

D. EPA's Approach to Evaluating Interstate Transport SIPs for the 2015 8-Hour Ozone NAAQS

EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submittals for the 2015 8-hour ozone NAAQS. These policy judgments reflect consistency with relevant case law and past agency practice as reflected in CSAPR and related rulemakings. Nationwide consistency in approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_X SIP Call have necessitated the application of a uniform framework of policy judgments in order to ensure an ''efficient and equitable'' approach. *See EME Homer City Generation, LP* v. *EPA,* 572 U.S. 489, 519 (2014).

In the March, August, and October 2018 memoranda, EPA recognized that states may be able to establish alternative approaches to addressing their interstate transport obligations for the 2015 8-hour ozone NAAQS that vary from a nationally uniform framework. EPA emphasized in these memoranda, however, that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular State's submittal. In general, EPA continues to believe that deviation from a nationally consistent approach to ozone transport must be substantially justified and have a well-documented technical basis that is consistent with relevant case law. Where states submitted SIPs that rely on any such potential concepts as may have been identified or suggested in the past, EPA will evaluate whether the State adequately justified the technical and legal basis for doing so.

EPA notes that certain potential concepts included in an attachment to the March 2018 memorandum require unique consideration, and these ideas do not constitute Agency guidance with respect to transport obligations for the 2015 8-hour ozone NAAQS. Attachment A to the March 2018 memorandum identified a ''Preliminary List of Potential Flexibilities'' that could potentially inform SIP development.[21] However, EPA made clear in that attachment that the list of ideas were not suggestions endorsed by the Agency but rather ''comments provided in various forums'' on which EPA sought

[14] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018 (''October 2018 memorandum''), available in Docket ID No. EPA–HQ–OAR–2021–0663 or at *https://www.epa.gov/sites/default/files/2018-10/documents/maintenance_receptors_flexibility_memo.pdf.*

[15] The results of this modeling, as well as the underlying modeling files, are included in Docket ID No. EPA–HQ–OAR–2021–0663.

[16] *See* 85 FR 68964, 68981.

[17] *See* the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in Docket ID No. EPA–HQ–OAR–2021–0663.

[18] Additional details and documentation related to the MOVES3 model can be found at *https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.*

[19] *See* Technical Support Document (TSD) Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform included in the Docket ID No. EPA–HQ–OAR–2021–0663.

[20] Ramboll Environment and Health, January 2021, *www.camx.com.*

[21] March 2018 memorandum, Attachment A.

''feedback from interested stakeholders.'' [22] Further, Attachment A stated, ''EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches.'' [23] Attachment A to the March 2018 memorandum, therefore, does not constitute Agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. To the extent states sought to develop or rely on these ideas in support of their SIP submittals, EPA will thoroughly review the technical and legal justifications for doing so.

The remainder of this section describes EPA's proposed framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of contribution threshold, and multifactor control strategy assessment.

1. Selection of Analytic Year

In general, the states and EPA must implement the interstate transport provision in a manner ''consistent with the provisions of [title I of the CAA.]'' *See* CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed ''as expeditiously as practicable'' and no later than the schedule of attainment dates provided in CAA section 181(a)(1).[24] Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin* v. *EPA,* remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *See* 938 F.3d 303, 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland* v. *EPA* that cited the *Wisconsin* decision in holding that EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for EPA's denial of a petition under CAA section 126(b). *Maryland* v. *EPA,* 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that ''section 126(b) incorporates the Good Neighbor Provision,'' and, therefore, ''EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the *next downwind attainment deadline.* Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.'' *Id.* at 1204 (emphasis added). EPA interprets the court's holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,[25] which is now the Moderate area attainment date under CAA section 181 for ozone nonattainment. The Moderate area attainment date for the 2015 8-hour ozone NAAQS is August 3, 2024.[26] EPA believes that 2023 is now the appropriate year for analysis of interstate transport obligations for the 2015 8-hour ozone NAAQS, because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024, Moderate area attainment date for the 2015 8-hour ozone NAAQS.

EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 8-hour ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied upon EPA modeling of the year 2023, and no State provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, EPA must act on SIP submittals using the information available at the time it takes such action. In this circumstance, EPA does not believe it would be appropriate to evaluate states' obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the past, because the Agency interprets the interstate transport provision as forward looking. *See* 86 FR 23054, 23074, April 30, 2021; *see also Wisconsin,* 938 F.3d at 322. Consequently, in this proposal EPA will use the analytical year of 2023 to evaluate Alabama's CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 8-hour ozone NAAQS.

2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where EPA's analysis shows that a site does not fall under the definition of a nonattainment or maintenance receptor, that site is excluded from further analysis under EPA's 4-step interstate transport framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, EPA proceeds to the next step of the 4-step interstate transport framework by identifying the upwind state's contribution to those receptors.

EPA's approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. EPA's approach gives independent consideration to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina* v. *EPA.*[27]

For the purpose of this proposal, EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that EPA projects

[22] *Id.* at A–1.

[23] *Id.*

[24] For attainment dates for the 2015 8-hour ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[25] EPA notes that the court in *Maryland* did not have occasion to evaluate circumstances in which EPA may determine that an upwind linkage to a downwind air quality problem exists at Steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin,* 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

[26] *See* CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[27] *See North Carolina* v. *EPA,* 531 F.3d 896, 910–11 (D.C. Cir. 2008) (holding that EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

will be in nonattainment in the future analytic year (*i.e.,* 2023).[28]

In addition, in this proposal, EPA identifies a receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 136 (D.C. Cir. 2015).[29] Specifically, EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant base period. EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, EPA often uses the term ''maintenance-only'' to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described above, EPA identifies ''maintenance-only'' receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as ''maintenance-only'' receptors, even if they are currently measuring nonattainment based on the most recent official design values.

3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2, EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each State to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a State's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.,* 0.70 ppb for the 2015 8-hour ozone NAAQS), the upwind state is not ''linked'' to a downwind air quality problem, and EPA, therefore, concludes that the State does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a State's contribution equals or exceeds the 1 percent threshold, the State's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed ''significant'' and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

EPA is proposing to rely in the first instance on the 1 percent threshold for the purpose of evaluating a State's contribution to nonattainment or maintenance of the 2015 8-hour ozone NAAQS (*i.e.,* 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. EPA continues to find 1 percent to be an appropriate threshold. For ozone, as EPA found in CAIR, CSAPR, and the CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. results from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and, in some cases, substantially larger contributions from a subset of particular upwind states. EPA's analysis shows that much of the ozone transport problem being analyzed in this proposed rulemaking is the result of the collective impacts of contributions from many upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR at 74518, October 26, 2016; *see also* 86 FR at 23085, April 30, 2021 (reviewing and explaining rationale from CSAPR, 76 FR at 48237–38, August 8, 2011, for selection of 1 percent threshold).

The following describes EPA's experience with alternative Step 2 thresholds. EPA's August 2018 memorandum recognized that in certain circumstances, a State may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a State relies on this alternative threshold, and where that State determined that it was not linked at Step 2 using the alternative threshold, EPA will evaluate whether the State provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in the particular SIP submission.

EPA here shares further evaluation of its experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds at Step 2. This experience leads the Agency to now believe it may not be appropriate to continue to attempt to recognize alternative contribution thresholds at Step 2. The August 2018 memorandum stated that ''it may be reasonable and appropriate'' for states to rely on an alternative threshold of 1 ppb at Step 2.[30] (The memorandum also indicated that any higher alternative threshold, such as 2 ppb, would likely not be appropriate.) However, EPA also provided that ''air agencies should consider whether the recommendations in this guidance are appropriate for each situation.'' Following receipt and review of 49 good neighbor SIP submittals for the 2015 8-hour ozone NAAQS, EPA's experience has been that nearly every State that attempted to rely on a 1 ppb threshold did not provide sufficient

[28] *See* 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptors, was also applied in CAIR. *See* 70 FR 25162 at 25241, 25249 (January 14, 2005); *see also North Carolina,* 531 F.3d at 913–14 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

[29] *See* 76 FR 48208 (August 8, 2011). The CSAPR Update and Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

[30] *See* August 2018 memorandum at 4.

information and analysis to support a determination that an alternative threshold was reasonable or appropriate for that State.

For instance, in nearly all submittals, the states did not provide EPA with analysis specific to their State or the receptors to which its emissions are potentially linked. In one case, the proposed approval of Iowa's SIP submittal, EPA expended its own resources to attempt to supplement the information submitted by the State, in order to more thoroughly evaluate the state-specific circumstances that could support approval.[31] It was at EPA's sole discretion to perform this analysis in support of the State's submittal, and the Agency is not obligated to conduct supplemental analysis to fill the gaps whenever it believes a State's analysis is insufficient. The Agency no longer intends to undertake supplemental analysis of SIP submittals with respect to alternative thresholds at Step 2 for purposes of the 2015 8-hour ozone NAAQS.

Furthermore, EPA's experience since 2018 is that allowing for alternative Step 2 thresholds may be impractical or otherwise inadvisable for a number of additional policy reasons. For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Based on its review of submittals to-date and after further consideration of the policy implications of attempting to recognize an alternative Step 2 threshold for certain states, the Agency now believes the attempted use of different thresholds at Step 2 with respect to the 2015 8-hour ozone NAAQS raises substantial policy consistency and practical implementation concerns.[32] The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations based solely on the strength of a State's implementation plan submittal at Step 2 of the 4-step interstate transport framework. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions reductions needed, if any, to address a State's significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. Where alternative thresholds for purposes of Step 2 may be "similar" in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of an alternative threshold would allow certain states to avoid further evaluation of potential emission controls while other states must proceed to a Step 3 analysis. This can create significant equity and consistency problems among states.

Further, it is not clear that national ozone transport policy is best served by allowing for less stringent thresholds at Step 2. EPA recognized in the August 2018 memorandum that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, EPA notes that while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (*e.g.,* roughly 7 percent of total upwind state contribution was lost according to the modeling underlying the August 2018 memorandum;[33] in EPA's updated modeling, the amount lost is 5 percent). Considering the core statutory objective of ensuring elimination of all significant contribution to nonattainment or interference of the NAAQS in other states and the broad, regional nature of the collective contribution problem with respect to ozone, there does not appear to be a compelling policy imperative in allowing some states to use a 1 ppb threshold while others rely on a 1 percent of the NAAQS threshold.

Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS), is also important. Continuing to use a 1 percent of NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport. *See* 76 FR 48208, 48237–38, August 8, 2011.

Therefore, notwithstanding the August 2018 memorandum's recognition of the potential viability of alternative Step 2 thresholds, and in particular, a potentially applicable 1 ppb threshold, EPA's experience since the issuance of that memorandum has revealed substantial programmatic and policy difficulties in attempting to implement this approach. As discussed further below, the basis for disapproval of Alabama's SIP submission with respect to the Step 2 analysis is, in the Agency's view, warranted even under the terms of the August 2018 memorandum.

4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with EPA's longstanding approach to eliminating significant contribution or interference with maintenance, at Step 3, states linked at Steps 1 and 2 are generally expected to prepare a multifactor assessment of potential emissions controls. EPA's analysis at Step 3 in prior Federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a State is linked; other factors may potentially be relevant if adequately supported. In general, where EPA's or alternative air quality and contribution modeling establishes that a State is linked at Steps 1 and 2, it will be insufficient at Step 3 for a State merely to point to its existing rules requiring control measures as a basis for approval. In general, the emissions-reducing effects of all existing emissions control requirements are already reflected in the air quality results of the modeling for Steps 1 and 2. If the State is shown to still be linked to one or more downwind receptor(s), states must provide a well-documented evaluation determining whether their emissions constitute significant contribution or interference with maintenance by evaluating additional available control opportunities by preparing a multifactor assessment. While EPA has not prescribed a particular method for this assessment, EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no

[31] Air Plan Approval; Iowa; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard, 85 FR 12232 (March 2, 2020). The Agency received adverse comment on this proposed approval and has subsequently formally withdrawn the proposed approval. *See* 87 FR 9477 (February 22, 2022).

[32] EPA notes that Congress has placed on EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. *See* CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

[33] *See* August 2018 memorandum at 4.

additional emissions controls should be required.[34]

5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, states (or EPA) develop permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a State linked at Steps 1 and 2 to rely on an emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the State's implementation plan so that it is permanent and federally enforceable. *See* CAA section 110(a)(2)(D) (''Each such [SIP] shall . . . contain adequate provisions. . . .''). *See also* CAA section 110(a)(2)(A); *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by a State to meet CAA requirements must be included in the SIP).

II. Summary of Alabama's 2015 8-Hour Ozone Transport SIP Submissions

The following section provides information related to Alabama's June 21, 2022, SIP submission addressing the interstate transport requirements for the 2015 8-hour ozone NAAQS, as well as information related to previous submittals for the 2015 8-hour ozone NAAQS.

A. Prior Submissions

On August 20, 2018, Alabama submitted multiple SIP revisions under one cover letter, including an interstate transport SIP revision for the 2015 8-hour ozone NAAQS which relied on modeling released with the March 2018 memorandum. EPA initially proposed approval of Alabama's interstate transport SIP revision for the 2015 8-hour ozone NAAQS, based on the modeling provided in the March 2018 memorandum. *See* 84 FR 71854, 71859 (December 30, 2019). When EPA completed updating the modeling of 2023 in 2020, using a 2016-based emissions modeling platform (2016v1), it became evident that Alabama was projected to be linked above 1 percent of the NAAQS to downwind nonattainment and maintenance receptors (see footnote 47 of this document).

As a result, EPA deferred acting on Alabama's interstate transport SIP submittal when EPA published a supplemental proposal in 2021 to approve four other southeastern states' good neighbor SIP submissions using the updated 2023 modeling. *See* 86 FR 37942, 37943 (July 19, 2021). The next update to the 2023 modeling used an updated 2016-based emissions modeling platform (2016v2), and it confirms the prior 2016-based modeling of 2023 in that it continues to show Alabama is linked to at least one downwind nonattainment or maintenance receptor above 1 percent of the NAAQS.

Subsequently, EPA proposed to disapprove Alabama's August 20, 2018, interstate transport SIP submission on February 22, 2022, based in part on the updated modeling using the 2016v2 emissions modeling platform, discussed in Section I.C. of this document. *See* 87 FR 9545, 9562. Additionally, EPA withdrew its 2019 proposed approval on Alabama's August 20, 2018, interstate transport SIP revision as published on December 30, 2019. *See* 84 FR 71854.

Subsequently, on April 21, 2022, ADEM withdrew the August 20, 2018, submission that EPA had proposed to disapprove.[35] On the same day, April 21, 2022, ADEM provided a replacement submission for its August 20, 2018, submission addressing the interstate requirements for the 2015 ozone standards. Based on EPA's review of that new submission and the completeness criteria for SIPs (40 CFR part 51, Appendix V), EPA determined Alabama's April 21, 2022, submission was incomplete and provided that determination to Alabama in a letter dated June 14, 2022.[36] On June 15, 2022, EPA signed a document (published in the **Federal Register** on June 22, 2022), finding that the State failed to submit a complete submission addressing the 2015 ozone interstate transport requirements through the transmission of Alabama's April 21, 2022, submittal. *See* 87 FR 37235.

B. Current Submission

On June 21, 2022, Alabama submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) good neighbor interstate transport requirements for the 2015 8-hour ozone NAAQS. The SIP submission purported to address the issues identified in the EPA's June 15, 2022, incompleteness letter. The June 21, 2022, SIP submission provides Alabama's evaluation of its impact on downwind states and concludes that emissions from the State will not significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states in 2023.

Alabama's June 21, 2022, submittal identifies existing SIP-approved regulations and Federal programs[37] that regulate ozone precursor emissions from sources in the State, including the CSAPR trading programs, which, according to Alabama, are the reason for the decline of ozone precursor emissions in the State.[38] Alabama's submission acknowledges that CSAPR does not address interstate transport for the 2015 ozone standard but does provide residual NO_X emission reductions and notes that the CSAPR NO_X ozone season trading programs were adopted into the Alabama SIP on August 31, 2016, and October 6, 2017.[39] Alabama notes that the implementation of the existing SIP-approved regulations and Federal programs provide for a decline in ozone precursor emissions in the State. Alabama also states there are no nonattainment or maintenance areas in Alabama and that ozone precursor emissions would continue to decline in the State.

[34] As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51, October 26, 2016; CSAPR, 76 FR 48208, 48246–63, August 8, 2011; CAIR, 70 FR 25162, 25195–229; or the NOx SIP Call, 63 FR 57356, 57399–405, October 27, 1998. *See also* the Revised CSAPR Update, 86 FR 23054, 23086–23116, April 30, 2021. Consistently across these rulemakings, EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

[35] ADEM's April 21, 2022, withdrawal letter is provided in Docket ID No. EPA–R04–OAR–2021–0841.

[36] *See* EPA's June 14, 2022, incompleteness letter to ADEM in Docket ID No. EPA–R04–OAR–2021–0841.

[37] Alabama's submission cites the following SIP approved regulations: Administrative Code Rule 335–3–6, ''Control of Organic Emissions'', 335–3–8, ''Control of Nitrogen Oxides Emissions'', 335–3–14–.01, ''General Provisions'', 335–3–14–.02, ''Permit Procedures'', 335–3–14–.03, ''Standards for Granting Permits'', 335–3–14–.04, ''Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]'' and 335–3–14–.05, ''Air Permits Authorizing Construction in or Near Nonattainment Areas.'' Alabama's Submission cites the following Federal Rules: EPA's Tier 1 and 2 mobile source rules, EPA's nonroad Diesel Rule, EPA's 2007 Heavy-duty Highway Rule, New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and CSAPR.

[38] Alabama's SIP references CSAPR, which covers the NO_X ozone season trading program established in EPA's 2011 CSAPR, 76 FR 48208 (August 8, 2011). In addition, Alabama's submittal includes a reference to the SIP-approved rules that adopted the CSAPR Update, 81 FR 74504 (October 26, 2016). *See* 82 FR 46674 (October 6, 2017).

[39] *See* 81 FR 59869 (August 31, 2016), 82 FR 46674 (October 6, 2017) (adopting Alabama Administrative Code Rule 335–3–8, ''Control of Nitrogen Oxides Emissions'' and adopting revisions to Rule 335–3–8 into the SIP).

The State's submission also includes a weight of evidence (WOE) analysis[40] that evaluates data related to Alabama in EPA's 2016v2 emissions modeling platform.[41] The WOE analysis begins by acknowledging that EPA's January 2022 2016v2 modeling platform results indicate that Alabama is predicted to contribute above 0.70 ppb to one predicted nonattainment monitor and one predicted maintenance monitor. The WOE analysis then evaluates meteorological influence, Alabama emission sources, model performance, and the ''significance threshold'' (in fact, what EPA would refer to as the ''contribution threshold''). EPA summarizes the State's qualitative and quantitative analysis below.

Based on this information, Alabama's submission states that emissions from Alabama do not contribute above 1 ppb of the 2015 8-hour ozone NAAQS at any projected nonattainment or maintenance receptors at Step 2 of the 4-Step Framework (using EPA's approach to defining such receptors). ADEM then concludes that emissions from Alabama sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other State.

1. Alabama's Weight of Evidence Analysis

Alabama's June 21, 2022, submittal includes a WOE analysis of the data related to Alabama in EPA's 2016v2 modeling platform. The analysis begins by acknowledging that EPA's modeling shows sources in Alabama contributing greater than one percent of the NAAQS to downwind nonattainment and maintenance receptors at Harris County and Denton County, Texas, respectively, in 2023. Alabama states that EPA's 2016v2 modeling does not establish that Alabama is linked to any receptors in 2023, and the modeling does not identify any downwind linkages greater than one percent in 2026. Alabama states that based on an assessment of all available information and weighing the data by considering the relevance and quality of the information through both qualitative and quantitative analyses, emissions from Alabama do not significantly contribute to downwind nonattainment or maintenance receptors for the 2015 8-hr ozone NAAQS. Below is a summary of Alabama's WOE analysis.

a. Identifying Maintenance Receptors—Step 1 of 4-Step Framework

Alabama's analysis suggests that determining significance should be different for nonattainment and maintenance receptors and cites EPA's October 2018 memorandum, which discusses alternative methods to identifying maintenance receptors. Alabama indicates that an approach for identification of maintenance receptors could include relying on the continued decline of emissions in an area out to the attainment date of the receptor. Applying this approach, Alabama asserts that it should be excluded as a significant contributor to the Denton County, Texas receptor because the modeled average concentration is 70.4 ppb and maximum concentration is 72.2 ppb in 2023, and there will be continuing emissions reductions at Alabama point sources, which Alabama asserts are the only emissions it can reasonably control.

b. Alternative Significant Contribution Threshold—Step 2 of 4-Step Framework

Alabama points to EPA's 2018 March and August 2018 memoranda and states that the two documents provide for flexibility in determining significance and support Alabama's argument establishing 1 ppb as a sufficient threshold. Alabama goes on to assert that there is precedent for setting a 1 ppb significance threshold for ozone in the PSD permitting program and that since the purpose of the PSD permitting program is to show compliance with the NAAQS, 1 ppb should be consistent for determining future year significance against the ozone NAAQS.

c. Modeling Performance—Step 2 of 4-Step Framework

Alabama asserts that a threshold of 0.71 ppb is within the margin of error for the model. Alabama goes on to reference EPA's TSD for the 2016v2 platform modeling and suggests that, considering that there is bias and error in the modeling (ranging from +/−2.9 to 6.1 ppb in the southeast and +/−7.8 to 9.1 ppb in the south, according to Alabama), the 0.70 ppb threshold could not accurately represent ''with true accuracy'' impacts hundreds of miles from a downwind receptor.

d. Meteorological Influence and Back Trajectories—Step 2 of 4-Step Framework

Alabama's WOE analysis includes Hybrid Single Particle Lagrangian Integrated Trajectory (HYSPLIT) model back trajectory analysis to the Denton County and Harris County, Texas, receptors.[42] This HYSPLIT analysis evaluates back trajectories of 72 hours in time for the 2018–2020 3-year period.[43] Alabama claims that during the period 2018–2020, the HYSPLIT model showed that, for Harris County, air moved over Alabama on only four of 31 exceedance days, and for Denton County, air moved over Alabama on only four of 26 exceedance days. Alabama asserts that of those days, weather patterns do not indicate that upper-level transport of emissions from Alabama would have contributed to concentrations at those monitors. Alabama also asserts that on days when wind flow suggests that Alabama could have contributed to exceedances at the Texas monitors, the air quality index (AQI) indicated good or moderate air quality in Alabama. Alabama thus concludes that, based on the back trajectories, monitored exceedances at the Texas receptors are locally driven. Alabama also notes that the design values for the two Texas monitors have been stagnant, while design values in Alabama continue to trend downward.

e. Alabama NO_X Emission Trends—Step 3 of 4-Step Framework

Alabama reviewed their statewide NO_X emissions for point and mobile sources. Alabama indicates that the highest contributor of NO_X emissions in the State are from mobile sources but indicated that NO_X emissions from this source category have decreased and would continue to decrease nationwide due to turnover in the gasoline and diesel fleets and due to the rise in use of electric vehicles. Alabama asserts that statewide NO_X emissions from point sources (EGU and non-EGU) continue to decline and asserts there has been ''a precipitous drop in tonnage in our major source emissions inventory.'' Alabama claims that the 2017 NEI indicates that NO_X emissions will ''continue to decline'' from point sources and ''continue to increase'' from mobile sources. Alabama asserts that controls on mobile sources should be evaluated first. Lastly, the State acknowledges that the largest NO_X emission sources are in the Birmingham area (Jefferson County and Shelby

[40] *See* Attachment A of Alabama's June 21, 2022, 2015 ozone transport SIP submission provided in Docket ID No. EPA–R04–OAR–2021–0841.

[41] EPA notes that Alabama's SIP submission is not organized around EPA's 4-Step Framework for assessing good neighbor obligations, but EPA summarizes the submission using that framework for clarity here.

[42] According to Alabama, the HYSPLIT analysis were generated using EPA's 2015 Ozone Designation Mapping Tool, available at *https://www.epa.gov/ozone-designations/ozone-designations-guidance-and-data#:~:text=The%20ozone%20designations%20mapping%20tool,for%20the%202015%20Ozone%20NAAQS.*

[43] *See* Attachment A of Alabama's June 21, 2022, SIP submission in Docket ID No. EPA–R04–OAR–2021–0841.

County) and the Mobile area (Mobile County and Escambia County) and, of these sources, the biggest emitters are EGUs. However, Alabama asserts that NO_X emissions from EGUs have declined on the order of 80 percent and that an overwhelming majority of these EGUs are already fully controlled.

2. ADEM's Response to Comments

Alabama received two sets of comments during their State public comment period from Alabama Power and Southern Company (jointly referred to as Alabama Power) and from Sierra Club.[44] Alabama's ''Reconciliation of Comments Received'' [45] states that Alabama Power's comments were generally supportive of [ADEM]'s proposed plan and included additional information which bolsters the Department's reasoning for adopting the plan. The comments did provide some additional information for supporting the proposed plan. Therefore, the Department is making a modification of the proposed plan by adding the following statement: ''It is also important to note that the 2016v2 modeling platform does not identify any significant (>1%) linkages for Alabama in 2026.'' ADEM acknowledged that Sierra Club submitted adverse comments opposed to the proposed plan, and stated that ''none of the comments led ADEM to conclude that changes to the proposed plan were necessary,'' but did not address the substance of these comments.

Apart from the statements noted above, the State does not explicitly discuss Alabama Power's or Sierra Club's legal, technical, and policy arguments. Therefore, EPA will treat Alabama's June 21, 2022, ozone transport SIP narrative and WOE analysis as not relying on the legal, technical, or policy arguments provided in comments except as expressly stated by Alabama.

III. EPA's Evaluation of Alabama's 2015 Ozone Interstate Transport SIP Submission

EPA is proposing to find that Alabama's June 21, 2022, SIP submission does not meet Alabama's obligations with respect to prohibiting emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other State based on EPA's evaluation of the SIP submission using the 4-step interstate transport framework. EPA is therefore proposing to disapprove Alabama's June 21, 2022, submission.

A. Results of EPA's Step 1 and Step 2 Modeling and Findings for Alabama

As described in Section I of this document, EPA performed updated air quality modeling to project design values and contributions for 2023. These data were examined to determine if Alabama contributes at or above the threshold of 1 percent of the 2015 8-hour ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. As shown in Table 1, the data [46] indicate that in 2023, emissions from Alabama contribute greater than 1 percent of the standard to a nonattainment receptor in Harris County, Texas (ID#: 482010055) and a maintenance-only receptor in Denton County, Texas (ID#: 481210034).[47]

TABLE 1—ALABAMA LINKAGE RESULTS BASED ON EPA UPDATED 2023 MODELING

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Alabama contribution (ppb)
482010055	Harris County, Texas	Nonattainment	71.0	72.0	0.88
481210034	Denton County, Texas	Maintenance	70.4	72.2	0.71

B. Evaluation of Information Provided by Alabama Regarding Step 1

At Step 1 of the 4-step interstate transport framework, Alabama relied on EPA's 2016v2 modeling platform to identify nonattainment and maintenance receptors in 2023. As described in Section I.D. of this document, EPA's 2016v2 modeling platform relies on the most recently available and technically appropriate information. EPA proposes to rely on this modeling to identify nonattainment and maintenance receptors in 2023. That information establishes that there are two receptors to which Alabama is projected to be linked in 2023.

1. Evaluation of Alabama's Approach to Maintenance Receptors

Based on this information, the State attempted to apply an alternative definition of a maintenance receptor utilizing the potential concepts included in the October 2018 memorandum. This memorandum included a description of the approach that EPA has historically used to identify maintenance-only receptors [48] and identified potential alternative ways to define maintenance receptors based on certain criteria suggested in the memorandum, including an evaluation of meteorology conducive to ozone formation, review of ozone monitored concentrations, and precursor emissions trends.

EPA recognized in the October 2018 memorandum that states could potentially, with sufficient justification, establish an approach for addressing maintenance receptors that gives independent significance to prong 2 in some manner different than EPA's approach. In addition, the October 2018 memorandum identified two potential concepts that states could use to identify maintenance receptors: (1) States may, in some cases, eliminate a site as a maintenance receptor if the site is currently measuring clean data, or (2) in some cases, use a design value from the base period that is not the maximum design value. For either of these alternative methods, to adequately consider areas struggling to meet the NAAQS, EPA also indicated that it

[44] See comments submitted with Alabama's June 21, 2022, 2015 ozone transport SIP package found in Docket ID No. EPA–R04–OAR–2021–0841.

[45] *See* Part C, pdf p. 76, in Alabama's June 21, 2022, SIP submission in Docket ID No. EPA–R04–OAR–2021–0841.

[46] The ozone design values and contributions at individual monitoring sites nationwide are provided in the file ''2016v2_DVs_state_contributions.xlsx'' which is included in Docket ID No. EPA–HQ–OAR–2021–0663.

[47] These modeling results are consistent with the results of a prior round of 2023 modeling using the 2016v1 emissions platform which became available to the public in the fall of 2020 in the Revised CSAPR Update, as noted in Section I of this document. That modeling showed that Alabama had a maximum contribution greater than 0.70 ppb to at least one nonattainment or maintenance-only receptor in 2023. These modeling results are included in the file ''Ozone Design Values And Contributions Revised CSAPR Update.xlsx'' in Docket ID No. EPA–HQ–OAR–2021–0663.

[48] *See* Section I.D., of this document for a discussion of EPA's approach to identify maintenance receptors.

expects states to include with their SIP demonstration a technical analysis showing that the following three criteria are met:

- Meteorological conditions in the area of the monitoring site were conducive to ozone formation during the period of clean data or during the alternative base period design value used for projections;[49]
- Ozone concentrations have been trending downward at the site since 2011 (and ozone precursor emissions of NO_X and VOC have also decreased); and
- Emissions are expected to continue to decline in the upwind and downwind states out to the attainment date of the receptor.

EPA's October 2018 memorandum explained that the intent of the analysis is to demonstrate that monitoring sites that would be identified as maintenance receptors under EPA's historical approach could nonetheless be shown to be very unlikely to violate the NAAQS in the future analytic year.

However, Alabama's WOE analysis provides limited supporting information to show that the Denton County, Texas, maintenance receptor is unlikely to violate the NAAQS in 2023. Regarding the first criterion, ADEM does not identify any periods of clean data for the Denton County, Texas, maintenance receptor for which meteorological conditions could be assessed to determine whether particular summers had ozone-conducive or unconducive meteorology during a period of clean data. Alabama also does not attempt to discuss or consider how meteorological factors identified in the October 2018 memorandum (such as temperature, humidity, solar radiation, vertical mixing, and/or other meteorological indicators such as cooling-degree days) confirm whether conditions affecting the monitor may have been conducive to ozone formation, nor did ADEM identify a specific calendar timeframe.

With respect to the second criterion, ADEM's submission does not establish that there is a downward ozone design value trend for the Denton monitor. Furthermore, EPA does not observe any consistent downward trend for the 3-year average of the 4th highest daily maximum 8-hour ozone concentration at the Denton County receptor from 2011 through 2021.[50] The available information in the submittal (see pdf p. 145) shows that DVs at this receptor are flat or increasing.

With respect to the third criterion, ADEM alludes to expected emissions reductions from fully controlled EGUs in Alabama for NO_X for point sources, fleet turnover of gas and diesel mobile sources in coming years, a rise in the use of electric vehicles, and existing SIP-approved and Federal regulations of point sources and mobile sources. However, the State does not quantify the NO_X emission reduction potential of existing controlled EGUs, fleet turnover of mobile sources, increase in electric vehicles, or current regulations for point and mobile sources such that their downwind contribution is addressed.[51] Additionally, while the State does make summary statements, Alabama does not provide details to demonstrate why or how NO_X emissions from sources in Alabama or Texas are expected to continue to decline through the next attainment date for the Dallas-Fort Worth-Arlington, Texas, area.

Alabama's analysis supporting the use of an alternative definition for a maintenance receptor is insufficient. Furthermore, EPA does not observe any consistent downward trend for the 3-year average of the 4th highest daily maximum 8-hour ozone concentration at the Denton County receptor from 2011 through 2021. Thus, under the terms of the October 2018 memorandum, Alabama's SIP submission does not adequately establish a basis for eliminating the Denton County monitoring site as a maintenance receptor.

C. Evaluation of Information Provided by Alabama Regarding Step 2

In this action, EPA proposes to rely on the Agency's most recently available modeling to identify upwind contributions and ''linkages'' to downwind air quality problems in 2023 using a threshold of 1 percent of the NAAQS. *See* Section I.D of this document for a general explanation of the use of 1 percent of the NAAQS. EPA evaluates Alabama's use of an alternative threshold of 1 ppb in Section III.C.3. of this document below. As shown in Table 1 of this document, updated EPA modeling identifies Alabama's maximum contribution to downwind nonattainment and maintenance receptors as greater than 1 percent of the standard (*i.e.,* 0.70 ppb). Therefore, the State is linked to a downwind air quality problem at Steps 1 and 2 in 2023.[52] Alabama acknowledges EPA's 2016v2 updated modeling platform's projected contributions to nonattainment and maintenance receptors in 2023, but concludes Alabama does not contribute above 1 ppb of the NAAQS at any monitors that are projected to be in nonattainment or maintenance, and argues that is an acceptable threshold to use. EPA proposes to disapprove Alabama's SIP submission based on EPA's finding that the State is linked to receptors in 2023 using the one percent threshold, and the State's arguments in support of using a 1 ppb threshold are not approvable.

1. Evaluation of Alabama's Analysis of 2016v2 Modeling Platform Performance

The Alabama SIP submission states that EPA's 2016v2 modeling platform cannot account for a 0.71 ppb threshold which Alabama claims is within the margin of error for the model, asserting that when considering the magnitude of the so-called margin of error, the small threshold could not accurately account for impacts hundreds of miles away to a downwind receptor. (EPA interprets these statements as relating to the one-percent threshold, which is 0.70 ppb for the 2015 ozone NAAQS.) Alabama's WOE analysis cites EPA's Modeling TSD, ''Air Quality Modeling for the 2016v2 Emissions Platform Technical

[49] *See* Attachment A of EPA's October 2018 memorandum to assess whether particular summers had ozone-conducive or unconducive meteorology within the 10-year period 2008 through 2017. The memorandum states that meteorological conditions including temperature, humidity, winds, solar radiation, and vertical mixing affect the formation and transport of ambient ozone concentrations. The memorandum suggests generally that above-average temperatures are an indication that meteorology is conducive to ozone formation and below average temperatures indicate that conditions are unconducive to ozone formation. Within a particular summer season, the degree that meteorology is conducive for ozone formation can vary from region to region and fluctuate with time within a particular region.

[50] See measured 2015 8-hour ozone design values from Table 6—''Monitor Trends'' in the file O3_DesignValues_2019_2021_FINAL_05_25_22 at *https://www.epa.gov/air-trends/air-quality-design-values.*

[51] EPA accounts for, and projects whether, receptors may have trouble attaining the NAAQS through the use of projected maximum design values in the relevant analytic year. Further, EPA's modeling of the relevant analytic year also already accounts for projected emissions trends of the upwind state (among others) and may (and often does) identify a linkage to areas that may struggle to maintain the NAAQS despite an overall declining emissions trend. This is not surprising. First, most maintenance receptors in EPA's projections are currently measuring nonattainment, meaning that, despite projecting improved air quality in the future analytic year, the receptor location is currently, and may continue to be, near the level of the NAAQS. Second, ozone levels are influenced by meteorological variability and thus high ozone levels may persist despite declining emissions as a result of recurring or worsening ozone-conducive atmospheric conditions (*e.g.,* higher temperatures).

[52] Alabama states in its submission that EPA's 2016v2 modeling platform does not identify any significant linkages for Alabama to downwind receptors, greater than one percent of ozone NAAQS in 2026. EPA agrees that this is what the 2016v2 modeling shows; however, that does not diminish the conclusion that a linkage does exist in the relevant analytic year for the next attainment date, which is 2023.

Support Document: Appendix A,'' which Alabama claims identifies that there is bias and error in the modeling ranging from ±2.9 to 6.1 ppb in the Southeast region (which includes Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia) and ±7.8 to 9.1 ppb in the South region (which includes Texas, Louisiana, Mississippi, Arkansas, Oklahoma, and Kansas).

Alabama misunderstands the meaning of the terms and figures provided by EPA in this TSD and conflates two different concepts: model bias and model error. For days with maximum daily average 8-hour (MDA8) concentrations greater than or equal to 60 ppb, EPA's TSD found average bias was −2.9 ppb in the Southeast region and −7.8 ppb in the South region, whereas average error was 6.1 ppb in the Southeast and 9.1 ppb in the South. Model bias can be positive or negative, but model error is always a positive value. Thus, EPA's TSD identifies model bias of −2.9 and −7.8 ppb and model error of 6.1 ppb and 9.1 ppb in the Southeast and South regions, respectively. In other words, EPA found that the model tended to under-predict actual ozone levels at monitoring sites in these regions. Note that EPA evaluates linkages using the multi-day average contribution from each upwind state to each downwind receptor based on daily contributions from the State to the receptor for the days with the highest model-predicted future year concentrations. The modeled data are intended to represent future year ozone concentrations and contributions associated with ozone conducive meteorological conditions and transport patterns typical for high ozone episodes at the receptor. In this regard, base year model performance statistics that are derived from measured and modeled data strictly paired in space and time are not useful as the sole measure for gauging the ability of the model to adequately estimate future year average contributions on the order of 0.70 ppb on high ozone days representative of the magnitude of measured concentrations at the receptor. Further, with respect to model ''error,'' as explained in EPA's TSD, the performance of our modeling is within the generally accepted performance parameters for modeling of this type.[53] Finally, while EPA concedes that its modeling cannot perfectly project air quality levels and contributions in a future year, EPA has successfully applied its CAMx modeling platform across many CAA regulatory actions and continues to find the modeling reliable for purposes of the Step 1 and Step 2 analyses of the 4-Step Framework. If EPA were unable to draw reasonable conclusions from the results of its future-year modeling projections at ppb intervals smaller than 6.1 or 9.1 ppb, it would effectively mean the Agency is incapable of making virtually any conclusions with respect to interstate ozone transport, which would frustrate the purposes of the Act. EPA must implement its statutory mandates in the face of uncertainty unless that uncertainty is ''so profound that it precludes . . . reasoned judgment.'' *Wisconsin,* 938 F.3d at 319; *see also EME Homer City* v. *EPA,* 795 F.3d 118, 135 (D.C. Cir. 2015) (''We will not invalidate EPA's predictions solely because there might be discrepancies between those predictions and the real world.''). We do not believe the modeling, our evaluation of that modeling, or the record overall prevents the Agency from rendering a reasonable judgment that Alabama contributes above 1 percent of the NAAQS at the two receptors in Texas in 2023 based on the 2016v2 modeling. *See Sierra Club* v. *EPA,* 939 F.3d 649, 686–87 (5th Cir. 2019) (upholding EPA's modeling in the face of complaints regarding an alleged ''margin of error,'' noting challengers face a ''considerable burden'' in overcoming a ''presumption of regularity'' afforded ''the EPA's choice of analytical methodology'') (citing *BCCA Appeal Grp.* v. *EPA,* 355 F.3d 817, 832 (5th Cir. 2003)).

2. Evaluation of Alabama's Consideration of an Alternative Significant Contribution Threshold

In their June 21, 2022, SIP submission, Alabama states that EPA's March and August 2018 memoranda allow for flexibility to determine significance and establish a significance level of 1 ppb as a sufficient threshold. Alabama then determines that the threshold should be set at 1 ppb to support their conclusion that Alabama would not be linked to any projected downwind nonattainment or maintenance receptors. *See* Section II.B of this document. Alabama does not argue in its submittal that 1 percent of the NAAQS would *not* be an appropriate threshold for upwind contribution to the Texas receptors. Alabama's submission instead asserts that the State is not linked at Step 2 because the March and August 2018 memoranda identified a 1 ppb threshold as a sufficient threshold.

EPA proposes to find that Alabama's reliance on an alternative contribution threshold of 1 ppb at Step 2 is not approvable. EPA acknowledges that the August 2018 memorandum generally recognized that a 1 ppb threshold may be appropriate for states to use, but also made clear that this guidance would be applied under the facts and circumstances of each SIP submittal.[54] However, Alabama did not provide a technical analysis to sufficiently justify use of an alternative 1 ppb threshold at the linked, downwind monitors. Alabama's SIP submission simply states that ADEM agrees with EPA's rationale set out in the August 2018 memorandum that the amount of upwind collective contribution captured with the 1 percent and 1 ppb thresholds was generally comparable. But the guidance anticipated that states would evaluate whether the alternative threshold was appropriate under their specific facts and circumstances, not that the use of the alternative threshold would be automatically approvable.[55] With respect to the assertion that 1 ppb was generally comparable to 1 percent, Alabama does not provide discussion or analysis containing information specific to the State or a receptor analysis for the affected monitors, as anticipated in the August 2018 memorandum, to evaluate whether the alternative threshold was appropriate to apply with respect to the monitors to which Alabama was linked. Such state-specific information is necessary to thoroughly evaluate the state-specific circumstances that could support approval.

Alabama's SIP also claims there is precedent for setting a 1 ppb ''significance'' threshold for ozone in the PSD permitting program. However, the State's implementation plan submission does not elaborate on this assertion. EPA has provided guidance identifying a 1.0 ppb 8-hour ozone NAAQS significant impact level (SIL) for use by PSD permitting authorities.[56] The PSD program applies in areas that are designated attainment or

[53] *See* Air Quality Modeling Technical Support Document, Appendix A, in Docket ID No. EPA–HQ–OAR–2021–0663.

[54] *See* August 2018 memorandum at 1.

[55] As an example of the type of analysis that EPA anticipated states might conduct under the guidance, in one instance, EPA itself attempted to conduct a state- and receptor-specific analysis that could support approval of the use of a 1 ppb threshold. *See* Air Plan Approval; Iowa; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard, 85 FR 12232 (March 2, 2020). The Agency received adverse comment on this proposed approval and has subsequently formally withdrawn the proposed approval. *See* 87 FR 9477 (February 22, 2022).

[56] See Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program, April 17, 2018, available at *https://www.epa.gov/sites/default/files/2018-04/documents/sils_policy_guidance_document_final_signed_4-17-18.pdf*.

unclassifiable for the NAAQS,[57] and a SIL is a screening tool used to determine whether a PSD permit applicant is required to perform a comprehensive, cumulative modeling analysis that involves evaluating the impact of the new facility in addition to impacts from other existing sources in the area. Good neighbor analysis for the ozone NAAQS, by contrast, addresses the degree of significant contribution to nonattainment and interference with maintenance of the NAAQS resulting at downwind receptors from the collective contribution of many upwind sources. This fundamental difference in purpose between SIL thresholds and the interstate transport contribution threshold used under CAA section 110(a)(2)(D)(i)(I) has been recognized since at least the 2005 Clean Air Interstate Rule.[58] Further, it is not correct to conflate the use of the term ''significance,'' as used in the SIL guidance, with the term ''contribution,'' which is the appliable statutory term that EPA applies at Step 2 of the 4-step interstate transport framework. (''Significance'' within the 4-step framework is evaluated at Step 3 through a multifactor analysis for those states that are determined to ''contribute'' to downwind receptors at Steps 1 and 2. *See* Section I.D.4. of this document). Given the fundamentally different statutory objectives and context, EPA disagrees with Alabama's contention that the SIL guidance is applicable in the good neighbor context.

Given the absence of technical analysis to support the use of a 1 ppb threshold under the facts and circumstances relevant to Alabama and its linked receptors, EPA proposes that the use of 1 ppb as a contribution threshold is not approvable. As discussed in Section I.D.3.of this document above, EPA no longer intends to dedicate resources to supplement State submittals with insufficient analysis in this regard and also has identified other policy and programmatic concerns with attempting to recognize alternative thresholds at Step 2 or otherwise deviating from its historical, consistent practice of applying a threshold of 1 percent of the NAAQS. EPA views the 1 percent of NAAQS threshold as the more appropriate threshold, as explained elsewhere in this document.[59] EPA's experience with the alternative Step 2 thresholds is further discussed in Section I.D.3. of this document.

3. Evaluation of Alabama's Analysis of Meteorological Influence and HYSPLIT Back Trajectories

Alabama's WOE analysis includes a HYSPLIT model back trajectory analysis to the Denton County and Harris County, Texas, receptors.[60] This HYSPLIT analysis evaluates back trajectories of 72 hours in time, for the 2018–2020 3-year period.[61] Alabama used these HYSPLIT back trajectories to emphasize the local nature of the ozone precursor emissions at the two Texas receptors.[62] However, the information provided by Alabama is not adequate to support approval of the State's implementation plan submittal on this basis.

Alabama asserts that on days when wind flow suggests that could have contributed to exceedances at the Texas monitors, the AQI indicated good or moderate air quality in Alabama. Alabama explains that in the HYSPLIT model for Harris County, during 2018–2020, only four of 31 exceedance days showed air that moved over Alabama, and in Denton County, during the same period, only three of 26 exceedance days showed air that moved over Alabama. Alabama asserts that of those days, weather patterns do not indicate that upper-level transport of emissions from Alabama would have contributed to concentrations at those monitors. Alabama thus concludes that, based on the back trajectories, monitored exceedances at the Texas receptors are locally driven. Alabama also notes that the design values for the two Texas monitors have been stagnant, while design values in Alabama continue to trend downward.

As an initial matter, the images supplied by ADEM showing a map of the south-central and southeast United States with ozone concentration gradients on specific days do not reveal any information that would call into question the results of EPA's photochemical grid modeling. These images purport to show that on days when there are high ozone levels at the receptor areas in Dallas and Houston, or in the days preceding those high-ozone events, ozone concentrations in the State of Alabama were relatively low. However, it has long been understood that ozone concentrations in downwind areas are affected not by the transport of ozone per se from upwind areas, but from ozone formed downwind from the ozone-precursor emissions, such as NO_X, in the upwind state. Thus, it is not at all unusual that an upwind source area could have relatively low ozone levels in the days preceding a high ozone event at a downwind receptor area; sources and other emissions activities in that State nonetheless may be emitting ozone-precursor emissions in amounts sufficient to contribute ozone above one percent of the NAAQS to the high-ozone event that occurs at the downwind receptor.[63]

Further, ADEM uses HYSPLIT back trajectories to purport to demonstrate that air parcels transporting from Alabama do not transect Alabama for a long enough period of time to have a meaningful impact at the downwind receptor. But once again, the data supplied by the State do not call into question the results of EPA's photochemical grid modeling. First, the back trajectories supply limited information, showing only the pathway of air currents that reach a receptor area during a high-ozone event. They do not display emissions levels in the areas traversed by and transported by those air currents. Further, the figures provided by ADEM establish that air

[57] Pursuant to section 107(d) of the CAA, EPA must designate areas as either ''nonattainment,'' ''attainment,'' or ''unclassifiable.'' During initial designations for the ozone NAAQS, EPA has designated most areas that do not meet the definition of nonattainment as ''unclassifiable/attainment'' or ''attainment/unclassifiable.'' This category includes areas that have air quality monitoring data meeting the NAAQS and areas that do not have monitors but for which EPA has no evidence that the areas may be violating the NAAQS or contributing to a nearby violation.

[58] *See* 70 FR at 25191, May 12, 2005 (''The implication of the [SIL] thresholds cited by the commenters is not that single-source contributions below these levels indicate the absence of a contribution. Rather, these thresholds address whether further, more comprehensive, multi-source review or analysis of appropriate control technology and emissions offsets are required of the source. *A source with estimated impacts below these levels is recognized as still affecting the airshed and is subject to meeting applicable control requirements, including best available control technology, designed to moderate the source's impact on air quality.*'') (emphasis added).

[59] EPA notes the explanation for how the 1 percent contribution threshold was originally derived is available in the 2011 CSAPR rulemaking. *See* 76 FR 48208, 48237–38, August 8, 2011. Further, in the CSAPR Update, EPA re-analyzed the threshold for purposes of the 2008 ozone NAAQS and determined it was appropriate to continue to apply this threshold. *See* 81 FR 74504, 74518–19, October 26, 2016.

[60] According to Alabama, the HYSPLIT analysis were generated using EPA's 2015 Ozone Designation Mapping Tool, available at *https://www.epa.gov/ozone-designations/ozone-designations-guidance-and-data#:~:text=The%20ozone%20designations%20mapping%20tool,for%20the%202015%20Ozone%20NAAQS.*

[61] *See* Attachment A of Alabama's June 21, 2022, SIP submission in Docket ID No. EPA–R04–OAR–2021–0841.

[62] *See* id.

[63] *See* Moghani, M., The effects of transport, climate, and emissions on ozone pollution in the U.S. University of Delaware Press, 2020. *https://udspace.udel.edu/handle/19716/27961*; Atkinson, R., ''Atmospheric chemistry of VOCs and NO_X. Atmospheric Environment 34 (2000) 2063–2101; National Research Council 1991. Rethinking the Ozone Problem in Urban and Regional Air Pollution. Washington, DC. The National Academies Press. *http://doi.org/10.17226/1889.*

parcels do in fact move over Alabama during meteorological patterns that result in high ozone levels at downwind receptors. In addition, the vectors of the back trajectories only show the center line of air flow. In other words, the breadth of the air currents represented by the back trajectory is much wider than the single line displayed in the images, and thus, a broader parcel of air covering a wider region can assume to be transported based on the line displayed. Thus, the back trajectories supplied by ADEM do not provide compelling evidence that EPA's photochemical grid modeling is unreliable.

D. Evaluation of Information Provided by Alabama Regarding Step 3

At Step 3 of the 4-step interstate transport framework, a State's emissions are further evaluated, in light of multiple factors, including air quality and cost considerations, to determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

To effectively evaluate which emissions in the State should be deemed ''significant'' and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. EPA has consistently applied this general approach (*i.e.,* Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be ''significant'' (or interfere with maintenance) in each of its prior Federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. *See EME Homer City,* 572 U.S. 489, 519 (2014). While EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner EPA has done in its prior regional transport rulemakings, State implementation plans addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit ''any source or other type of emissions activity within the State'' from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to EPA's analysis (or an alternative approach to defining ''significance'' that comports with the statute's objectives) to determine whether and to what degree emissions from a State should be ''prohibited'' to eliminate emissions that will ''contribute significantly to nonattainment in or interfere with maintenance of'' the NAAQS in any other State. Alabama does not include such an analysis in its SIP submission.

Alabama's SIP submission does not contain a Step 3 analysis regarding future emissions reduction opportunities beyond pointing to NO_X emission reductions from SIP-approved and Federal measures. Alabama's submission cursorily evaluates NO_X emissions from point and mobile source categories from the 2017 NEI and suggests a steep decline in the major source emissions inventory. This includes an assertion that NO_X emissions from EGUs have declined on the order of 80 percent and that an overwhelming majority of these EGUs are already fully controlled. However, these claims are not supported in the submittal with any specific timeframe or baseline from which the asserted decline in point source or mobile source emissions have been measured, or a quantitative demonstration that explains how or why the asserted decline in NO_X emission would be sufficient to eliminate Alabama's significant contribution. Alabama does not include a comprehensive accounting of facilities in the State and does not include a sufficient analysis of potential NO_X emissions control technologies, their associated costs, estimated emissions reductions, and downwind air quality improvements for the purpose of identifying what additional emission controls may be necessary to eliminate their significant contribution.

Alabama's SIP also argues that the highest NO_X emissions in the State are from mobile sources, not point sources, suggesting that ozone is created and remains locally in Alabama rather than transported to downwind states. However, these claims are not supported by any evidence. The State's back trajectories do not provide any technical demonstration that supports the claim that NO_X emissions, specifically mobile emissions, remain local (see Section III.C. of this document).

Further, Alabama asserts that since mobile source emissions are the ''highest'' source category of emissions in the State, they should be evaluated first for purposes of interstate transport. However, the State conducted no such analysis of methods or control techniques that could be used to reduce mobile source emissions in the State, instead insinuating that it cannot ''reasonably'' control mobile source emissions.[64] States do have options, however, to reduce emissions from certain aspects of their mobile source sectors, and to the extent the State is attributing its contribution to out of State receptors to its mobile sources, it could have conducted an analysis of possible programs or measures that could achieve emissions reductions from those sources. (For example, a general list of types of transportation control measures can be found in CAA section 108(f).[65]

Alabama provides information related to programs that potentially reduced NO_X emissions in the State, such as SIP-approved and State regulations, Federal programs (including the CSAPR Update), and turnover in gasoline and diesel fleets and the rise in electric vehicles. Alabama thus determined that the SIP contains adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other State. However, the State does not analyze total ozone precursors that continue to be emitted from sources and other emissions activity within the State, nor does ADEM quantify the NO_X emission reduction potential of SIP-approved regulations or Federal programs or on-the-way measures for 2023 or consider the cost-effectiveness of potential additional emissions controls, the total emissions reductions that may be achieved by requiring these controls, or the air quality impacts such emissions reductions would have on the downwind receptors to which Alabama is linked. Identifying a range of on-the-books emissions control measures that have been or may be enacted at the State or local level, without analysis of the impact of those measures on the downwind receptors, is not a sufficient analysis. Additionally, EPA's modeling already takes account of on-the-book measures. Despite these existing emissions controls, the State is projected in the most recently available modeling to be linked to at least one downwind nonattainment receptor and one maintenance receptor. The State was therefore obligated at Step 3 to

[64] *See* Alabama's WOE Analysis in the June 21, 2022, submittal (pdf p. 106), stating that ''Alabama point source NO_X emissions [are] the only emissions that Alabama can reasonably control.''

[65] In making this observation, EPA is not suggesting that mobile source emissions reductions are necessarily required to address Alabama's good neighbor obligations, but merely pointing out that if the State itself attributes the problem to mobile sources, then it is reasonable to expect that further analysis of such control strategies would be explored.

assess *additional* control measures using a multifactor analysis.

Among the Federal programs referenced in Alabama's submission was the CSAPR Update NO_X ozone season Group 2 trading program for the 2008 ozone standard, which ADEM adopted into the Alabama SIP.[66] This reference suggests that Alabama may have intended to rely on its EGUs being subject to the CSAPR Update (which reflected a stringency at the nominal marginal cost threshold of $1,400/ton (in 2011 dollars) for the 2008 8-hour ozone NAAQS) to argue that it has already implemented all cost-effective emissions reductions at EGUs.

EPA does not support the concept that reliance on the CSAPR Update is appropriate to conclude that no further emissions reductions are necessary under Step 3 for the 2015 8-hour ozone NAAQS. Relying on the CSAPR Update's (or any other CAA program's) determination of cost-effectiveness without further Step 3 analysis is not approvable. Cost-effectiveness must be assessed in the context of the specific CAA program; assessing cost-effectiveness in the context of ozone transport should reflect a more comprehensive evaluation of the nature of the interstate transport problem, the total emissions reductions available at several cost thresholds, and the air quality impacts of the reductions at downwind receptors. While EPA has not established a benchmark cost-effectiveness value for 2015 8-hour ozone NAAQS interstate transport obligations, it is reasonable to expect control measures or strategies to address interstate transport under this NAAQS to reflect higher marginal control costs because the 2015 8-hour ozone NAAQS is a more stringent and more protective air quality standard. As such, the marginal cost threshold of $1,400/ton for the CSAPR Update (which addresses the 2008 ozone 8-hour NAAQS and is in 2011 dollars) is not an appropriate cost threshold and cannot be approved as a benchmark to use for interstate transport SIP submissions for the 2015 8-hour ozone NAAQS. In addition, the updated EPA modeling captures all existing CSAPR trading programs in the baseline, and that modeling confirms that these control programs were not sufficient to eliminate Alabama's linkage at Steps 1 and 2 under the 2015 8-hour ozone NAAQS (even acknowledging that the CSAPR Update provisions have been adopted into Alabama's SIP). The State was therefore obligated at Step 3 to assess *additional* control measures using a multifactor analysis.

As mentioned above, the 2016v2 modeling on which Alabama has relied in its June 2022 submittal indicates sources in Alabama are linked to downwind air quality problems for the 2015 ozone standard. Alabama's SIP submittal does not include an accounting of emissions sources and activity in the State along with an analysis of potential NO_X emissions control technologies, their associated costs, estimated emissions reductions, and downwind air quality improvements. Nor does Alabama present an alternative approach to assess which of its emissions should be deemed ''significant.'' EPA proposes to find that Alabama's analysis is insufficient to support the State's claim that its SIP adequately prohibits emissions within Alabama in a manner sufficient to address the State's interstate transport obligations for the 2015 8-hour ozone. Therefore, EPA proposes to disapprove Alabama's August 20, 2018, interstate transport SIP submission on the separate, additional basis that the SIP submittal did not assess additional emissions control opportunities.

E. Evaluation of Information Provided by Alabama Regarding Step 4

Step 4 of the 4-step interstate transport framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned in Section III.D. of this document, Alabama's SIP submission did not contain an evaluation of additional emissions control opportunities (or establish that no additional controls are required), thus no information was provided at Step 4. As a result, EPA proposes to disapprove Alabama's August 20, 2018, submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(d)(i)(I).

The previous section explained why EPA views Alabama's analysis at Step 3 as insufficient to demonstrate that the emissions reductions it asserts have occurred or may occur are sufficient to address the State's interstate transport obligations. At Step 4, EPA finds that ADEM has also not provided SIP revisions that would ensure the reductions it claims to rely on are rendered permanent and enforceable. As just one example, while Alabama stated that mobile source emissions would decline as use of electric vehicles grows, the State cited to no State program or enforceable measures to implement such an emissions-reduction strategy. *See Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by a State to meet CAA requirements must be included in the SIP). As a result, EPA proposes to disapprove Alabama's June 21, 2022, submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(d)(i)(I).

IV. Conclusion for Alabama

Based on EPA's evaluation of Alabama's SIP submission and after consideration of updated EPA modeling using the 2016-based emissions modeling platform, EPA is proposing to find that Alabama's June 21, 2022, SIP submission addressing CAA section 110(a)(2)(D)(i)(I) does not meet the State's interstate transport obligations because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other State.

V. Proposed Action

EPA is proposing to disapprove the 2015 ozone good neighbor interstate transport SIP revision from Alabama, dated June 21, 2022. If EPA finalizes this disapproval, EPA will continue to be subject to an obligation to promulgate a FIP to address the relevant interstate transport requirements, which was triggered by the finding of failure to submit published on June 22, 2022. However, under the CAA, a good neighbor SIP disapproval does not start a mandatory sanctions clock.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

The proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

The proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

[66] *See* 81 FR 59869 (August 31, 2016), 82 FR 46674 (October 6, 2017) (adopting Alabama Administrative Code Rule 335–3–8, ''Control of Nitrogen Oxides Emissions'' and adopting revisions to Rule 335–3–8 into the SIP).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

The proposed action does not have tribal implications as specified in Executive Order 13175. The proposed action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission from Alabama as not meeting the CAA.

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

The proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this proposed action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This proposed action merely proposes to disapprove a SIP submission as not meeting the CAA.

K. CAA Section 307(b)(1)

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion whether to invoke the exception in (ii).[67]

If EPA takes final action on this proposed rulemaking, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), EPA interprets and applies section 110(a)(2)(d)(i)(I) of the CAA for the 2015 8-hour ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, EPA is applying here (and in other proposed actions related to the same obligations) the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 8-hour ozone NAAQS. EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and contributions at Steps 1 and 2 of that framework. Further, EPA proposes to determine and apply a set of nationally consistent policy judgments to apply the 4-step framework. EPA has selected a nationally uniform analytic year (2023) for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.[68] For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on one or more determinations of nationwide scope or effect for purposes of CAA section 307(b)(1).[69]

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: October 17, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–22892 Filed 10–24–22; 8:45 am]

BILLING CODE 6560–50–P

[67] In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[68] A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[69] EPA may take a consolidated, single final action on all of the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 8-hour ozone NAAQS. Should EPA take a single final action on all such disapprovals, this action would be nationally applicable, and EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2021–0361, FRL–10180–01–R2]

Approval of Air Quality Implementation Plans; New York; Fuel Composition and Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) concerning the control and reduction of sulfur and particulate matter emissions from facilities in New York State. The proposed SIP revision consists of amendments to regulations outlined within New York's Codes, Rules and Regulations (NYCRR) for sulfur in fuel limits. The intended effect of this revision is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain National Ambient Air Quality Standards (NAAQS) for fine particulate matter and sulfur dioxide emissions throughout New York State. Additionally, the proposed revisions will establish applicability criteria, composition limits and permitting requirements for waste oils; establish monitoring, recordkeeping and reporting requirements for facilities that are determined eligible to burn waste oil; and allow for the burning of waste oils in space heaters at automotive maintenance/service facilities.

DATES: Written comments must be received on or before November 25, 2022.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2021–0361, at *https://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, such as the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Nicholas Ferreira, Environmental Protection Agency, Air Programs Branch, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3127, or by email at *ferreira.nicholas@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. The EPA's Evaluation of New York's Submittal
III. Proposed Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background

The EPA is proposing to approve New York's SIP submittal consisting of revisions to Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) subpart 225–1, ''Fuel Composition and Use—Sulfur Limitations,'' which imposes limits on the sulfur content of distillate oil, residual oil, and coal fired in stationary sources and regulates the burning of waste oils in combustion, incineration, and process sources throughout New York State. In addition, the EPA is proposing to approve revisions to 6 NYCRR subpart 225–2, ''Fuel Composition and Use,'' and an attendant revision made to 6 NYCRR part 200, ''General Provisions,'' that moves the definition for ''residual oil'' from subpart 225–2, now entitled, ''Fuel Consumption and Use—Waste Oil as a Fuel,'' to part 200. The EPA is proposing to approve these revisions, requested by New York, to strengthen the effectiveness of New York's SIP.

II. The EPA's Evaluation of New York's Submittal

On August 26, 2020, the New York State Department of Environmental Conservation (NYSDEC) submitted to the EPA proposed SIP revisions to 6 NYCRR part 225, ''Fuel Composition and Use,'' subpart 225–2, now entitled, ''Fuel Composition and Use—Waste Oil as a Fuel,'' and attendant revisions to part 200, ''General Provisions,'' sections 200.1, ''Definitions,'' and section 200.9, ''Referenced material''. The attendant revisions to 6 NYCRR part 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced material,'' for 6 NYCRR subpart 225–2 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022. Additionally, on March 2, 2021, NYSDEC submitted to the EPA proposed SIP revisions to 6 NYCRR part 225, ''Fuel Composition and Use,'' subpart 225–1, ''Fuel Composition and Use—Sulfur Limitations''. Each proposed SIP revision submitted to the EPA provided supplemental materials and the NYSDEC's responses to public comments. These materials are in the EPA's docket for this proposal.

Revisions to Parts 225 and 200

The EPA is proposing to approve revisions to parts 225 and 200. The revisions to part 225 apply to fuel composition and use, and limits the sulfur content of distillate oil, residual oil, and coal fired in stationary sources and regulates the burning of waste oils in combustion, incineration, and process sources throughout New York. The EPA proposes to approve these revisions to strengthen New York's SIP.[1]

The revisions to subpart 225–1, ''Fuel Composition and Use—Sulfur Limitations,'' will add process sources and incinerators as stationary emission sources to which these revisions will apply throughout New York State. The revisions also lower the sulfur-in-fuel limit for waste oil and correct minor typographical errors. The revisions remove 6 NYCRR subdivision 225–1.3(e) which had stated that, pursuant to Section 117 of Article 5 of the Energy Law, the Governor may pre-empt the requirements of 6 NYCRR subpart 225–1 if an energy or fuel supply emergency

[1] The NYSDEC revised subpart 225–1 to impose limits on the sulfur content of distillate oil, residual oil, and coal fired in stationary source and revised subpart 225–2 which establishes applicability criteria, composition limits, and permitting requirements for waste oils; establishes monitoring, recordkeeping, and reporting requirements for facilities that are determined eligible to burn waste oil; and allows for the burning of waste oils in space heaters at automotive maintenance/service facilities. Subpart 225–2 has also been renamed ''Fuel Composition and Use—Waste Oil as Fuel''.

is declared. Finally, the revisions will remove paragraph 225–1.4(c)(2) which New York indicated, in the January 20, 2021 Notice of Adoption, was contradictory and less stringent than the sulfur-in-fuel requirements of the table in subdivision 225–1.2(b) of this subpart.

The revisions to subpart 225–2 that the EPA is proposing to approve, ''Fuel Composition and Use—Waste Oil As A Fuel,'' simplify and streamline implementation of the regulation by eliminating obsolete regulatory references; correcting typographical errors; updating the regulation's waste oil constituent limits; removing outdated work practices; expanding the number of facilities eligible to burn waste oil; updating the permitting process to include monitoring, recordkeeping, and reporting requirements, thus aligning it with part 201 and Title V criteria found in the Clean Air Act; and moving the definition of ''residual oil'' from existing subpart 225–2 to part 200. The existing SIP version of subpart 225–2 also contains references to liquid waste transportation regulations that no longer apply and need to be removed from the SIP. NYSDEC also now includes arsenic (5 ppm), cadmium (2 ppm), and chromium (10 ppm) and their corresponding limits in Table 1 of Proposed Subpart 225–2. The NYSDEC has removed the ninety-nine (99) percent combustion efficiency requirement. The revised subpart 225–2 no longer addresses the burning of chemical waste and ''off-spec'' waste oils (*i.e.,* Waste fuel B) that do not meet the limitations specified in Table 1 of existing subpart 225–2. Instead, burning chemical waste and off-spec waste oils is regulated under 6 NYCRR part 212, Process Operations or 6 NYCRR parts 370–376 as appropriate. New York State's subpart 225–2 revisions clarify the regulation's process for the burning of waste oil while removing the term ''waste fuel.''

III. Proposed Action

The EPA proposes to approve the revisions to 6 NYCRR subpart 225–2, ''Fuel Composition and Use,'' attendant revisions to part 200, ''General Provisions,'' section 200.1, ''Definitions,'' and revisions to 6 NYCRR part 225, ''Fuel Consumption and Use,'' subpart 225–1, ''Fuel Composition and Use—Sulfur Limitations'', with State effective dates of April 2, 2020 (subpart 225–2 and section 200.1) and February 4, 2021 (part 225–1), into New York's SIP, in order to strengthen enforcement of the State's air pollution control regulations. The attendant revisions to 6 NYCRR part 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced material,'' for 6 NYCRR subpart 225–2 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022. The EPA is soliciting public comments on the issues discussed in this proposed rulemaking action. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to 6 NYCRR part 225, ''Fuel Composition and Use,'' subpart 225–2, ''Fuel Composition and Use,'' attendant revisions to part 200, ''General Provisions,'' section 200.1, ''Definitions,'' and 6 NYCRR part 225, ''Fuel Composition and Use,'' subpart 225–1, ''Fuel Composition and Use—Sulfur Limitations,'' as described in Section II. and III. of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2022–22400 Filed 10–24–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[RTID 0648–BL75]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Announcement of the availability of a proposed fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council submitted Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan to the Secretary of Commerce for review and approval. We are requesting comments from the public on this amendment in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. This amendment would implement a revised Atlantic mackerel rebuilding plan and the 2023 Atlantic mackerel specifications, including a 20-fish per person recreational possession limit. The purpose of this action is to rebuild the mackerel stock with appropriate measures so that optimum yield can be achieved on an ongoing basis.

DATES: Comments must be received on or before December 27, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0098, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0098 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Mid-Atlantic Council prepared an environmental assessment (EA) for Amendment 23 that describes the proposed action and provides an analysis of the impacts of the proposed measures and other alternatives considered. Copies of Amendment 23, including the EA, the Regulatory Impact Review, and the Regulatory Flexibility Act analysis, are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The EA and associated analysis is accessible via the internet *http://www.mafmc.org/supporting-documents*.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, 978–281–9150.

SUPPLEMENTARY INFORMATION:

Background

Atlantic mackerel recruitment has been declining since 1999 and has been below the long-term average since 2009. On November 29, 2019 (84 FR 58053), NMFS implemented a 5-year Atlantic mackerel rebuilding plan. At its July 2021 meeting, the Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) reviewed the 2021 Atlantic mackerel management track assessment results, which concluded that Atlantic mackerel remains overfished and overfishing is occurring. This management track assessment also determined that due to previous assumptions about potential recruitment that did not come to fruition, the original rebuilding plan no longer provides a realistic rebuilding approach. Stock biomass is estimated to have nearly tripled in size from 2014 to 2019 (from approximately 8 percent to 24 percent of a fully rebuilt Atlantic mackerel stock), but full rebuilding on the original schedule by 2023 now appears impossible; the stock is expected to be less than half rebuilt by 2023.

Amendment 23 is intended to implement a revised Atlantic mackerel rebuilding plan to fully rebuild the stock within 10 years (*i.e.,* 2032) and prevent overfishing by incorporating the findings from the 2021 Atlantic mackerel management track assessment. The proposed rebuilding plan assumes that recruitment starts low (similar to recruitment from 2009 to present) and then increases toward long-term typical recruitment as the stock rebuilds. This plan also assumes a fishing mortality rate of 0.12, which is predicted to have a 61 percent probability of rebuilding the Atlantic mackerel stock in 10 years. This action would set the overall rebuilding plan and the acceptable biological catch (ABC) for 2023 of 8,094 mt (metric tons). This rebuilding plan would also project the ABCs for the following years, but the ABC will be revisited each year during future specification setting.

Additionally, Amendment 23 proposes the 2023 Atlantic mackerel specifications and following measures, which are outlined in further detail in the EA prepared for this action (see **ADDRESSES**):

- An ABC deduction of 2,197 mt to account for Canadian catch of the Atlantic mackerel stock;
- An ABC deduction of 2,143 mt to account for recreational catch;
- An estimated ABC deduction of 115 mt to account for commercial discards;
- A revised commercial fishery closure approach where before May 1, the directed commercial fishery would close with 886 mt of the quota remaining, and after May 1, the directed commercial fishery would close with 443 mt of the quota remaining which would result in reduced trip limits of 40,000 lb (18.14 mt) for Tier 1, 2, and 3 moratorium permits and 5,000 lb (2.27 mt) for open access permits;
- A final directed commercial fishery closure when 100 mt of the quota remains which would result in a reduced possession limit of 5,000 lb (2.27 mt) for all permits;
- A 20-fish per person recreational possession limit; and
- A status quo river herring and shad catch cap of 129 mt.

In accordance with section 304(a)(1) of the Magnuson-Stevens Act, we are soliciting public comments on Amendment 23 to the Mackerel, Squid, and Butterfish FMP and its incorporated documents through the end of the comment period specified in the **DATES** section of this notice of availability (NOA). Under this provision of the Magnuson-Stevens Act (section 304(a)(3)), the Secretary may approve, partially approve, or disapprove the amendment as submitted by the Council based on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. As such, we are seeking comment on whether measures in Amendment 23 to the Mackerel, Squid, and Butterfish FMP are consistent with the Mackerel, Squid,

and Butterfish FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. All comments received by the end of the comment period of the NOA will be considered in the approval/disapproval decision on the amendment. Comments received after the end of the comment period for the NOA will not be considered in the approval/disapproval decision.

A proposed rule to implement the amendment, including draft regulatory text, will also be published in the **Federal Register** for public comment. Public comments on the proposed rule received before the end of the comment period provided in this NOA will be considered in the approval/disapproval decision on the amendment. All comments received by December 27, 2022, whether specifically directed to Amendment 23 to the Mackerel, Squid, and Butterfish FMP or the proposed rule for this amendment, will be considered in the approval/disapproval decision on the amendment. Comments received after that date will not be considered in the decision to approve or disapprove the amendment. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: October 19, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–23104 Filed 10–24–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 87, No. 205

Tuesday, October 25, 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

Food Safety and Inspection Service

[Docket No. FSIS–2022–0028]

Notice of Request for Revision of an Approved Information Collection (In-Home Food Safety Behaviors and Consumer Education: Web-Based Survey)

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the FSIS is announcing its intention to request a revision of the approved information for an exploratory Web-based survey of consumers to evaluate food safety education and communication activities and to inform the development of food safety communication products. The revision is requested because the survey content has been modified to collect additional information on consumer awareness and understanding of Safe Handling Instructions and the USDA mark of inspection, food safety knowledge, food safety risk perceptions, preferences for receiving food safety information from FSIS, and perceptions of USDA. The approval for this information collection will expire on October 31, 2023.

DATES: Submit comments on or before November 25, 2022.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2022–0028. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202)205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: In-Home Food Safety Behaviors and Consumer Education: Web-Based Survey.

OMB Number: 0583–0178.

Expiration Date of Approval: 10/31/2023.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged.

FSIS' Office of Public Affairs and Consumer Education (OPACE) develops consumer education programs concerning the safe handling, preparation, and storage of meat, poultry, and egg products, to improve consumer food handling behaviors and minimize the incidence of foodborne illness. OPACE shares its messages through social media, the Meat and Poultry Hotline and Ask USDA (an online database of frequently asked food safety questions), the FSIS website, *FoodSafety.gov*, publications, and events. These messages are focused on the four core food safety behaviors: clean, separate, cook, and chill.

By testing planned and tailoring existing communication programs and materials, FSIS can ensure that it is effectively communicating with the public to improve consumer food safety practices. As part of ongoing activities by OPACE to develop and evaluate its public health education and communication activities, FSIS is requesting a revision of the approved information collection to conduct exploratory Web-based surveys of consumers. Findings from these surveys will provide information about how FSIS communication programs and materials affect consumer understanding of recommended safe food handling practices, as well as insight into how to effectively inform consumers about recommended practices. The findings will be used to enhance communication programs and materials to improve consumers' food safety behaviors and help prevent foodborne illness. Additionally, this research will provide useful information for tracking progress toward the goals outlined in the FSIS Strategic Plan.

FSIS contracted with an independent consulting firm to conduct two iterations of a web-based survey. The first survey was conducted in Fiscal Year (FY) 2019 and the second survey will be conducted in FY 2023. Each iteration of the exploratory survey is designed to collect information from 2,400 English-speaking adult members of a Web-enabled research panel maintained by a subcontractor. A pilot will be conducted before the survey to test the survey instrument and procedures.

The first iteration of the survey collected information on consumer use of and response to the Meat and Poultry Hotline, consumer awareness of The Food Safe Families campaign, and consumer behaviors for preparing raw meat and poultry products. The second

iteration of the survey will collect information on consumer awareness and understanding of Safe Handling Instructions and the USDA mark of inspection, food safety knowledge, food safety risk perceptions, preferences for receiving food safety information from FSIS, and perceptions of USDA.

Estimate of Burden: The total estimated burden for each iteration of the survey is 978.2 hours, for a total burden of 1,956.4 hours. To achieve 80 completed surveys during the pretest, 146 panel members will be invited via email to take the survey. To achieve 2,400 completed surveys during the full-scale study, 4,400 panel members will be invited via email to take the survey. Therefore, a total of 4,546 (146 + 4,400) will be invited to participate in both the pretest and the full-scale study for each iteration of the survey. The invitation email for the pretest and the full-scale survey is expected to take 2 minutes (0.03333 hour). Each survey is expected to take 20 minutes (0.33333 hours) to complete.

ESTIMATED ANNUAL REPORTING BURDEN FOR THE FY 2019 WEB-BASED CONSUMER SURVEY

Study component	Estimated number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Pretest Invitation	146	1	146	0.03333(2 min.)	4.87
Pretest [1]	80	1	80	0.03333(20 min.)	26.67
Survey Invitation	4,400	1	4,400	0.03333(2 min.)	146.67
Survey [1]	2,400	1	2,400	0.03333(20 min.)	800
Total	4,546				978.2

[1] A subset of the people who received the invitation.

ESTIMATED ANNUAL REPORTING BURDEN FOR THE FY 2023 WEB-BASED CONSUMER SURVEY

Study component	Estimated number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Pretest Invitation	146	1	146	0.03333(2 min.)	4.87
Pretest [1]	80	1	80	0.03333(20 min.)	26.67
Survey Invitation	4,400	1	4,400	0.03333(2 min.)	146.67
Survey [1]	2,400	1	2,400	0.03333(20 min.)	800
Total	4,546				978.2

[1] A subset of the people who received the invitation.

Respondents: Consumers.

Estimated No. of Respondents: 9,092.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Burden on Respondents: 1,956.4 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a)whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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(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.*

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Paul Kiecker,

Administrator.

[FR Doc. 2022–23108 Filed 10–24–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2135]

Designation of New Grantee, Foreign-Trade Zone 123, Denver, Colorado

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (docketed August 18, 2022) submitted by the City and County of Denver, grantee of FTZ 123, requesting reissuance of the grant of authority for said zone to the Rocky Mountain Word Trade Center Association d/b/a World Trade Center Denver, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the Rocky Mountain Word Trade Center Association d/b/a World Trade Center Denver as the new grantee for Foreign-Trade Zone 123, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: October 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2022–23219 Filed 10–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Claudia Delgadillo, 3325 Duranzo Avenue, El Paso, Texas 79905

On October 9, 2019, in the U.S. District Court for the Western District of Texas, Claudia Delgadillo (''Delgadillo'') was convicted of violating 18 U.S.C. 554(a). Specifically, Delgadillo was convicted of knowingly and willfully combining, conspiring, confederating and agreeing with others to knowingly and unlawfully conceal, buy, and facilitate the transportation and concealment of various rifles and handguns, knowing they were to be exported from the United States to Mexico. As a result of her conviction, the Court sentenced Delgadillo to 48 months in prison, three years of supervised release and a $100 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Delgadillo's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Delgadillo to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Delgadillo.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Delgadillo's export privileges under the Regulations for a period of 10 years from the date of Delgadillo's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Delgadillo had an interest at the time of her conviction.[3]

Accordingly, it is hereby Ordered:

First, from the date of this Order until October 9, 2029, Claudia Delgadillo, with a last known address of 3325 Duranzo Avenue, El Paso, Texas 79905, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Delgadillo by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Delgadillo may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Delgadillo and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 9, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–23181 Filed 10–24–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on uncovered innerspring units (innersprings) from the People's Republic of China (China). The period of review (POR) is February 1, 2021, through January 31, 2022. Commerce preliminarily determines that the two companies under review, Bomei Tex Ltd. (Bomei) and Saffron Living Co., Ltd. (Saffron Living), are part of the China-wide entity. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on innersprings from China for the POR.[1] On April 12, 2022, in response to a timely request from Leggett & Platt, Incorporated (the petitioner),[2] and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* with respect to Bomei and Saffron Living.[3]

On April 21, 2022, we provided U.S. Customs and Border Protection (CBP) entry data under administrative protective order (APO) to all interested parties having APO access and invited parties to submit comments by April 28, 2022.[4] No party filed comments. The deadline for interested parties to submit a no-shipment certification, separate rate application (SRA), or separate rate certification (SRC) was May 12, 2022.[5] No party submitted a no-shipment certification, SRA, or SRC.

Scope of the Order

The merchandise subject to the *Order* is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 7112 (February 8, 2022); *see also Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009) (*Order*).

[2] *See* Petitioner's Letter, ''Request for 2021–2022 Antidumping Duty Administrative Review,'' dated February 28, 2022.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 21619 (April 12, 2022). (*Initiation Notice*).

[4] *See* Memorandum, ''U.S. Customs and Border Protection Data Query,'' dated April 21, 2022.

[5] *See Initiation Notice,* 87 FR at 21619–20 (''With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. . . . Separate Rate Certifications . . . {and} . . . Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice.'').

covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 9404.29.9005, 9404.29.9011, 7326.20.0070, 7326.20.0090, 7320.20.5010, 7320.90.5010, or 7326.20.0071 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the *Order* is dispositive.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Act and 19 CFR 351.213.

Preliminary Results of Review

The companies subject to this review, *i.e.,* Bomei and Saffron Living, did not file no-shipment certifications, SRAs, or SRCs. Thus, Commerce preliminarily determines that these companies have not demonstrated their eligibility for separate rate status. As such, Commerce also preliminarily determines that the companies are part of the China-wide entity.

In addition, Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative review.[6] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[7] In this administrative review, no party requested a review of the China-wide entity and we have not self-initiated a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity's entries are not subject to the review and the rate applicable to the NME entity is not subject to change as a result of this review. The China-wide entity rate is 234.51 percent.[8]

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs, filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review. ACCESS is available to registered users at *https://access.trade.gov.* Rebuttal briefs, limited to issues raised in the case briefs, must be filed within seven days after the time limit for filing case briefs.[9] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.[10] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until further notice.[11]

Interested parties who wish to request a hearing must submit a written request to Commerce within 30 days of the date of publication of this notice.[12] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held.[13]

Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP will assess, antidumping duties on all appropriate entries covered by this review.[14] If these preliminary results are unchanged for the final results of review, we intend to instruct CBP to liquidate entries of subject merchandise exported by Bomei and Saffron Living at the China-wide entity rate of 234.51 percent.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate (including Bomei and Saffron Living), the cash deposit rate will be the China-wide rate of 234.51 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of

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[6] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Non-Market Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[7] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their requests.

[8] *See Order,* 74 FR at 7662.

[9] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[10] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule.*

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 310(d).

[14] *See* 19 CFR 351.212(b)(1).

the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: October 18, 2022.

Lisa W. Wang,

Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2022–23137 Filed 10–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–803]

Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on light-walled welded rectangular carbon steel tubing (LWR tubing) from Taiwan would be likely to lead to continuation or recurrence of dumping at the level indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Claudia Cott, 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) 482–4270.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1989, Commerce published its AD order on LWR tubing from Taiwan.[1] On August 9, 2017, Commerce published the most recent continuation notice of the *Order*.[2] On July 1, 2022, Commerce published the notice of initiation of the five-year sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received notices of intent to participate in this sunset review from the domestic interested parties[4] within 15 days after the date of publication of the *Initiation Notice*.[5] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.[6]

Commerce received an adequate joint substantive response to the *Initiation Notice* from domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[7] Commerce received no substantive responses from any other interested parties. On August 23, 2022, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from other interested parties.[8] As a result, in accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited, *i.e.,* 120-day sunset review of the *Order.*

Scope of the Order

The products covered by the order are LWR tubing of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch. This merchandise is classified under subheading 7306.61.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). It was formerly classified under HTSUS subheading 7306.60.5000. The HTSUS subheadings are provided for convenience and customs purposes only. The written product description remains dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[9]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as 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.*

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be at a rate up to 40.97 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: October 20, 2022.

Lisa W. Wang,

Assistant Secretary, for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping

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[1] *See Antidumping Duty Order; Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan,* 54 FR 12467 (March 27, 1989) (*Order*).

[2] *See Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan: Continuation of Antidumping Duty Order,* 82 FR 37193 (August 9, 2017).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 39459 (July 1, 2022) (*Initiation Notice*).

[4] There are six domestic interested producers of LWR tubing: Atlas Tube (a division of Zekelman Industries); Bull Moose Tube Company (Bull Moose); California Steel and Tube; Maruichi American Corporation (Maruichi); Nucor Tubular Products, Inc. (Nucor Tubular); and Searing Industries, Inc. (Searing) (hereinafter referred to as domestic interested parties).

[5] *See* Atlas Tube, Bull Moose, California Steel and Tube, Maruichi and Searing's Letter, ''Fifth Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Welded Carbon Steel Pipe and Tube from Taiwan: Notice of Intent to Participate,'' dated July 15, 2022; *see also* Nucor Tubular's Letter, ''Light-Walled Rectangular Welded Carbon Steel Pipe and Tube from Taiwan: Notice of Intent to Participate in Sunset Review,'' dated July 18, 2022.

[6] *Id.*

[7] *See* Domestic Interested Parties' Letter, ''Light-Walled Rectangular Welded Carbon Steel Pipe and Tube from Taiwan: Substantive Response to Notice of Initiation,'' dated August 1, 2022 (Domestic Interested Parties' Substantive Response).

[8] *See* Commerce's Letter, ''Sunset Reviews for July 1, 2022,'' dated August 23, 2022.

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

2. Magnitude of Margin of Dumping Likely To Prevail
VII. Final Results of Expedited Sunset Review
VIII. Recommendation

[FR Doc. 2022–23218 Filed 10–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that two exporters of certain frozen warmwater shrimp (shrimp) from the People's Republic of China (China) under review had no shipments of subject merchandise during the period of review (POR) February 1, 2021, through January 31, 2022. Commerce also preliminarily determines that the 134 remaining companies subject to this review are part of the China-wide entity because they did not demonstrate their eligibility for separate rates.

DATES: Applicable October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Eric Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1988.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, Commerce published in the **Federal Register** the antidumping duty order on shrimp from China.[1] On February 8, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On April 12, 2022, based on timely requests for an administrative review, Commerce initiated the administrative review with respect to 136 exporters.[3] Subsequently, we released U.S. Customs and Border Protection (CBP) data to interested parties for comment.[4] We received timely comments from the Ad Hoc Shrimp Trade Action Committee (AHSTAC) and the American Shrimp Processors Association (ASPA).[5]

On May 11 and 12, 2022, we received timely no-shipment certifications from two companies.[6] We did not receive a no-shipment statement, separate rate application (SRA), or separate rate certification (SRC) from any other company subject to this review. For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[7] A list of topics discussed in the Preliminary Decision Memorandum is included at Appendix III to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The scope of the *Order* includes certain frozen warmwater shrimp and prawns, whether wild caught (ocean harvested) or farm raised (produced by aquaculture), head on or head off, shell on or peeled, tail on or tail off,[8] deveined or not deveined, cooked or raw, or otherwise processed in frozen form. A complete description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213.

Preliminary Determination of No Shipments

Based upon the no-shipment certifications received by Commerce, and our review of the CBP data, we preliminary find that two companies had no shipments during the POR. Commerce requested that CBP confirm whether any shipments of subject merchandise entered the United States during the POR with respect to the two companies that submitted no shipment claims.[9] CBP responded that it has no record of any subject entries for these two inquiries.[10] For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with our assessment in non-market economy administrative reviews,[11] Commerce is not rescinding this review for these two companies.[12] Commerce intends to complete this review and issue appropriate instructions to CBP based on the final results of this review.

Separate Rates

Because the other 134 companies under review did not submit a no-shipment certification, SRA, or SRC, Commerce preliminarily determines that these companies have not demonstrated their eligibility for separate rates.[13] For additional

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[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China,* 70 FR 5149 (February 1, 2005) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 7112 (February 8, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 21619 (April 12, 2022).

[4] *See* Memorandum, ''Release of U.S. Customs and Border Protection Data,'' dated April 13, 2022.

[5] *See* AHSTAC's Letter, ''Certain Frozen Warmwater Shrimp from India, Thailand, the Socialist Republic of Vietnam, and the People's Republic of China: Domestic Producers' Comments Regarding CBP Data and Respondent Selection,'' dated April 14, 2022; *see also* ASPA's Letter, ''Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from the People's Republic of China (POR 17: 02/01/21–01/31/2022): Comments on Respondent Selection and CBP Data,'' dated April 20, 2022.

[6] We received timely no-shipment certifications from Zhangzhou Hongwei Foods Co., Ltd.; and Zhanjiang Regal Integrated Marine Resources Co., Ltd. (Zhanjiang Regal). Zhanjiang Regal is excluded from the *Order* with respect to merchandise manufactured and exported by Zhanjiang Regal. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011–2012,* 78 FR 56209, 56210 (September 12, 2013). Zhanjiang Regal submitted a no-shipment certification for exports outside the above combination.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[9] *See* CBP Message 2138420, ''No Shipment Inquiry for Zhangzhou Hongwei Foods Co., Ltd. During the Period 02/01/2021 through 1/31/2022,'' dated May 18, 2022; *see also* CBP Message 2138426, ''No Shipment Inquiry for Zhanjiang Regal Integrated Marine Resources Co., Ltd. During the Period 02/01/2021 through 1/31/2022,'' dated May 18, 2022.

[10] *See* Memorandum, ''Certain Frozen Warmwater Shrimp from the People's Republic of China; No Shipment Inquiries for Zhangzhou Hongwei Foods Co., Ltd. and Zhanjiang Regal Integrated Marine Resources Co., Ltd. During the Period 02/01/2021 through 01/31/2022,'' dated May 25, 2022.

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011); *see also* ''Assessment Rate'' section, *infra.*

[12] *See* Appendix II.

[13] *See* Appendix I.

information, *see* the Preliminary Decision Memorandum.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[14] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the China-wide entity.[15] Because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review and the China-wide entity's rate (*i.e.,* 112.81 percent) is not subject to change.[16] For additional information, *see* the Preliminary Decision Memorandum.

Public Comment

In accordance with 19 CFR 351.309(c), case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[17] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[18]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to those issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[19] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. An electronically filed hearing request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[20] We have not calculated any assessment rates in this administrative review. Based on record evidence, we have preliminarily determined that two companies had no shipments of subject merchandise and, therefore, pursuant to Commerce's assessment practice, any suspended entries that entered under their case numbers, where available, will be liquidated at the China-wide entity rate.[21] For all remaining companies subject to this review, which are part of the China-wide entity, we will instruct CBP to liquidate their entries at the current rate for the China-wide entity (*i.e.,* 112.81 percent). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the two companies that had no shipments during the POR will remain unchanged from the rates assigned to them in the most recently completed segment for each company; (2) for previously investigated or reviewed Chinese and non-Chinese exporters that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 112.81 percent); and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a 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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act, and 19 CFR 351.213(h)(1).

Dated: October 19, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

Companies Not Eligible for a Separate Rate

1. Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd./Allied Pacific Food (Dalian) Co., Ltd.
2. Anhui Fuhuang Sungem Foodstuff Group Co., Ltd.
3. Asian Seafoods (Zhanjiang) Co., Ltd.
4. Beihai Anbang Seafood Co., Ltd.
5. Beihai Boston Frozen Food Co., Ltd.
6. Beihai Evergreen Aquatic Product Science and Technology Company Limited
7. Beihai Tianwei Aquatic Food Co. Ltd.
8. Changli Luquan Aquatic Products Co., Ltd.
9. Chengda Development Co Ltd.

[14] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[15] *Id.*

[16] *See Order,* 83 FR at 512.

[17] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[18] *See Temporary Rule Modifying AD/CVD Service Requirements Due to Covid–19, Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[19] *See* 19 CFR 351.310(d).

[20] *See* 19 CFR 351.212(b)(1).

[21] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

10. Colorful Bright Trade Co., Ltd.
11. Dalian Beauty Seafood Company Ltd.
12. Dalian Changfeng Food Co., Ltd.
13. Dalian Guofu Aquatic Products and Food Co., Ltd.
14. Dalian Haiqing Food Co., Ltd.
15. Dalian Hengtai Foods Co., Ltd.
16. Dalian Home Sea International Trading Co., Ltd.
17. Dalian Philica International Trade Co., Ltd.
18. Dalian Philica Supply Chain Management Co., Ltd.
19. Dalian Rich Enterprise Group Co., Ltd.
20. Dalian Shanhai Seafood Co., Ltd.
21. Dalian Sunrise Foodstuffs Co., Ltd.
22. Dalian Taiyang Aquatic Products Co., Ltd.
23. Dandong Taihong Foodstuff Co., Ltd.
24. Dongwei Aquatic Products (Zhangzhou) Co., Ltd.
25. Ferrero Food
26. Fujian Chaohui Group
27. Fujian Chaowei International Trading
28. Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.
29. Fujian Dongwei Food Co., Ltd.
30. Fujian Dongya Aquatic Products Co., Ltd.
31. Fujian Fuding Seagull Fishing Food Co., Ltd.
32. Fujian Haihun Aquatic Product Company
33. Fujian Hainason Trading Co., Ltd.
34. Fujian Hongao Trade Development Co.
35. Fujian R & J Group Ltd.
36. Fujian Rongjiang Import and Export Co., Ltd.
37. Fujian Zhaoan Haili Aquatic Co., Ltd.
38. Fuqing Chaohui Aquatic Food Co., Ltd.
39. Fuqing Dongwei Aquatic Products Industry Co., Ltd.
40. Fuqing Longhua Aquatic Food Co., Ltd.
41. Fuqing Minhua Trade Co., Ltd.
42. Fuqing Yihua Aquatic Food Co., Ltd.
43. Gallant Ocean Group
44. Guangdong Foodstuffs Import & Export (Group) Corporation
45. Guangdong Gourmet Aquatic Products Co., Ltd.
46. Guangdong Jinhang Foods Co., Ltd.
47. Guangdong Rainbow Aquatic Development
48. Guangdong Shunxin Marine Fishery Group Co., Ltd.
49. Guangdong Taizhou Import & Export Trade Co., Ltd.
50. Guangdong Universal Aquatic Food Co. Ltd.
51. Guangdong Wanshida Holding Corp.
52. Guangdong Wanya Foods Fty. Co., Ltd.
53. HaiLi Aquatic Product Co., Ltd.
54. Hainan Brich Aquatic Products Co., Ltd.
55. Hainan Golden Spring Foods Co., Ltd.
56. Hainan Qinfu Foods Co., Ltd.
57. Hainan Xintaisheng Industry Co., Ltd.
58. Huazhou Xinhai Aquatic Products Co. Ltd.
59. Kuehne Nagel Ltd. Xiamen Branch
60. Leizhou Bei Bu Wan Sea Products Co., Ltd.
61. Longhai Gelin Foods Co., Ltd.
62. Maoming Xinzhou Seafood Co., Ltd.
63. New Continent Foods Co., Ltd.
64. Ningbo Prolar Global Co., Ltd.
65. North Seafood Group Co.
66. Pacific Andes Food Ltd.
67. Penglai Huiyang Foodstuff Co., Ltd.
68. Penglai Yuming Foodstuff Co., Ltd.
69. Qingdao Fusheng Foodstuffs Co., Ltd.
70. Qingdao Yihexing Foods Co., Ltd.
71. Qingdao Yize Food Co., Ltd.
72. Qingdao Zhongfu International
73. Qinhuangdao Gangwan Aquatic Products Co., Ltd.
74. Raoping YuXiang Aquaculture Co., Ltd.
75. Rizhao Meijia Aquatic Foodstuff Co., Ltd.
76. Rizhao Meijia Keyuan Foods Co. Ltd.
77. Rizhao Rongjin Aquatic
78. Rizhao Rongxing Co. Ltd.
79. Rizhao Smart Foods Company Limited
80. Rongcheng Sanyue Foodstuff Co., Ltd.
81. Rongcheng Yinhai Aquatic Product Co., Ltd.
82. Rushan Chunjiangyuan Foodstuffs Co., Ltd.
83. Rushan Hengbo Aquatic Products Co., Ltd.
84. Savvy Seafood Inc.
85. Sea Trade International Inc.
86. Shanghai Finigate Integrated
87. Shanghai Zhoulian Foods Co., Ltd.
88. Shantou Freezing Aquatic Product Foodstuffs Co.
89. Shantou Haili Aquatic Product Co. Ltd.
90. Shantou Haimao Foodstuff Factory Co., Ltd.
91. Shantou Jiazhou Food Industrial Co., Ltd.
92. Shantou Jinping Oceanstar Business Co., Ltd.
93. Shantou Jintai Aquatic Product Industrial Co., Ltd.
94. Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.
95. Shantou Ocean Best Seafood Corporation
96. Shantou Red Garden Food Processing Co., Ltd./Shantou Red Garden Foodstuff Co., Ltd.
97. Shantou Ruiyuan Industry Co., Ltd.
98. Shantou Wanya Foods Fty. Co., Ltd.
99. Shantou Yuexing Enterprise Company
100. Shengyuan Aquatic Food Co., Ltd.
101. Suizhong Tieshan Food Co., Ltd.
102. Thai Royal Frozen Food Zhanjiang Co., Ltd.
103. Tongwei Hainan Aquatic Products Co., Ltd.
104. Time Seafood (Dalian) Company Limited
105. Xiamen East Ocean Foods Co., Ltd.
106. Xiamen Granda Import and Export Co., Ltd.
107. Yangjiang Dawu Aquatic Products Co., Ltd.
108. Yangjiang Guolian Seafood Co., Ltd.
109. Yangjiang Haina Datong Trading Co.
110. Yantai Longda Foodstuffs Co., Ltd.
111. Yantai Tedfoods Co., Ltd.
112. Yantai Wei-Cheng Food Co., Ltd.
113. Yixing Magnolia Garment Co., Ltd.
114. Zhangzhou Donghao Seafoods Co., Ltd.
115. Zhangzhou Fuzhiyuan Food Co., Ltd.
116. Zhangzhou Tai Yi Import & Export Trading Co., Ltd.
117. Zhangzhou Xinhui Foods Co., Ltd.
118. Zhangzhou Xinwanya Aquatic Product Co., Ltd.
119. Zhangzhou Yanfeng Aquatic Product & Foodstuff Co., Ltd.
120. Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.
121. Zhanjiang Fuchang Aquatic Products Co., Ltd.
122. Zhanjiang Fuchang Aquatic Products Freezing Plant
123. Zhanjiang Go-Harvest Aquatic Products Co., Ltd.
124. Zhanjiang Guolian Aquatic Products Co., Ltd.
125. Zhanjiang Longwei Aquatic Products Industry Co., Ltd.
126. Zhanjiang Universal Seafood Corp.
127. Zhaoan Yangli Aquatic Co., Ltd.
128. Zhejiang Evernew Seafood Co.
129. Zhejiang Xinwang Foodstuffs Co., Ltd.
130. Zhenye Aquatic (Huilong) Ltd.
131. Zhoushan Genho Food Co., Ltd.
132. Zhoushan Green Food Co., Ltd.
133. Zhoushan Haizhou Aquatic Products
134. Zhuanghe Yongchun Marine Products

Appendix II

Companies Preliminarily Found to Have No Shipments

1. Zhangzhou Hongwei Foods Co., Ltd.
2. Zhanjiang Regal Integrated Marine Resources Co., Ltd.

Appendix III

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–146]

Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 18, 2022.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280.

SUPPLEMENTARY INFORMATION:

The Petition

On September 28, 2022, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain freight rail couplers and parts thereof (freight rail couplers) from the People's Republic of China (China) filed in proper form on behalf of the Coalition of Freight Coupler Producers (the

petitioner).[1] The Petition was accompanied by antidumping duty (AD) petitions concerning imports of freight rail couplers from China and Mexico.[2]

Between September 30 and October 7, 2022, Commerce requested supplemental information pertaining to certain aspects of the Petition in separate supplemental questionnaires.[3] On October 4, 6, and 11, 2022, the petitioner filed timely responses to these requests for additional information.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of freight rail couplers in China and that such imports are materially injuring, or threatening material injury to, the domestic industry producing in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is supported by information reasonably available to the petitioner.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(F) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[5]

Period of Investigation

Because the Petition was filed on September 28, 2022, the period of investigation is January 1, 2021, through December 31, 2021.[6]

Scope of the Investigation

The products covered by this investigation are certain freight rail couplers and parts thereof from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

On September 30 and October 7, 2022, Commerce requested information from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On October 4 and 11, 2022, the petitioner revised the scope.[8] The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on November 7, 2022. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 17, 2022, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's (E&C) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the Petition.[12] The GOC requested consultations,[13] which were held via video conference on October 17, 2022.[14]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the

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[1] *See* Petitioner's Letter, ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated September 28, 2022 (Petition). The members of the Coalition of Freight Coupler Producers are McConway & Torley LLC and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and Mexico: Supplemental Questions,'' dated September 30, 2022 (Commerce's First General Issues Supplemental); and ''Petition for the Imposition of Countervailing Duties on Imports of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Supplemental Questions,'' dated October 3, 2022; *see also* Memorandum, ''Phone Call with Counsel to the Petitioner,'' dated October 7, 2022 (Commerce's Second General Issues Supplemental).

[4] *See* Petitioner's Letters, ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Response to Supplemental Questions for Volume I Common Issues and Injury Petition,'' dated October 4, 2022 (First General Issues Supplement); ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Petitioner's Supplemental Questionnaire Response,'' dated October 6, 2022; and ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Response to Second Supplemental Questions for Volume I Common Issues and Injury Petition,'' dated October 11, 2022 (Second General Issues Supplement).

[5] *See* section on ''Determination of Industry Support for the Petition,'' *infra.*

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* Commerce's First General Issues Supplemental at 3–4; *see also* Commerce's Second General Issues Supplemental at 1–2.

[8] *See* First General Issues Supplement at 1–3 and Exhibit I–Supp–I; *see also* Second General Issues Supplement at 2 and Exhibit I–Supp2–4.

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* Commerce's Letter, Consultations with the GOC, dated October 6, 2022.

[13] *See* GOC's Letter, ''Request for Consultation to Discuss the Countervailing Duty Investigation Petition,'' dated October 11, 2022.

[14] *See* Memorandum, ''Consultations with Officials from the Government of the People's Republic of China (China),'' dated October 17, 2022.

petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[15] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[16]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[17] Based on our analysis of the information submitted on the record, we have determined that freight rail couplers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[18]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production and compared this to the estimated total 2021 production of the domestic like product for the entire U.S. industry.[19] We relied on data provided by the petitioner for purposes of measuring industry support.[20]

Our review of the data provided in the Petition, the First General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[21] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[22] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[23] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[24] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[25]

Injury Test

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[26]

The petitioner contends that the industry's injured condition is illustrated by a significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; declines in production, U.S. shipments, and capacity utilization; decline in employment; and decline in financial performance.[27] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[28]

Initiation of CVD Investigation

Based upon our examination of the Petition and supplemental responses,

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[15] *See* section 771(10) of the Act.

[16] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[17] *See* Petition at Volume I (17–21 and Exhibit I–19); *see also* First General Issues Supplement at 8–9.

[18] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* CVD Investigation Initiation Checklist, ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China,'' dated concurrently with this notice (China CVD Initiation Checklist), at Attachment II (Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and Mexico).

[19] *See* Petition at Volume I (4–5 and Exhibits I–5 and I–18); *see also* First General Issues Supplement at 4–8 and Exhibits I–Supp–2 and I–Supp–3.

[20] *See* Petition at Volume I (4–5 and Exhibits I–5 and I–18); *see also* First General Issues Supplement at 4–8 and Exhibits I–Supp–2 and I–Supp–3.

[21] *See* Petition at Volume I (3–5 and Exhibits I–1 through I–3, I–5, and I–18); *see also* First General Issues Supplement at 4–8 and Exhibits I–Supp–2 through I–Supp–4. For further discussion, *see* Attachment II of the China CVD Initiation Checklist.

[22] *See* China CVD Initiation Checklist at Attachment II; *see also* section 702(c)(4)(D) of the Act.

[23] *See* China CVD Initiation Checklist at Attachment II.

[24] *Id.*

[25] *Id.*

[26] *See* Petition at Volume I (34 and Exhibit I–34).

[27] *See* Petition at Volume I (16–17, 24–57, and Exhibits I–3, I–4, I–15 through I–18, and I–21 through I–63); *see also* First General Issues Supplement at 9–12 and Exhibits I–Supp–5 through I–Supp–7.

[28] *See* China CVD Initiation Checklist at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Freight Rail Couplers and Parts thereof from the People's Republic of China and Mexico).

we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of freight rail couplers from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all 33 of the alleged programs. Additionally, we find that there is sufficient information to initiate on the allegation pertaining to the uncreditworthiness of CRRC Corporation Limited (CRRC) and will conduct the appropriate investigation, should CRRC be selected as a mandatory respondent. For a full discussion of the basis for our decision to initiate on each program, *see* the China CVD Initiation Checklist. The initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named twelve companies in China as producers and/or exporters of freight rail couplers.[29] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to the potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. However, for this investigation, one of the HTSUS subheadings under which the subject merchandise would enter (*i.e.,* 8607.30.1000) is a basket category under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents. Because there are twelve producers and/or exporters identified in the Petition, Commerce intends instead to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on E&C's website at *https://access.trade.gov/resources/questionnaires/questionnaires-ad.html.* Producers/exporters of freight rail couplers from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from E&C's website. In the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on November 1, 2022, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on E&C's website at *https://www.trade.gov/administrative-protective-orders.* Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of freight rail couplers from China are materially injuring, or threatening material injury to, a U.S. industry.[30] A negative ITC determination will result in the investigation being terminated.[31] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i) through (iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[32] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[33] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.[34] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension

[29] *See* Petition at Volume I (13 and Exhibit I–10).

[30] *See* section 703(a)(1) of the Act.

[31] *Id.*

[32] *See* 19 CFR 351.301(b).

[33] *See* 19 CFR 351.301(b)(2).

[34] *See* 19 CFR 351.302.

request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting extension requests or factual information in this investigation.[35]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[36] Parties must use the certification formats provided in 19 CFR 351.303(g).[37] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of document submission procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)) (*e.g.,* by filing the required letter of appearance).[38] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[39]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 18, 2022.

Lisa W. Wang,

Assistant Secretary, for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers certain freight railcar couplers (also known as "fits" or "assemblies") and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the investigation include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.,* knuckles and coupler bodies) are included within the scope of this investigation when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with nonsubject merchandise, such as other nonsubject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other nonsubject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of this investigation meet or exceed the AAR specifications of M–211, "Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts" and/or AAR M–215 "Coupling Systems," or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

The couplers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic. Subject merchandise may also be imported under HTSUS statistical reporting number 7325.99.5000. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

[FR Doc. 2022–23135 Filed 10–24–22; 8:45 am]

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[35] *See* 19 CFR 351; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[36] *See* section 782(b) of the Act.

[37] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[38] *See Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008).

[39] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–145, A–201–857]

Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China and Mexico: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 18, 2022.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin (the People's Republic of China (China)); and Jon Hall-Eastman or Samuel Brummitt (Mexico); AD/CVD Operations, Offices IV and III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2638, (202) 482–1468, or (202) 482–7851, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On September 28, 2022, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of certain freight rail couplers and parts thereof (freight rail couplers) from China and Mexico filed in proper form on behalf of the Coalition of Freight Coupler Producers (the petitioner).[1] The Petitions were accompanied by a countervailing duty (CVD) petition concerning imports of freight rail couplers from China.[2]

Between September 30 and October 11, 2022, Commerce requested

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[1] *See* Petitioner's Letter, "Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Petitions for the Imposition of Antidumping and Countervailing Duties," dated September 28, 2022 (Petitions). The members of the Coalition of Freight Coupler Producers are McConway & Torley LLC and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[2] *Id.*

supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[3] The petitioner filed timely responses to these requests for additional information.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of freight rail couplers from China and Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the freight rail coupler industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting their allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(F) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested AD investigations.[5]

Periods of Investigation

Because the Petitions were filed on September 28, 2022, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Mexico AD investigation is July 1, 2021, through June 30, 2022. Because China is a non-market economy (NME) country, pursuant to section 351.204(b)(1), the POI for the China investigation is January 1, 2022, through June 30, 2022.

Scope of the Investigations

The products covered by these investigations are freight rail couplers from China and Mexico. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On September 30 and October 7, 2022, Commerce requested information from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On October 4 and 11, 2022, the petitioner revised the scope.[7] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on November 7, 2022. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 17, 2022, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's (E&C) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[10] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of freight rail couplers to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or cost of production (COP) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide

[3] *See* Commerce's Letters, ''Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and Mexico: Supplemental Questions,'' dated September 30, 2022 (Commerce's First General Issues Supplemental); ''Petition for the Imposition of Antidumping Duties on Imports of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Supplemental Questions,'' dated October 3, 2022; and ''Petition for the Imposition of Antidumping Duties on Imports of Certain Freight Rail Couplers and Parts Thereof from Mexico: Supplemental Questions,'' dated October 3, 2022; *see also* Memoranda, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Freight Rail Couplers and Parts Thereof from the People's Republic of China and Antidumping Duties on Certain Freight Rail Couplers and Parts Thereof from Mexico: Phone Call with Counsel to the Petitioner,'' dated October 7, 2022 (Commerce's Second General Issues Supplemental); ''Petition for the Imposition of Antidumping Duties on Imports of Certain Freight Rail Couplers and Parts Thereof from Mexico: Supplemental Questions,'' dated October 11, 2022; and ''Petition for the Imposition of Antidumping Duties on Imports of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Supplemental Questions,'' dated October 11, 2022.

[4] *See* Petitioner's Letters, ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Response to Supplemental Questions for Volume I Common Issues and Injury Petition,'' dated October 4, 2022 (First General Issues Supplement); ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Response to the First Supplemental Questions for Volume II China Antidumping Petition,'' dated October 7, 2022; ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Response to the First Supplemental Questions for Volume IV Mexico Antidumping Petition,'' dated October 7, 2022; ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Response to Second Supplemental Questions for Volume I Common Issues and Injury Petition,'' dated October 11, 2022 (Second General Issues Supplement); ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Response to Second Supplemental Questions for Volume IV Mexico Antidumping Duty Petition,'' dated October 13, 2022; and ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States: Response to Second Supplemental Questions for Volume II China Antidumping Duty Petition,'' dated October 13, 2022.

[5] *See infra,* section on ''Determination of Industry Support for the Petitions.''

[6] *See* Commerce's First General Issues Supplemental at 3–4; *see also* Commerce's Second General Issues Supplemental at 1–2.

[7] *See* First General Issues Supplement at 1–3 and Exhibit I–Supp–1; *see also* Second General Issues Supplement at 2 and Exhibit I–Supp2–4.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe freight rail couplers, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on November 7, 2022. Any rebuttal comments must be filed by 5:00 p.m. ET on November 17, 2022. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[13] Based on our analysis of the information submitted on the record, we have determined that freight rail couplers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of freight rail couplers in 2021 and compared this to the estimated total 2021 production of the domestic like product for the entire U.S. industry.[15] We relied on data provided by the petitioner for purposes of measuring industry support.[16]

Our review of the data provided in the Petitions, First General Issues Supplement, Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[17] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[18] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[19] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[20] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[21]

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] *See* Petitions at Volume I (17–21 and Exhibit I–19); *see also* First General Issues Supplement at 8–9.

[14] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* AD Investigation Initiation Checklists, ''Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China,'' and ''Certain Freight Rail Couplers and Parts Thereof from Mexico,'' both dated concurrently with this notice (China AD Initiation Checklist and Mexico AD Initiation Checklist, respectively), at Attachment II (Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and Mexico).

[15] *See* Petitions at Volume I (4–5 and Exhibits I–5 and I–18); *see also* First General Issues Supplement at 4–6 and Exhibits I–Supp–2 and I–Supp–3.

[16] *Id.* For further discussion, *see* Attachment II of the China and Mexico AD Initiation Checklists.

[17] *See* Petitions at Volume I (3–5 and Exhibits I–1 through I–3, I–5, and I–18); *see also* First General Issues Supplemental Response at 4–8 and Exhibits I–Supp–2 through I–Supp–4. For further discussion, *see* Attachment II of the China and Mexico AD Initiation Checklists.

[18] *See* Attachment II of the China and Mexico AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[19] *See* Attachment II of the China and Mexico AD Initiation Checklists.

[20] *Id.*

[21] *Id.*

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22]

The petitioner contends that the industry's injured condition is illustrated by a significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; declines in production, U.S. shipments, and capacity utilization; decline in employment; decline in financial performance, and the magnitude of the estimated dumping margins.[23] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[24]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of freight rail couplers from China and Mexico. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the China and Mexico AD Initiation Checklists.

U.S. Price

For China and Mexico, the petitioner based export price (EP), on pricing information for sales of, or sales offers for, freight rail couplers produced in and exported from each country. The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where appropriate.[25]

[22] *See* Petitions at Volume I (34 and Exhibit I–34).

[23] *See* Petitions at Volume I (16–17, 24–57, and Exhibits I–3, I–4, I–15 through I–18, and I–21 through I–63); *see also* First General Issues Supplement at 9–12 and Exhibits I–Supp–5 through I–Supp–7.

[24] *See* China and Mexico AD Initiation Checklists at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and Mexico).

[25] *See* China and Mexico AD Initiation Checklists.

Normal Value[26]

For Mexico, the petitioner stated that it was unable to obtain home market or third country prices for freight rail couplers to use as a basis for NV.[27] Therefore, for Mexico, the petitioner calculated NV based on CV.[28] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value.''

Commerce considers China to be an NME country.[29] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.

The petitioner claims that the Republic of Turkey (Turkey) is an appropriate surrogate country for China because Turkey is a market economy country that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.[30] The petitioner provided publicly available information from Turkey to value all FOPs.[31] Based on the information provided by the petitioner, we determine that it is appropriate to use Turkey as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

[26] In accordance with section 773(b)(2) of the Act, for the Mexico investigation, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[27] *See* Mexico AD Initiation Checklist.

[28] *Id.*

[29] *See, e.g., Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum, at ''China's Status as a Non-Market Economy,'' unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[30] *See* Petitions at Volume II (8–9).

[31] *Id.*

Factors of Production

The petitioner used the product-specific consumption rates of a U.S. producer of freight rail couplers as a surrogate to value the Chinese manufacturer's FOPs.[32] Additionally, the petitioner calculated factory overhead, selling, general and administrative (SG&A) expenses, and profit based on the experience of a Turkish producer of comparable merchandise (*i.e.,* iron-casted products used in automotive, agricultural, construction, mining, and machine building applications).[33]

Normal Value Based on Constructed Value

As noted above, for Mexico, the petitioner stated it was unable to obtain home market or third-country prices for freight rail couplers to use as a basis for NV. Therefore, the petitioner calculated NV based on CV.[34]

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing (COM), SG&A expenses, financial expenses, and profit.[35] In calculating the COM, the petitioner relied on the production experience and input consumption rates of a U.S. freight rail couplers producer, valued using publicly available information applicable to Mexico.[36] In calculating SG&A expenses, financial expenses, and profit ratios (where applicable), the petitioner relied on the fiscal year 2021 financial statements of a producer of comparable merchandise (*i.e.,* iron-casted parts used in the automotive industry) in Mexico.[37]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of freight rail couplers from China and Mexico are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for freight rail couplers for each of the countries covered by this initiation are as follows: (1) China—67.45 and 169.90 percent *ad valorem;*[38] and (2) Mexico—160.05 and 187.08 percent *ad valorem.*[39]

[32] *Id.* at 10 and Exhibit II–13.

[33] *Id.* at 17 and Exhibit II–27.

[34] *See* Mexico AD Initiation Checklist.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *See* China AD Initiation Checklist for details of the calculations.

[39] *See* Mexico AD Initiation Checklist for details of the calculations.

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of freight rail couplers from China and Mexico are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

China

In the Petitions, the petitioner named twelve companies in China as producers and/or exporters of freight rail couplers.[40] In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are twelve producers and/or exporters identified in the Petition, Commerce intends to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on E&C's website at *https://access.trade.gov/Resources/questionnaires/questionnaires-ad.html.* Producers/exporters of freight rail couplers from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from E&C's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on November 1, 2022, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on E&C's website at *https://www.trade.gov/administrative-protective-orders.*

Mexico

In the Petitions, the petitioner identified one company as a producer/exporter of freight rail couplers in Mexico, ASF–K de Mexico, S.de R.L. de C.V. Sahagun (Amsted), and provided independent third-party information as support.[41] We currently know of no additional producers/exporters of subject merchandise from Mexico. Accordingly, Commerce intends to examine all known producers/exporters in this investigation (*i.e.,* Amsted).

We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Because we intend to examine all known producers in Mexico, if no comments are received or if comments received further support the existence of this sole producer/exporter in Mexico, we do not intend to conduct respondent selection and will proceed to issuing the initial AD questionnaire to Amsted. However, if comments are received which create a need for a respondent selection process, we intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application.[42] The specific requirements for submitting a separate rate application in a China investigation are outlined in detail in the application itself, which is available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html.* The separate rate application will be due 30 days after publication of this initiation notice.[43] Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response both to the Q&V questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. Policy Bulletin 05.1 states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[44]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR

[40] *See* Petitions at Volume I (12 and Exhibit I–13).

[41] *See* Petitions at Volume I (Exhibits I–3 and I–14) and Volume IV (Exhibit IV–3); *see also* Second General Issues Supplement at 3 and Exhibit I–Supp2–5.

[42] *See* E&C's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available at *https://enforcement.trade.gov/policy/bull05-1.pdf.*

[43] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[44] *See* Policy Bulletin 05.1 at 6 (emphasis added).

351.202(f), copies of the public version of the Petitions have been provided to the governments of China and Mexico via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of freight rail couplers from China and/or Mexico are materially injuring, or threatening material injury to, a U.S. industry.[45] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[46] Otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[47] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[48] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

[45] *See* section 733(a) of the Act.

[46] *Id.*

[47] *See* 19 CFR 351.301(b).

[48] *See* 19 CFR 351.301(b)(2).

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.[49] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[50]

[49] *See* 19 CFR 351.302.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[51] Parties must use the certification formats provided in 19 CFR 351.303(g).[52] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance).[53] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[54]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The scope of these investigations covers certain freight railcar couplers (also known as ''fits'' or ''assemblies'') and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler

[50] *See* 19 CFR 351; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[51] *See* section 782(b) of the Act.

[52] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[53] *See Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008).

[54] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

bodies but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the investigations include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.,* knuckles and coupler bodies) are included within the scope of the investigations when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with nonsubject merchandise, such as other nonsubject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other nonsubject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of these investigations meet or exceed the AAR specifications of M–211, ''Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts'' and/or AAR M–215 ''Coupling Systems,'' or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

The couplers that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic. Subject merchandise may also be imported under HTSUS statistical reporting number 7325.99.5000. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive.

[FR Doc. 2022–23136 Filed 10–24–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–815]

Finished Carbon Steel Flanges From Spain: Final Results of Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that sales of finished carbon steel flanges (flanges) from Spain were made at less than normal value (NV) during the period of review (POR) June 1, 2020, through May 31, 2021.

DATES: Applicable October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Carolyn Adie or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6250 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] On August 8, 2022, ULMA Forja, S.Coop (ULMA) submitted its case brief.[2] No other interested party filed a case or rebuttal brief. These final results cover eight companies for which an administrative review was initiated and not rescinded. Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[3]

The scope of the *Order* covers finished carbon steel flanges from Spain. For full description of the scope of the *Order, see* the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in the case brief filed by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is included 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 analysis of the comments received, and for the reasons explained in the Issues and Decision Memorandum, we made one change to the preliminary weighted-average margin calculations for ULMA and the non-examined companies.[5]

Final Results of Administrative Review

For these final results, we determine that the following weighted-average dumping margins exist for the period June 1, 2020, through May 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
ULMA Forja, S.Coop	7.17
Rate Applicable to the Non-Selected Companies	
Aleaciones De Metales Sinterizados S.A	7.17
Central Y Almacenes	7.17
Farina Group Spain	7.17
Friedrich Geldbach Gmbh	7.17
Grupo Cunado	7.17
Transglory S.A	7.17

[1] *See Finished Carbon Steel Flanges from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 40496 (July 7, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* ULMA's Letter, ''ULMA Forja, S. Coop's Case Brief Finished Carbon Steel Flanges from Spain, POR 4,'' dated August 8, 2022.

[3] *See Finished Carbon Steel Flanges from Spain: Antidumping Duty Order,* 82 FR 27229 (June 14, 2017) (*Order*).

[4] *See* Memorandum, ''Finished Carbon Steel Flanges from Spain: Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *Id.*

Producer/exporter	Weighted-average dumping margin (percent)
Tubacero, S.L	7.17

Rate for Non-Selected Respondents

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely on the basis of facts available. In this segment of the proceeding, we calculated a margin for ULMA that was not zero, *de minimis,* or based on facts available. Accordingly, we have applied the margin calculated for ULMA to the non-individually examined respondents.

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to interested parties within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice 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 of subject merchandise in accordance with the final results of this review. For ULMA, 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). 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 regard to antidumping duties. For entries of subject merchandise during the POR produced by ULMA for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[6] For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established in these final results of review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of this notice for all shipments of flanges from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for the companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 18.81 percent, the all-others rate established in the less-than-fair-value investigation of this proceeding.[7] 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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[6] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[7] *See Order,* 82 FR at 27229.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction or return of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the destruction or return of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 20, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Issue
  Comment: Double-Counted Rebates on Certain U.S. Sales
V. Recommendation

[FR Doc. 2022–23216 Filed 10–24–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC416]

Fisheries Finance Program; Announcement of Availability of Federal Financial Assistance for Western Alaskan Community Development Groups; Revision

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

ACTION: Notice, revision.

SUMMARY: NOAA published a notice in the **Federal Register** on March 25, 2022,

announcing the availability of Federal financial assistance for Western Alaskan Community Development Groups. The notice listed a program policy that has since been updated.

FOR FURTHER INFORMATION CONTACT: Earl Bennett, 301–427–8765.

SUPPLEMENTARY INFORMATION:

Revision

The **Federal Register** notice published on March 25, 2022 (87 FR 17070), on page 17071, in the third column, Section II, that reads ''NMFS will not approve loans for fisheries that are listed as overfished or subject to overfishing,'' is revised as follows: ''The Fisheries Finance Program (FFP) will decline loans for applicants applying for funds for a vessel(s) or harvesting privilege(s) in any fishery that is not subject to a fisheries management plan that includes rebuilding or sustainable harvesting provisions consistent with the Magnuson-Stevens Conservation and Management Act to prevent overfishing and rebuild stocks to sustainable levels.''

The new language represents a change of policy for all FFP lending programs.

Dated: October 20, 2022.

Brian Pawlak,

Director, NMFS Office of Management and Budget.

[FR Doc. 2022–23177 Filed 10–24–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC453]

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Shark Research Fishery Permits; Letters of Acknowledgment

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

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), display permits, letters of acknowledgment (LOAs), and shark research fishery permits for Atlantic highly migratory species (HMS) in 2023. EFPs and related permits would authorize collection of a limited number of HMS, including tunas, swordfish, billfishes, and sharks, from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific research, data collection, the investigation of bycatch, and public display, among other things. LOAs acknowledge that scientific research activity aboard a scientific research vessel is being conducted. Generally, EFPs and related permits would be valid from the date of issuance through December 31, 2023, unless otherwise specified in the permit, subject to the terms and conditions of individual permits.

DATES: Written comments received in response to this notice will be considered by NMFS when issuing EFPs and related permits, and must be received on or before November 25, 2022.

ADDRESSES: Comments may be submitted electronically via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2022–0101'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 427–8503, email: *craig.cockrell@noaa.gov.*

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. The regulations specific to HMS EFPs and related permits can be found at § 635.32.

NMFS issues EFPs and related permits where HMS regulations (*e.g.,* fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) may otherwise prohibit the collection of live animals and/or biological samples for data collection and public display purposes or may otherwise prohibit certain fishing activities that NMFS has an interest in permitting or acknowledging. Consistent with 50 CFR 600.745 and 635.32, the NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. These permits exempt permit holders from the specific portions of the regulations that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. Collection of HMS under EFPs, SRPs, display permits, and shark research fishery permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the relevant quota, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

The Magnuson-Stevens Act exempts scientific research conducted by a scientific research vessel from the definition of ''fishing.'' NMFS issues LOAs acknowledging such bona fide research activities involving species that are only regulated under the Magnuson-Stevens Act (*e.g.,* most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered ''bona fide research vessels'' while engaged only in the specified research. For such activities, NMFS reviews scientific research plans and may issue an LOA acknowledging that the proposed activity is scientific research for purposes of the Magnuson-Stevens Act. Examples of research acknowledged by

LOAs include tagging and releasing sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history and bycatch studies.

While scientific research is not defined as ''fishing'' subject to the Magnuson-Stevens Act, scientific research is not exempt from regulation under ATCA. Therefore, NMFS issues SRPs that authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (*i.e.,* tunas, swordfish, and billfish). One example of research conducted under SRPs consists of scientific surveys of tunas, swordfish, and billfish conducted from NOAA research vessels.

EFPs are issued for activities conducted from commercial or recreational fishing vessels. Examples of activities conducted under EFPs include collection of young-of-the-year bluefin tuna for genetic research from recreational fishing vessels; conducting billfish larval tows from private vessels to determine billfish habitat use, life history, and population structure; and tagging sharks caught on commercial or recreational fishing gear to determine post-release mortality rates.

NMFS also intends to issue display permits for the collection of sharks and other HMS for public display in 2023. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species (*e.g.,* sand tiger sharks), and collection of fish below the regulatory minimum size. NMFS published the final rule for Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; corrected version published July 15, 2008, 73 FR 40658) which included, among other things, that dusky sharks cannot be collected for public display.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of HMS within existing quotas, and the impacts of the activities to be conducted usually have been previously analyzed in various environmental assessments and environmental impact statements for HMS management. In most such cases, NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of HMS, or rarely, for research that is particularly controversial. NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR 600.745, should such applications be received by NMFS.

In addition, this notice invites comments on the shark research fishery first implemented through Amendment 2 to the 2006 Consolidated HMS FMP. This research fishery is conducted under the auspices of the EFP program. Shark research fishery permit holders assist NMFS in collecting valuable shark life history and other scientific data required in shark stock assessments. Since the shark research fishery was established in 2008, the research fishery has allowed for: the collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks; the collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks; and the collection of sharks to update the weight conversion factor from dressed weight to whole weight. Shark research fishery participants are subject to 100-percent observer coverage. In recent years, all non-prohibited shark species brought back to the vessel dead have been required to be retained and were counted against the appropriate quotas of the shark research fishery participant. Additionally, in recent years, all participants of the shark research fishery were limited to a very small number of dusky shark mortalities on a regional basis. Once the designated number of dusky shark mortalities occurs in a specific region, certain terms and conditions are applied (*e.g.,* soak time limits). While the specific terms and conditions of the 2023 SRF permit have yet to be decided, NMFS expects that participants would continue to be limited in the number of sets allowed on each trip and the number of hooks allowed on each set and on the vessel itself. A **Federal Register** notice describing the specific objectives for the shark research fishery in 2023 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2023 during the comment period of this notice.

The number of specimens that has been authorized thus far under EFPs and other related permits for 2022, as well as the number of specimens collected in 2021, is summarized in Table 1. The total amount of collections in 2021 was within the analyzed quotas for all quota-managed HMS species. The number of specimens collected in 2022 will be available when all 2022 interim and annual reports are submitted to NMFS.

In all cases, mortalities associated with EFPs, SRPs, or display permits (except for larvae) are counted against the appropriate quota. NMFS issued a total of 38 EFPs, SRPs, display permits, and LOAs in 2021 for the collection of HMS and 4 shark research fishery permits. As of October 4, 2022, NMFS has issued a total of 43 EFPs, SRPs, display permits, and LOAs and 5 shark research fishery permits.

TABLE 1—SUMMARY OF HMS EXEMPTED FISHING PERMITS ISSUED IN 2020 AND 2021, OTHER THAN SHARK RESEARCH FISHERY PERMITS

Permit type	Species	2021			2022	
		Permits issued	Authorized fish (numbers) [1]	Fish kept/ discarded dead (numbers)	Permits issued	Authorized fish (numbers) [1]
EFP	HMS	5	[2] N/A	0	9	626
	Shark	3	[1] N/A	4	2	[1] N/A
	Tuna	1	500	1	2	500
	Swordfish	1	[2] N/A	9	0	0
SRP	HMS	3	770	0	7	1,101

TABLE 1—SUMMARY OF HMS EXEMPTED FISHING PERMITS ISSUED IN 2020 AND 2021, OTHER THAN SHARK RESEARCH FISHERY PERMITS—Continued

Permit type	Species	2021			2022	
		Permits issued	Authorized fish (numbers) [1]	Fish kept/ discarded dead (numbers)	Permits issued	Authorized fish (numbers) [1]
Display	Shark	1	1,010	306	0	0
	HMS	1	55	0	2	82
	Shark	5	287	23	4	270
Total		20	2,122	342	26	2,122
LOA	Shark	18	[1] N/A	246	17	[1] N/A

Note: "HMS" refers to multiple species being collected under a given permit type.
[1] Some shark EFPs, SRPs, and LOAs were issued for the purposes of tagging and the opportunistic sampling of sharks or other HMS and were not expected to result in large amounts of mortality, thus no limits on sampling were set. Some mortality may occur throughout 2022, and will be accounted for under the 60-metric ton shark research and display quota.
[2] These permits are issued to commercial fishermen and the number of species retained are governed by commercial retention limits.

Final decisions on the issuance of any EFPs, SRPs, display permits, and shark research fishery permits will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits, if vessels or applicants were issued any prior violations of marine resource laws administered by NOAA, consistency with relevant National Environmental Policy Act documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs, consistent with the assessment of such activities within the environmental impacts analyses in existing HMS actions, including the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, Amendment 2 to the Consolidated HMS FMP, the Environmental Assessment for the 2012 Swordfish Specifications, the Environmental Assessment for the 2022 Final Bluefin Tuna Quota and Atlantic Tuna Fisheries Management Measures, and the 2022 Zero Atlantic Shortfin Mako Shark Retention Limit Final Rule.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: October 20, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–23174 Filed 10–24–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BI58

Reopening of Comment Period on a Supplemental Draft Environmental Impact Statement Regarding the Makah Tribe's Request To Hunt Eastern North Pacific Gray Whales

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

ACTION: Notice; reopening of public comment period.

SUMMARY: NMFS announces the reopening of the public comment period for seven days on the Supplemental Draft Environmental Impact Statement on the Makah Tribe Request to Hunt Gray Whales. We announced a 45-day comment period to end on August 15, 2022, and on August 16, 2022, we announced an extension of the public comment period by 60 days to October 14, 2022. Comments previously submitted need not be resubmitted.

DATES: The comment period for the notice published at 87 FR 39804 on July 5, 2022, which was extended at 87 FR 50319 on August 16, 2022, is reopened. Comments must be received during the reopened public comment period from October 28, 2022 until November 3, 2022.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0104–0456, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Email: Submit electronic public comments via the following NMFS email address: *makah2022sdeis.wcr@noaa.gov.*

Mail: Submit written comments to: Grace Ferrara, NMFS West Coast Region, 7600 Sand Point Way NE, Seattle, WA 98115.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Grace Ferrara, NMFS Northwest Region, (206) 526–6172, *makah2022sdeis.wcr@noaa.gov.*

SUPPLEMENTARY INFORMATION: On July 1, 2022, NMFS issued a Supplemental Draft Environmental Impact Statement (SDEIS) regarding the Makah Tribe's request to resume ceremonial and subsistence harvest of eastern North Pacific gray whales and announced a 45-day comment period on the SDEIS. During the comment period, we received a request to extend the public comment period and agreed to extend the public comment period by 60 days, to close on October 14, 2022. On October 6, 2022, we received a second request to extend the public comment period. While that request was received too late to allow for an extension notice, we are now reopening the comment period for an additional 7 days, from

October 28, 2022 through November 3, 2022.

The SDEIS is available in electronic form on the internet at the following address: *https://www.fisheries.noaa.gov/west-coast/marine-mammal-protection/makah-tribal-whale-hunt.* In addition, copies of the SDEIS are available on CD by contacting Grace Ferrara (see **FOR FURTHER INFORMATION CONTACT**).

Dated: October 19, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–23112 Filed 10–24–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA'') of the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 25, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0111, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's Regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Dina Moussa, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5696 or *dmoussa@cftc.gov,* and refer to OMB Control No. 3038–0111.

SUPPLEMENTARY INFORMATION:

Title: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements (OMB Control No. 3038–0111). This is a request for an extension of a currently approved information collection.

Abstract: Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[2] amended the Commodity Exchange Act (''CEA''), 7 U.S.C. 1 *et seq.,* to add, as Section 4s(e) thereof, provisions concerning the setting of initial and variation margin requirements for swap dealers (''SDs'') and major swap participants (''MSPs'').[3] Each SD and MSP for which there is a Prudential Regulator, as defined in Section 1a(39) of the CEA,[4] must meet margin requirements established by the applicable Prudential Regulator, and each SD and MSP for which there is no Prudential Regulator (''Covered Swap Entities'' or ''CSEs'') must comply with the Commission's Regulations governing margin on all swaps that are not centrally cleared.

With regard to the cross-border application of the Commission's margin rules, Section 2(i)[5] of the CEA provides the Commission with express authority over activities outside the United States relating to swaps when certain conditions are met. Section 2(i) of the CEA provides that the provisions of the CEA relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA that was enacted by the Wall Street Transparency and Accountability Act of 2010.

On May 31, 2016, the Commission published the Commission's Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements (''Final Rule'') addressing the cross-border application of its margin requirements for uncleared swaps applicable to CSEs.[6] The Final Rule contains a collection of information under Commission Regulation 23.160(c) regarding requests for comparability determinations, and information collections regarding non-netting jurisdictions,[7] and non-segregation jurisdictions.[8]

[1] 17 CFR 145.9.

[2] Public Law 111–023, 124 Stat. 1376 (2010).

[3] 7 U.S.C. 6s(e).

[4] 7 U.S.C. 1a(39).

[5] 7 U.S.C. 2(i).

[6] 81 FR 34818 (May 31, 2016).

[7] As used in the adopting release, a ''non-netting jurisdiction'' is a jurisdiction in which a CSE cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in that foreign jurisdiction meets the definition of an ''eligible master netting agreement'' set forth in Commission Regulation 23.151, and as described in Section II.B.5.b of the adopting release.

[8] As used in the adopting release, a ''non-segregation jurisdiction'' is a jurisdiction where

Continued

Under Commission Regulation 23.160(c)(1), a CSE that is eligible for substituted compliance or a foreign regulatory agency that has direct supervisory authority over one or more CSEs and that is responsible for administering the relevant foreign jurisdiction's margin requirements may request, individually or collectively, that the Commission make a determination that a CSE that complies with margin requirements in the relevant foreign jurisdiction would be deemed to be in compliance with the Commission's corresponding margin rule (a ''comparability determination''). Once a comparability determination is made for a jurisdiction, it applies for all entities or transactions in that jurisdiction to the extent provided in the comparability determination, as approved by the Commission and subject to any conditions specified by the Commission. All CSEs, regardless of whether they rely on a comparability determination, remain subject to the Commission's examination and enforcement authority.

Commission Regulation 23.160(c)(2) requires that applicants for a comparability determination provide copies of the relevant foreign jurisdiction's margin requirements and descriptions of their objectives, how they differ from the margin policy framework for non-cleared, bilateral derivatives set forth by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions, and how they address the elements of the Commission's margin requirements. The applicant must identify the specific legal and regulatory provisions of the foreign jurisdiction's margin requirements that correspond to each element and, if necessary, whether the relevant foreign jurisdiction's margin requirements do not address a particular element.

Commission Regulation 23.160(d) includes a special provision for non-netting jurisdictions. This provision allows CSEs that cannot conclude after sufficient legal review with a well-founded basis that the netting agreement with a counterparty in a foreign jurisdiction meets the definition of an ''eligible master netting agreement'' set forth in Commission Regulation 23.151 to nevertheless net uncleared swaps in determining the amount of margin that they post, provided that certain conditions are met. In order to avail itself of this special provision, a CSE must treat the uncleared swaps covered by the agreement on a gross basis in determining the amount of initial and variation margin that it must collect, but may net those uncleared swaps in determining the amount of initial and variation margin it must post to the counterparty, in accordance with the netting provisions of Commission Regulations 23.152(c) and 23.153(d). A CSE that enters into uncleared swaps in ''non-netting'' jurisdictions in reliance on this provision must have policies and procedures ensuring that it complies with the special provision's requirements, and maintain books and records properly documenting that all of the requirements of this exception are satisfied.

Commission Regulation 23.160(e) includes a special provision for non-segregation jurisdictions that allows non-U.S. CSEs that are Foreign Consolidated Subsidiaries (''FCS'') (as defined in Commission Regulation 23.160(a)(1)) and foreign branches of U.S. CSEs to engage in swaps in foreign jurisdictions where inherent limitations in the legal or operational infrastructure make it impracticable for the CSE and its counterparty to post collateral in compliance with the custodial arrangement requirements of the Commission's margin rules, subject to certain conditions. In order to rely on this special provision, a FCS or foreign branch of a U.S. CSE is required to satisfy all of the conditions of the rule, including that (1) inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post any form of eligible initial margin collateral for the uncleared swap pursuant to custodial arrangements that comply with the Commission's margin rules; (2) foreign regulatory restrictions require the CSE to transact in uncleared swaps with the counterparty through an establishment within the foreign jurisdiction and do not permit the posting of collateral for the swap in compliance with the custodial arrangements of Commission Regulation 23.157 in the United States or a jurisdiction for which the Commission has issued a comparability determination under Commission Regulation 23.160(c) with respect to Commission Regulation 23.157; (3) the CSE's counterparty is not a U.S. person and is not a CSE, and the counterparty's obligations under the uncleared swap are not guaranteed by a U.S. person; (4) the CSE collects initial margin in cash on a gross basis, and posts and collects variation margin in cash, for the uncleared swap in accordance with specific requirements; (5) for each broad risk category, as set out in Commission Regulation 23.154(b)(2)(v), the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on Commission Regulation 23.160(e), may not exceed 5 percent of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category; (6) the CSE has policies and procedures ensuring that it is in compliance with the requirements of this provision; and (7) the CSE maintains books and records properly documenting that all of the requirements of this provision are satisfied.

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. On August 5, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed renewal, 87 FR 48001 (''60-Day Notice''). The Commission received no relevant comments on the 60-Day Notice.[9]

• *Burden Statement—Information Collection for Comparability Determinations:*

The Commission estimates that approximately 53 CSEs may request a comparability determination pursuant to Commission Regulation 23.160(c).[10] The Commission notes that any foreign regulatory agency that has direct supervisory authority over one or more CSEs and that is responsible for administering the relevant foreign jurisdiction's margin requirements may also apply for a comparability determination. However, once a comparability determination is made for a jurisdiction, it will apply for all entities or transactions in that jurisdiction to the extent provided in the determination, as approved by the Commission. To date, the Commission

inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post initial margin pursuant to custodial arrangements that comply with the Commission's margin rules, as further described in Section II.B.4.b of the adopting release.

[9] The Commission received one comment from William J. Harrington on October 4, 2022. *See* Comment of William J. Harrington (Oct. 4, 2022). The comment is not relevant to the Commission's Paperwork Reduction Act analysis, including its cost and hour burden estimates, but instead advocates for an unrelated change to the Commission Regulations referenced above.

[10] Currently, there are approximately 108 swap entities provisionally registered with the Commission. The Commission estimates that of the approximately 108 swap entities that are provisionally registered, approximately 53 are CSEs for which there is no Prudential Regulator, and are therefore subject to the Commission's margin rules.

has issued a comparability determination for 3 jurisdictions.[11] Accordingly, the Commission estimates that it will receive requests from the 13 remaining jurisdictions within the G20,[12] in addition to Switzerland. The number of burden hours associated with such requests is estimated to be 40 hours. Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 14.

Estimated Average Burden Hours per Respondent: 40.

Estimated Total Annual Burden Hours: 560.

Frequency of Collection: Once.

There are no capital costs or operating and maintenance costs associated with this collection.

• *Burden Statement—Information Collection for Non-Netting Jurisdictions:*

The Commission is revising its estimate of the burden for this collection to reflect the current number of registrants subject to the Commission's margin requirements for uncleared swaps. Specifically, the Commission estimates that approximately 53 CSEs may rely on Commission Regulation 23.160(d).[13] Furthermore, the Commission estimates that these CSEs would incur an average of 10 annual burden hours to maintain books and records properly documenting that all of the requirements of this exception are satisfied (including policies and procedures ensuring compliance). Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 53.

Estimated Average Burden Hours per Respondent: 10.

Estimated Total Annual Burden Hours: 530.

Frequency of Collection: Once; As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

• *Burden Statement—Information Collection for Non-Segregation Jurisdictions:*

The Commission estimates that there are eight jurisdictions for which the first two conditions specified above for non-segregation jurisdictions are satisfied and where FCSs and foreign branches of U.S. CSEs that are subject to the Commission's margin rules may engage in swaps. The Commission estimates that approximately 12 FCSs or foreign branches of U.S. CSEs may rely on Commission Regulation 23.160(e) in some or all of these jurisdictions. The Commission estimates that each FCS or foreign branch of a U.S. CSE relying on this provision would incur an average of 20 annual burden hours to maintain books and records properly documenting that all of the requirements of this provision are satisfied (including policies and procedures for ensuring compliance) with respect to each jurisdiction as to which they rely on the special provision. Thus, based on the estimate of eight non-segregation jurisdictions, the Commission estimates that each of the approximately 12 FCSs and foreign branches of U.S. CSEs that may rely on this provision will incur an estimated 160 average burden hours per year (*i.e.,* 20 average burden hours per jurisdiction multiplied by 8). Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 12.

Estimated Average Burden Hours per Respondent: 160.

Estimated Total Annual Burden Hours: 1,920.

Frequency of Collection: Once; As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 20, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–23195 Filed 10–24–22; 8:45 am]

BILLING CODE 6351–01–P

[11] *See* Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 63376 (Sep. 15, 2016); Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 82 FR 48394 (Oct. 18, 2017); and Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12908 (Apr. 3, 2019). The Commission subsequently amended its comparability determination for Japan. *See* Amendment to Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12074 (Apr. 1, 2019).

[12] The Group of 20 (''G20'') is comprised of foreign leaders and central bank managers from the top 19 countries with the largest economies along with the European Union.

[13] *See* n.9, *supra*. Because all of these CSEs are eligible to use the special provision for non-netting jurisdictions, the Commission estimates that 53 CSEs may rely on Commission Regulation 23.160(d).

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0009]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: Exchange Security Verification for Contractors/Vendors; Exchange Forms 3900–002, 3900–006, and 3900–013; OMB Control Number 0702–0135.

Type of Request: Extension without change.

Number of Respondents: 2,900.

Responses per Respondent: 1.

Annual Responses: 2,900.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,450.

Needs and Uses: The information collection requirement is necessary for the processing of all Army and Air Force Exchange Service (Exchange) security clearance actions, to record security clearances issued or denied, and to verify eligibility for access to classified information or assignments to sensitive positions. Respondents are individuals and/or households affiliated with the Exchange by assignment, employment contractual relationship, or because of an inter-service support agreement on which personnel security clearance determination has been completed or is pending. In addition to utilizing the information for processing security clearances, the information may

be used by Exchange executives for adverse personnel actions such as removal from sensitive duties, removal from contract agreement, denial to a restricted or sensitive area, and revocation of security clearance.

Affected Public: Individuals or households; business or other for-profit.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23098 Filed 10–24–22; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0010]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: Exchange Employee and Retirement Benefit System; Exchange Form 1450–011, Exchange Form 1700–012; OMB Control Number 0702–0139.

Type of Request: Revision.

Number of Respondents: 10,530.

Responses per Respondent: 1.

Annual Responses: 10,530.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 3,510.

Needs and Uses: The information collection requirement is necessary to administer several different benefits, pay, and retirement entitlements to eligible Exchange associates, former associates (retirees), their dependents, beneficiaries, spouses, and ex-spouses.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23088 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0101]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: MHS GENESIS Patient Registration Module and Patient Portal; OMB Control Number 0720–0064.

Type of Request: Revision.

Number of Respondents: 2,870,338.

Responses per Respondent: 1.

Annual Responses: 2,870,338.

Average Burden per Response: 7 minutes.

Annual Burden Hours: 334,872.8 hours.

Needs and Uses: The information collection requirement is necessary to provide and document medical care; determine eligibility for benefits and entitlements; adjudicate claims; determine whether a third party is responsible for the cost of Military Health System provided healthcare and recover that cost; and evaluate fitness for duty and medical concerns which may have resulted from an occupational or environmental hazard. Obtaining this information is essential for the DoD to provide medical care and recover costs.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23097 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0091]

Submission for OMB Review; Comment Request

AGENCY: Chief Information Officer, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: DoD's Defense Industrial Base Cybersecurity Activities Cyber Incident Reporting; OMB Control Number 0704–0489.

Type of Request: Extension without change.

Number of Respondents: 8,500.

Responses per Respondent: 5.

Annual Responses: 42,500.

Average Burden per Response: 2 hours.

Annual Burden Hours: 85,000.

Needs and Uses: This information collection is necessary for the reporting and sharing of cyber incident information from DoD contractors in accordance with 32 CFR part 236, ''DoD Defense Industrial Base (DIB) Cybersecurity (CS) Activities,'' which authorizes the DIB CS Program. Sharing cyber incident information is critical to DoD's understanding of cyber threats against DoD information systems, programs, and warfighting capabilities. This information helps DoD to inform and mitigate adversary actions that may affect DoD information residing on or transiting unclassified defense contractor networks.

Affected Public: Business or other for-profit; Not-for-profit Institutions.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2022–23092 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0076]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense Health Affairs, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: Federal Agency Retail Pharmacy Program; OMB Control Number 0720–0032.

Type of Request: Revision.

Number of Respondents: 300.

Responses per Respondent: 4.

Annual Responses: 1,200.

Average Burden per Response: 8 hours.

Annual Burden Hours: 9,600 hours.

Needs and Uses: The information collection requirement is necessary to obtain and record refund amounts between the DoD and pharmaceutical manufacturers. The DoD quarterly provides pharmaceutical manufacturers with itemized utilization data on covered drugs dispensed to TRICARE beneficiaries through TRICARE retail network pharmacies. These manufacturers validate the refund

amounts calculated from the difference in price between the Federal Ceiling Prices and the direct commercial contract sales price. Once the refund amounts are validated, the pharmaceutical manufacturers directly pay the Defense Health Agency Government account.

Affected Public: Businesses or other for profit.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23096 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0085]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: DLA Police Center Records; DLA Form 635; OMB Control Number 0704–0514.

Type of Request: Extension.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Annual Responses: 2,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,000.

Needs and Uses: The DLA Police Center system houses data of civilian and military personnel of DLA, contractor employees, and other persons who have committed or are suspected of having committed any criminal act, as well as any violations of laws or regulations on DLA-controlled activities or facilities. The information is used by DLA police officers, DLA installation support offices, and the DLA Office of General Counsel (OGC) to monitor progress of cases and to develop non-personal statistic data on crime and criminal investigative support for the future. DLA OGC also uses the data to review cases, determine appropriate legal action, and coordinate on all available remedies. Information is released to DLA managers who use the information to determine actions required to correct the causes of loss and to take appropriate action against DLA employees or contractors in cases of their involvement. Records are also used by DLA police to monitor the progress of incidents, identify crime-conducive conditions, and prepare crime vulnerability assessments.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23093 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0068]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: Boren Scholarship and Fellowship Survey; OMB Control Number 0704–BSFS.

Type of Request: New.

Number of Respondents: 1,299.

Responses per Respondent: 1.

Annual Responses: 1,299.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 649.5 hours.

Needs and Uses: The Defense Language and National Security Education Office (DLNSEO) of the DoD is requesting OMB clearance for the Boren Scholarship and Fellowship Survey. DLNSEO has contracted with the RAND Corporation to conduct an evaluation of the Boren Scholarship and Fellowship Awards Program. The Boren Awards program, established in 1991, was authorized under the David L. Boren National Security Education Act, as amended, Public Law 102–183. The Boren Awards provide funding for long-term, overseas, immersive study to U.S. undergraduate and graduate students who are committed to public service. Boren awardees study languages and cultures that are critical to U.S. national security as part of their degree programs; in exchange, they agree to use the skills within DoD or other Federal agencies by seeking and securing Federal employment for at least one year after completing their degrees. The Boren Awards program was last evaluated in 2014 using a survey and interviews to determine how the program had affected the careers of those who had received Boren awards. Since the 2014 survey, more than 2,000 new Boren awardees have completed the Federal employment service commitment, yielding an alumni base of more than 4,000. The OUSD(P&R) contracted with the RAND National Defense Research Institute to conduct a new program evaluation, which would include a web-based survey of alumni, discussions with key stakeholders, and comparison of past data with new data to be collected during this project. The findings will support the OUSD(P&R) in evaluating the outcomes of the program, enabling comparisons between past and more-recent outcomes, and ultimately enhancing the Boren Awards' effectiveness in building and sustaining a federal workforce of diverse, language and culture-enabled individuals.

Affected Public: Individuals or households.

Frequency: Once.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23094 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the DACOWITS will take place.

DATES:

Day 1—Open to the public Tuesday, December 6, 2022 from 8 a.m. to 11:30 a.m.

Day 2—Open to the public Wednesday, December 7, 2022 from 8 a.m. to 11:45 a.m.

ADDRESSES: The meeting will take place at the Association of the United States Army Conference Center, located at 2425 Wilson Boulevard, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: COL Seana Jardin, Designated Federal Officer (DFO), (571) 232–7415 (voice), *seana.m.jardin.mil@mail.mil* (email). Website: *https://dacowits.defense.gov.*

The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available at the DACOWITS website, *https://dacowits.defense.gov/.* Materials presented in the meeting may also be obtained on the DACOWITS website.

Purpose of the Meeting: The purpose of the meeting is for the DACOWITS to receive briefings and have discussions on topics related to the recruitment, retention, employment, integration, well-being, and treatment of women in the Armed Forces of the United States.

Agenda: Tuesday, December 6, 2022, from 8:00 a.m. to 11:30 a.m.—Welcome, Introductions, Announcements, Request for Information Status Update, Briefings, and DACOWITS discussion. Wednesday, December 7, 2022, from 8:00 a.m. to 11:45 a.m.—Welcome, Introductions, Opening Remarks, Announcements, Briefings, DACOWITS discussion, and Public Comment Period.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to availability of space, from 8:00 a.m. to 11:30 a.m. on December 6, 2022; and 8:00 a.m. to 11:45 a.m. on December 7, 2022. The meeting will also be streamed by videoconference. The number of participants is limited and is on a first-come basis. Any member of the public who wishes to participate must register by contacting DACOWITS at *osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil* or by contacting Mr. Robert Bowling at (703) 380–0116 no later than Monday, November 28, 2022. Once registered, the videoconference information will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Robert Bowling no later than Monday, November 28, 2022 so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DACOWITS. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Monday, November 28, 2022 to Mr. Robert Bowling (703) 380–0116 (voice) or to *robert.d.bowling1.mil@mail.mil*

(email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. Members of the public interested in making an oral statement, must submit a written statement. If a statement is not received by Monday, November 28, 2022, it may not be provided to, or considered by the DACOWITS during this quarterly business meeting. After reviewing the written statements, the Chair and the DFO will determine if the requesting persons are permitted to make an oral presentation The DFO will review all timely submissions with the DACOWITS Chair and ensure they are provided to the members of the DACOWITS.

Dated: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23102 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0100]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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:* Application for Champus Provider Status: Corporate Services Provider; DD Form 3030; OMB Control Number 0720–0020.

Type of Request: Revision.

Number of Respondents: 335.

Responses per Respondent: 1.

Annual Responses: 335.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 111.67 hours.

Needs and Uses: This information collection requirement is necessary to ensure that the conditions are met for authorization as a TRICARE/CHAMPUS Corporate Service Provider. Respondents are freestanding corporations and foundations seeking authorization under the TRICARE/CHAMPUS program to provide otherwise covered professional services to eligible TRICARE/CHAMPUS beneficiaries.

Affected Public: Businesses or other for-profit.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23095 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0079]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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:* Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552; DD Form 149; OMB Control Number 0704–0003.

Type of Request: Revision.

Number of Respondents: 20,759.

Responses per Respondent: 1.

Annual Responses: 20,759.

Average Burden per Response: 1 hour.

Annual Burden Hours: 20,759 hours.

Needs and Uses: Under title 10 United States Code 1552, Active Duty and Reserve Component Service members, Coast Guard, former Service members, their lawful or legal representatives, spouses of former Service members on issues of Survivor Benefit Program (SBP) benefits, and civilian employees with respect to military records other than those related to civilian employment, who believe they have suffered an injustice as a result of error or injustice in military records (hereafter referred to as Respondent), may apply to their respective Boards for Correction of Military/Naval Records (BCM/NR) for a correction of their military record. These BCM/NR are the highest level of

administrative review authority regarding official personnel records in the Military Departments. The information collected is needed to provide the BCM/NR the basic data to process and act on the Respondent's request. The Respondent applies to the respective BCM/NR, which uses the DD Form 149, ''Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552,'' as the collection instrument. The form is formatted in both electronic and paper format with text or hand-written fillable entries. The information from the DD Form 149 is used by the respective BCM/NR in processing the respondent's request pursuant to 10 U.S.C. 1552. The DD Form 149 was developed to standardize application to the BCM/NR. This information is used to identify and secure the appropriate official military and medical records from the records storage facilities. Information on the form is also used to determine status, to allow respondents to designate counsel of choice, to identify the issues involved, and to determine if the request was filed within the three-year statute of limitations established by Congress (10 U.S.C. 1552). The request is initiated by the Respondent; therefore, there is no preemptory request or invitation sent to the Respondent associated with the information collection. The information collected from the DD Form 149 is used by the respective BCM/NR to determine if an error or injustice has occurred in an individual's military record and, if applicable, the BCM/NR will promulgate a correction based on error, injustice, or clemency.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23090 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0083]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence and Security, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: Department of Defense Security Agreement; DD Form 441, DD Form 441–1; OMB Control Number 0704–0194.

Type of Request: Revision.

Number of Respondents: 4,021.

Responses per Respondent: 1.

Annual Responses: 4,021.

Average Burden per Response: 12.98 minutes.

Annual Burden Hours: 870.

Needs and Uses: This information collection requirement is necessary for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to, or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees.

Affected Public: Business or other for-profit.

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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23091 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's website at *https://www.iwr.usace.army.mil/Missions/Navigation/Inland-Waterways-Users-Board/.*

DATES: The Army Corps of Engineers, Inland Waterways Users Board will conduct a meeting from 9:00 a.m. to 3:30 p.m. CST on December 1, 2022.

ADDRESSES: The Inland Waterways Users Board meeting will be conducted at the Holiday Inn Resort Galveston—On The Beach, 5002 Seawall Boulevard, Galveston, Texas 77551, 409–740–5300. The online virtual portion of the Inland Waterways Users Board meeting can be accessed at *https://usace1.webex.com/meet/ndc.nav,* Public Call-in: USA Toll-Free 844–800–2712, USA Caller Paid/International Toll: 1–669–234–1177 Access Code: 199 117 3596, Security Code 1234.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GN, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.* Alternatively, contact Mr. Steven D. Riley, an Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–NDC, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–659–3097; and by email at *Steven.D.Riley@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects, and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include the status of the Inland Waterways Trust Fund (IWTF); status of the Budget and funding for Navigation for Fiscal Year (FY) 2023 and the Infrastructure Investment and Jobs Act (IIJA); status of the inland waterways Capital Investment Strategy activities; status of inland waterways major rehabilitation evaluation reports (MRERs); Impacts of low water on the waterways; the Illinois Waterway consolidated closures for 2023; updates of inland waterways projects for the Upper Ohio River Navigation (Montgomery Lock), Mississippi River-Illinois Waterway Navigation and Ecosystem Sustainability Program (NESP), McClellan-Kerr Arkansas River Navigation System (MKARNS) Three Rivers, Arkansas, and 12-foot Channel Deepening Project, Gulf Intracoastal Waterway; status of the ongoing construction activities for the Monongahela River Locks and Dams 2, 3, and 4, Chickamauga Lock and the Kentucky Lock projects; and Lock Performance Monitoring System (LPMS) improvements.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the December 1, 2022, meeting will be available. The final version will be available at the meeting. All materials will be posted to the website for the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.1 65, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to participate in the meeting will begin at 8:30 a.m. CST on the day of the meeting. Participation is on a first-to-arrive basis. Any interested person may participate in the meeting, file written comments or statements with the committee, or make verbal comments during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: Individuals requiring any special accommodations related to the public meeting or seeking additional information about the procedures, should contact Mr. Mark Pointon, the committee DFO, or Mr. Steven Riley, an ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Pointon, the committee DFO, or Mr. Riley, a committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the public meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works, U.S. Army Corp of Engineers.

[FR Doc. 2022–23187 Filed 10–24–22; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0022]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 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: Response to the Marine Corps NAF Debt Collection Notice; NAVMC Form 11787; OMB Control Number 0703–0075.

Type of Request: Revision.

Number of Respondents: 2,080.

Responses per Respondent: 1.

Annual Responses: 2,080.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 520.

Needs and Uses: The information collection requirement is necessary to notify and account for vendors and patrons indebted to Marine Corps Non-appropriated Fund Instrumentality (NAFI) businesses and services for the purpose of repayment management or debt collection dependent on the response option elected by the respondent. Respondents are informed of their alleged debt and use the NAVMC Form 11787, ''Response to Marine Corps NAF Debt Collection Notice,'' to elect to repay the debt in full, agree to a repayment plan, dispute the debt, or indicate that bankruptcy has been filed.

Affected Public: Business or other for-profit; 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: October 19, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23089 Filed 10–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Digital Learning Infrastructure and IT Modernization Pilot

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 Digital Learning Infrastructure and IT Modernization Pilot, Assistance Listing Number 84.116L. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES: Applications Available: October 25, 2022.

Deadline for Transmittal of Applications: November 25, 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 phaseout 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: Pearson Owens, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B109, Washington, DC 20202–4260. Telephone: (202) 453–7997. Email: *Pearson.Owens@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 Digital Learning Infrastructure and IT Modernization Pilot provides grants to Historically Black Colleges and Universities (HBCUs), Tribal Colleges or Universities (TCUs), and other eligible minority-serving institutions (MSIs) to support IT modernization, and to enable them to provide support and technical assistance to expand their digital learning infrastructure.

Background: Digital infrastructure brings together and interconnects multiple resources, including physical, virtual, human, and social. Physical and virtual resources include technologies, such as computer, storage, network, application, and various platforms, to build the foundation for an institution of higher education's (IHE) digital operation. Human and social resources include the human knowledge and skills, professional development, and ongoing technical assistance needed to sustain an institution's digital operation. As such, digital learning infrastructure encompasses the key data systems, technologies, and human capital, needed to enable actions that allow for everywhere, all-the-time learning and ensure greater equity and accessibility to learning opportunities for students, staff, and faculty in person, at a distance, or a combination thereof. Over the last two years, as a result of the COVID–19 pandemic, IHEs pivoted to increase their online learning footprint, and both students and institutions have become more dependent on virtual

learning and technologies that support hybrid learning environments.

These changes in how institutions incorporate technologies in learning bring about challenges, such as the need for improved infrastructure that allows for adoption of reliable, high-speed devices and broadband (as defined in this notice) for multiple users and other technologies that allow for student engagement. Congress included $4 million in the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) to strengthen digital learning infrastructure at MSIs, HBCUs, and TCUs.

Given the need of many HBCUs, TCUs, and other MSIs to improve upon their technologies and systems to continue to upgrade their opportunities for virtual learning, the grant program seeks applications from these institutions to enhance their digital learning infrastructure. In this competition we require applicants to develop or enhance and implement digital learning infrastructure plans that address the leadership, human capital, instruction, and IT strategies that will improve the institution's capacity to seamlessly expand learning and promote innovation that improves student outcomes. Additionally, we are requiring applicants to include dissemination plans of their digital learning infrastructure plans to other institutions.

Priority: This notice contains one absolute priority.

We are establishing this priority 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).

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 to Develop or Improve the Institution's Digital Learning Infrastructure.

Proposed projects that address all of the following areas:

(a) *Leadership:* Describe how the institution will equitably and efficiently sustain progress toward digital learning and how institutional governance, resources, and collaboration with external partners will support and drive change to improve the learning environment for students, faculty, and staff.

(b) *Human Capacity:* Describe the institution's plan to address the professional development needs of leadership, faculty, and staff, which will allow for active learning opportunities enabled through technology for students as they work toward a certificate or degree.

(c) *Approach to networks and infrastructure:* Describe how the institution will strategically maximize resources to provide equitable access to and adoption of devices and broadband (as defined in this notice) and ensure adequate infrastructure for digital learning, including reliable, high-speed access. Applicants must describe how their projects will ensure greater equity and accessibility to learning opportunities for all students by providing support to ensure that the technology supports active teaching and learning practices.

(d) *Content, Instruction, and Assessment:* Describe how vendors will be vetted and evaluated to ensure that their products and services can meet the institution's digital learning infrastructure needs and goals for high-quality, active teaching and learning. The plan must address how the institution will develop and implement standards for high-quality digital learning in their courses and programs, provide coaching and professional development for faculty and leadership, and support students in the adoption and effective use of technology for learning.

(e) *Coordination and collaboration:* Describe how the institution will take a systemic approach by collaborating with other IHEs and/or other public, private, and nonprofit entities toward a systemic approach to address the purchase of broadband internet access service and/or any eligible equipment, and the hiring and training of information technology personnel.

Definitions: We are establishing definitions for ''adoption of devices and broadband,'' ''digital learning infrastructure,'' ''high speed access,'' ''Historically Black colleges and universities,'' ''minority-serving institution,'' and ''Tribal College or University'' 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 GEPA. The remaining definitions are from 34 CFR part 77.1.

Adoption of devices and broadband means the process by which an individual obtains daily access to the internet at a speed, quality, and capacity that qualifies as an advanced telecommunications capability with the digital skills that are necessary for the individual to participate in online learning, on a personal device, and on a secure and convenient network.

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.

Digital learning infrastructure means physical, virtual, human, and social assets related to the sustainable dissemination and adoption of digital technologies for learning. Physical and virtual assets include, but are not limited to, mobile and internet communications, spectrum, macro cell towers, data centers, fiber networks, and small cell networks, used both synchronously and asynchronously. Human and social assets include, but are not limited to, personnel recruitment, knowledge/needs assessments, resources, professional development, and technical assistance needed to sustain the dissemination and adoption of digital technologies for learning.

High speed access means access that is not less than 100 megabits per second for downloads nor 20 megabits per second for uploads and latency that is sufficient to support real-time, interactive applications.

Historically Black colleges and universities means colleges and universities that meet the criteria set out in 34 CFR 608.2.

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,* to help design their logic models. 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.*

Minority-serving institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the Higher Education Act of 1965, as amended (HEA).

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.

Tribal College or University has the meaning ascribed it in section 316(b)(3) of the HEA.

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. 1138–1138d 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 priority, definitions, and funding requirements under section 437(d)(1) of GEPA.

Program Authority: 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.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,895,200.

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: $750,000 to $973,800.

Estimated Average Size of Awards: $861,900.

Maximum Award: $973,800.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Minority-serving institutions (as defined in this notice) including HBCUs (as defined in this notice) and TCUs (as defined in this notice).

Note: The notice announcing the FY 2022 process for designation of eligible institutions and inviting applications for waiver of eligibility requirements was published in the **Federal Register** on December 16, 2021 (86 FR 71470). The eligibility designation process was reopened and published in the **Federal Register** on February 7, 2022, and closed on February 18, 2022 (87 FR 6855). Only institutions that the Department determined to be eligible, or which were granted a waiver under the process described in that notice, may apply for a grant in this program.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. This program uses the waiver authority of section 437(d)(1) of GEPA to establish this as a supplement-not-supplant program. 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 the grant and in no case supplant those funds.

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 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 *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to cost principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *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.* 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 *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards in a timely manner.

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. This does not apply to titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and

certifications; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 75.210. Applicants should address each of the following selection criteria separately for each proposed activity. The selection criteria are worth a total of 100 points; the maximum score for each criterion is noted in parentheses.

(a) *Significance.* (Maximum 15 points)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers:

(1) The significance of the problem or issue to be addressed by the proposed project. (5 points)

(2) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies. (5 points)

(3) The likelihood that the proposed project will result in system change or improvement. (5 points)

(b) *Quality of the project design.* (Maximum 35 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (15 points)

(2) 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. (10 points)

(3) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (10 points)

(c) *Quality of project services.* (Maximum 10 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. (3 points)

(2) In addition, the Secretary considers:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (3 points)

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (4 points)

(d) *Quality of the management plan.* (Maximum 20 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (10 points)

(3) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

(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:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of external reviewers will read, prepare a written evaluation of, and score all eligible applications using the selection criteria provided in this notice. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score. The Department will prepare a rank order of applications based on the evaluation of their quality according to the selection criteria.

In the event there are two or more applications with the same final score in the rank order listing, and there are insufficient funds to fully support each of these applications, the Department will apply the following procedure to determine which application or applications will receive an award:

First Tiebreaker: The first tiebreaker will be the highest average score for the selection criterion ''Quality of Project Services.'' If a tie remains, a second tiebreaker will be utilized.

Second Tiebreaker: The second tiebreaker will be the highest average score for the selection criterion ''Quality of the Project Design.'' If a tie remains, a third tiebreaker will be utilized.

Third Tiebreaker: The third tiebreaker will be the institution with the highest percentage of degree/certificate-seeking students who are Pell grant recipients, according to the most recent collection from the Integrated Postsecondary Education Data System.

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 Digital Learning Infrastructure and IT Modernization Pilot Program:

(a) The number of courses—added or enhanced—supported by this program that support digital learning.

(b) The number and percentage of students enrolled in such courses disaggregated by race of students.

(c) The percentage of grantees that attain or exceed the targets for the outcome indicators for their projects.

(d) The percentage of grantees that report an increase in faculty, staff, and students engaged in digital learning efforts.

(e) The number of capacity building activities offered by the institution (*e.g.,* trainings, technical assistance) in areas related to the digital learning infrastructure plan.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2022–23220 Filed 10–24–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Microgrid Program Strategy

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice; request for public comment.

SUMMARY: The Office of Electricity (OE) of the U.S. Department of Energy (DOE) requests comment from the public on its Microgrid Program Strategy located at *https://www.energy.gov/oe/microgrid-strategy-call-public-comment.* Response to this notice is voluntary. Responses to this notice may be used by the government for program planning on a non-attribution basis. OE therefore requests that no business proprietary information or copyrighted information be submitted in response to this notice. Please note that the U.S. Government will not pay for response preparation, or for the use of information contained in the response.

DATES: Written comments and information are requested on or before November 25, 2022.

ADDRESSES: Submit comments electronically to *MGRD@hq.doe.gov* by the deadline. Mailed paper submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Dan Ton at *MGRD@hq.doe.gov,* (202) 586–4618.

SUPPLEMENTARY INFORMATION: The development of the DOE Microgrid Program Strategy (Strategy) started in December 2020. The purpose was to define strategic research and development (R&D) areas for the DOE Office of Electricity (OE) Microgrids R&D (MGRD) Program to support its vision and accomplish its goals. The overarching vision for the Strategy and MGRD is:

By 2035, microgrids are envisioned to be essential building blocks of the future electricity delivery system to support resilience, decarbonization, and affordability.

The Strategy development process began with microgrid experts deliberating on areas the Strategy should focus on for impactful results in key metrics, such as reliability, resilience, decarbonization, and affordability, in the next five to ten years. These deliberations led to the development of seven strategic white papers, one for each of the six strategic R&D areas identified and one additional white paper on the overarching program vision, objectives, and targets. Each white paper was developed by a team of national laboratory and university members, and then reviewed by an industry advisory panel. These seven white papers constitute the DOE Microgrid Program Strategy.

OE sponsored the DOE MGRD Strategy Symposium on July 27–28, 2022, to seek input and feedback on the seven white papers from broader microgrid stakeholders. The symposium featured presentations, panel discussions, and group discussions on each white paper. Discussions focused on key R&D recommendations and their priority, aspirational R&D targets in five to ten years, and actionable steps recommended for enabling regulatory and business models.

The final draft of the seven white papers, which include feedback from the symposium, are being posted at *https://www.energy.gov/oe/microgrid-strategy-call-public-comment* for 30 days of public comment before finalization.

Signing Authority

This document of the Department of Energy was signed on October 19, 2022, by Gilbert C. Bindewald, III, Acting Principal Deputy Assistant Secretary of the Office of Electricity, 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. The administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 20, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–23183 Filed 10–24–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Form GC–859 ''Nuclear Fuel Data Survey,'' OMB Control Number 1901–0287. Form GC–859 collects data on spent nuclear fuel from all utilities that operate commercial nuclear reactors and from all others that possess irradiated fuel from commercial nuclear reactors.

DATES: Comments on this information collection must be received no later than November 25, 2022. 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: If you need additional information, contact Lindsay Aramayo, U.S. Energy Information Administration, telephone (202) 586–3264, or by email at *lindsay.aramayo@eia.gov.* The forms and instructions are available on EIA's website at *www.eia.gov/survey/#gc-859.*

SUPPLEMENTARY INFORMATION: This information collection request contains.

(1) *OMB No.* 1901– 0287;

(2) *Information Collection Request Title:* Nuclear Fuel Data Survey;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 *et seq.*) authorized DOE to enter contracts with all generators or owners of spent nuclear fuel and high-level radioactive waste of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent nuclear fuel. Form GC–859 (formerly Form RW–859) originated from an appendix to the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste, 10 CFR 961 (''Standard Contract'').

Form GC–859 collects information on nuclear fuel use and spent fuel discharges from all utilities that operate commercial nuclear reactors and from all others that possess irradiated fuel from commercial nuclear reactors. The data collection provides stakeholders with detailed information concerning the spent nuclear fuel generated by the respondents (commercial utility generators of spent nuclear fuel and other owners of spent nuclear fuel within the U.S.).

Data collected from the survey are used by personnel from DOE Office of Nuclear Energy (NE), DOE Office of Environmental Management (EM), and

the national laboratories to meet their research objectives of developing a range of options and supporting analyses that facilitate informed choices about how best to manage spent nuclear fuel (SNF).

(4a) Proposed Changes to Information Collection

- Collection method. DOE will provide respondents with an online platform to facilitate their responses. The Form GC–859 data collection system is automated. Respondents will also be provided with electronic files to aid in the current submittal and operating instructions for the software. To the greatest extent practicable, respondents will provide data either in the data collection system or as any commonly readable, present-day electronic spreadsheet file type. The following website will be used to submit data: *https://gc859.pnnl.gov.* Alternatively, a standalone copy of the submission software may be requested from the EIA GC–859 Survey Team contact identified earlier in the FOR FURTHER INFORMATION CONTACT section of this notice.
- Appendix E, Fuel Assembly Type Codes has been modified to include codes submitted on the 2018 data collection that were not already on the list, for the respondents convenience. A complete list of the Fuel Assembly Type Codes included on Appendix E may be requested from the EIA GC–859 Survey Team contact identified earlier in the FOR FURTHER INFORMATION CONTACT section of this notice.

(5) *Annual Estimated Number of Respondents:* 126;

(6) *Annual Estimated Number of Total Responses:* 42;

(7) *Annual Estimated Number of Burden Hours:* 3,707;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The information is maintained in the normal course of business. The cost of the burden hours is estimated to be $309,090 (3,707 burden hours times $83.38 per hour).

EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974,

Public Law 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Public Law 95–91, codified at 42 U.S.C. 7101 *et seq.,* The Nuclear Waste Policy Act of 1982 codified at 42 U.S.C. 10222 *et seq.*

Signed in Washington, DC, on October 19, 2022.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2022–23182 Filed 10–24–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–38–000.
Applicants: Centra Pipelines Minnesota Inc.
Description: § 4(d) Rate Filing: Updated Index of Shippers Oct 2022 to be effective 12/1/2022.
Filed Date: 10/18/22.
Accession Number: 20221018–5075.
Comment Date: 5 p.m. ET 10/31/22.

Docket Numbers: RP23–39–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Tracker Filing 10/19/22 to be effective 12/1/2022.
Filed Date: 10/19/22.
Accession Number: 20221019–5007.
Comment Date: 5 p.m. ET 10/31/22.

Docket Numbers: RP23–40–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.19.22 Negotiated Rates—Sequent Energy Management LLC R–3075–15 to be effective 11/1/2022.
Filed Date: 10/19/22.
Accession Number: 20221019–5013.
Comment Date: 5 p.m. ET 10/31/22.

Docket Numbers: RP23–41–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.19.22 Negotiated Rates—Sequent Energy Management LLC R–3075–16 to be effective. 11/1/2022.
Filed Date: 10/19/22.
Accession Number: 20221019–5017.
Comment Date: 5 p.m. ET 10/31/22.

Docket Numbers: RP23–42–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.19.22 Negotiated Rates—Spark Energy Gas, LLC R–3045–29 to be effective 11/1/2022.
Filed Date: 10/19/22.
Accession Number: 20221019–5019.
Comment Date: 5 p.m. ET 10/31/22.

Docket Numbers: RP23–43–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.19.22 Negotiated Rates—Spark Energy Gas, LLC R–3045–30 to be effective 11/1/2022.
Filed Date: 10/19/22.
Accession Number: 20221019–5021.
Comment Date: 5 p.m. ET 10/31/22.

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: October 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23176 Filed 10–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL21–83–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Supplement to Regulation Market Performance-Clearing Price Credit in EL21–83 to be effective 12/31/9998.
Filed Date: 10/19/22.
Accession Number: 20221019–5046.
Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: EL23–5–000; QF21–77–001; QF20–300–001; QF22–1085–001; QF22–846–001; QF20–151–001; QF20–152–001; QF22–213–001; QF22–1086–001; QF21–1275–001; QF21–1276–001; QF21–1277–001; QF21–1273–001; QF21–451–001; QF20–546–

001; QF22–918–001; QF22–917–001; QF22–1098–001; QF22–1101–001; QF22–1102–001; QF22–1103–001; QF22–1116–001; QF22–1115–001; QF22–1109–001; QF22–1114–001; QF22–1104–001; QF22–1113–001; QF22–1112–001; QF22–1111–001; QF22–1119–001; QF22–1118–001; QF22–1110–001; QF22–1117–001.

Applicants: CSU 2020 Renewable Energy, LLC, PPS School Solar, LLC, Waters Rd S, LLC, Waters Rd N, LLC, Wakefield Solar Fund, LLC, USS New Scotland 1 LLC, Turin Solar Fund, LLC, Tri-County Solar Fund 1, LLC, Mtn Solar 5 LLC, Mtn Solar 4 LLC, Mtn Solar 2 LLC, Mtn Solar 1 LLC, ECA Maine BET, LLC, CO LI CSG 3 LLC, CO LI CSG 1 LLC, Burrillville Solar, LLC, Standard Solar, Inc.

Description: Petition for Declaratory Order of Standard Solar, Inc., et al.

Filed Date: 10/18/22.

Accession Number: 20221018–5161.

Comment Date: 5 p.m. ET 11/17/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1639–000.

Applicants: Constellation Mystic Power, LLC.

Description: Out-Of-Time, Formal Challenges of The Eastern New England Consumer-Owned Systems to Constellation Mystic Power, LLC's, September 2022 Informational Filing.

Filed Date: 10/18/22.

Accession Number: 20221018–5158.

Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: ER18–1639–000.

Applicants: Constellation Mystic Power, LLC.

Description: The Eastern New England Consumer-Owned Systems submits Formal Challenges of Constellation Mystic Power, LLC's, September 15, 2022, Informational Filing.

Filed Date: 10/18/22.

Accession Number: 20221018–5167.

Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: ER20–1435–001.

Applicants: Energy Harbor LLC.

Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.

Filed Date: 10/19/22.

Accession Number: 20221019–5071.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–125–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.GLA–GLV to be effective 12/18/2022.

Filed Date: 10/18/22.

Accession Number: 20221018–5139.

Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: ER23–126–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5554; Queue No. AE1–015 to be effective 10/6/2022.

Filed Date: 10/18/22.

Accession Number: 20221018–5141.

Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: ER23–127–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 33, WAPA Triangle Agreement to be effective 12/31/2022.

Filed Date: 10/18/22.

Accession Number: 20221018–5144.

Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: ER23–128–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5857; Queue No. AB2–180 to be effective 10/6/2022.

Filed Date: 10/18/22.

Accession Number: 20221018–5145.

Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: ER23–129–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5553; Queue No. AE1–012 to be effective 10/6/2022.

Filed Date: 10/18/22.

Accession Number: 20221018–5146.

Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: ER23–130–000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: NYSEG–DCEC Attachment C Annual Update to be effective 1/1/2023.

Filed Date: 10/19/22.

Accession Number: 20221019–5026.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–131–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–10–19_SA 3916 Ameren-Lotus Wind E&P (J1289) to be effective 11/1/2022.

Filed Date: 10/19/22.

Accession Number: 20221019–5063.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–132–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to FERC Rate Schedule No. 61 to be effective 12/19/2022.

Filed Date: 10/19/22.

Accession Number: 20221019–5067.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–133–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Service Agreement No. 908 to be effective 10/6/2022.

Filed Date: 10/19/22.

Accession Number: 20221019–5069.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–134–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 348 to be effective 9/27/2022.

Filed Date: 10/19/22.

Accession Number: 20221019–5070.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–135–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 38 to be effective 12/19/2022.

Filed Date: 10/19/22.

Accession Number: 20221019–5075.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–136–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA No. 5071; Queue No. AB1–132 to be effective 4/16/2018.

Filed Date: 10/19/22.

Accession Number: 20221019–5084.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–138–000.

Applicants: Watlington Solar, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 12/19/2022.

Filed Date: 10/19/22.

Accession Number: 20221019–5104.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–139–000.

Applicants: Pleasant Hill Solar, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 12/19/2022.

Filed Date: 10/19/22.

Accession Number: 20221019–5110.

Comment Date: 5 p.m. ET 11/9/22.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF21–77–000; QF20–300–000; QF22–1085–000; QF22–846–000; QF20–151–000; QF20–152–000; QF22–213–000; QF22–1086–000; QF21–1275–000; QF21–1276–000; QF21–1277–000; QF21–1273–000; QF21–451–000; QF20–546–000; QF22–918–000; QF22–917–000.

Applicants: Waters Rd S, LLC, Waters Rd N, LLC, Wakefield Solar Fund, LLC, USS New Scotland 1 LLC, Turin Solar Fund, LLC, Tri-County Solar Fund 1, LLC, Tri-County Solar Fund 1, LLC, Tri-County Solar Fund 1, LLC, Mtn Solar 5 LLC, Mtn Solar 4 LLC, Mtn Solar 2 LLC, Mtn Solar 1 LLC,ECA Maine BET, LLC,CO LI CSG 3 LLC,CO LI CSG 1 LLC, Burrillville Solar, LLC.

Description: Refund Reports of Burrillville Solar, LLC, et al.

Filed Date: 10/18/22.

Accession Number: 20221018–5159.

Comment Date: 5 p.m. ET 11/8/22.

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: October 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23175 Filed 10–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF22–8–000]

East Tennessee Natural Gas, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned System Alignment Program Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the System Alignment Program Project involving construction and operation of facilities by East Tennessee Natural Gas, LLC (ETNG) in Knox, Jefferson, and Sevier Counties, Tennessee; Rockingham County, North Carolina; and Washington and Wythe Counties, Virginia. ETNG would also complete a hydrotest of an approximately 1.2-mile segment of existing pipeline in Patrick County, Virginia. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the NEPA Process and Environmental Document section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 18, 2022. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or oral comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on June 16, 2022, you will need to file those comments in Docket No. PF22–8–000 to ensure they are considered.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the links to Natural Gas Questions or Landowner Topics.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You

will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (PF22–8–000) on your letter. 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; or

(4) In lieu of sending written comments, the Commission invites you to attend one of the public scoping session(s) its staff will conduct. A schedule of the scoping meeting dates, times, and locations (if applicable) will be issued in a separate notice at least two weeks prior to the date of the meeting(s).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally scoping session.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Planned Project

The project involves the installation of facilities to enhance the physical, bi-directional flow capability on ETNG's Line 3300–1. ETNG plans to construct approximately 16.2 miles of 24-inch-diameter pipeline loop [1] (Boyds Creek Loop) adjacent to its existing 16-inch-diameter pipeline in Knox and Sevier Counties, Tennessee; a new 6,000-horsepower compressor station (the Talbot Compressor Station) in Jefferson County, Tennessee; a new 19,000-horsepower compressor station in Rockingham County, North Carolina (the Draper Compressor Station); and ancillary facilities in Knox County and Sevier Counties, Tennessee and Washington and Wythe Counties, Virginia. ETNG would also replace approximately 6.5 miles of 8-inch-diameter pipeline with new 24-inch-diameter pipeline within its existing right-of-way in Washington County, Virginia and complete a hydrotest of an approximately 1.2 mile-segment of existing pipeline in Patrick County, Virginia.

ETNG states that the purpose of the planned project is to improve the operational reliability of its system by minimizing the amount of displacement in the system design to meet customers' shifting needs. Specifically, ETNG states that with the existing system design, delivery of nominated quantities of natural gas from west-to-east and east-to-west relies upon customers' nominations of sufficient quantities in the opposite direction. However, changes in customer nominations have increasingly challenged ETNG's operational ability to meet all of its firm service obligations. Planned facilities would provide existing service to existing customers; ETNG would not sell additional capacity as part of the project.

The general location of the project facilities is shown in appendix A.[2]

Land Requirements for Construction

Construction of the planned facilities would disturb about 361.6 acres of land for the aboveground facilities and pipelines. Following construction, ETNG would maintain about 35 acres for permanent operation of the project's aboveground facilities; the remaining acreage would be restored. The planned Boyds Creek Loop is located within or adjacent to ETNG's existing Line 3300–1 right-of-way for 14.3 miles (approximately 88 percent of its total length).

NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics and environmental justice;
- air quality and noise;
- reliability and safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the environmental issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its determination on the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS, and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

through eLibrary [3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the environmental document.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] The environmental document for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.8.

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number PF22–8–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Becoming an Intervenor

Once ETNG files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

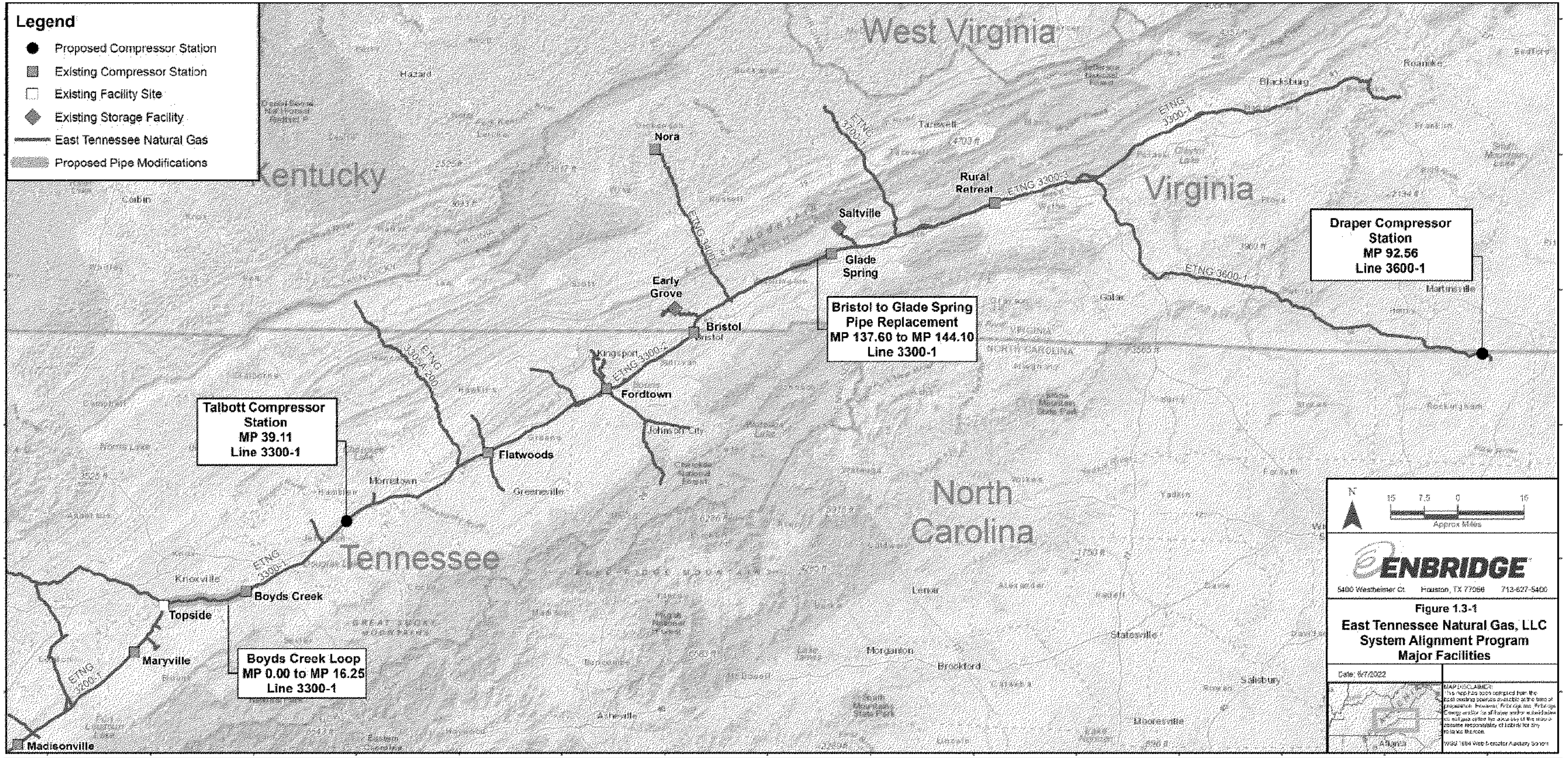
Dated: October 19, 2022.

Kimberly D. Bose,

Secretary.

Appendix 1

BILLING CODE 6717–01–P



Legend
Proposed Compressor Station
Existing Compressor Station
Existing Facility Site
Existing Storage Facility
East Tennessee Natural Gas
Proposed Pipe Modifications
West Virginia
Kentucky
Virginia
Tennessee
North Carolina
Nora
Saltville
Rural Retreat
Glade Spring
Early Grove
Bristol
Kingsport
Fordtown
Flatwoods
Morristown
Greeneville
Knoxville
Boyds Creek
Topside
Maryville
Madisonville
ETNG 3300-1
ETNG 3600-1
Draper Compressor Station
MP 92.56
Line 3600-1
Bristol to Glade Spring Pipe Replacement
MP 137.60 to MP 144.10
Line 3300-1
Talbott Compressor Station
MP 39.11
Line 3300-1
Boyds Creek Loop
MP 0.00 to MP 16.25
Line 3300-1
ENBRIDGE
Figure 1.3-1
East Tennessee Natural Gas, LLC
System Alignment Program
Major Facilities

FROM ______________________________

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ATTN: OEP - Gas 3, PJ - 11.3
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

(PF22-8-000, System Alignment Program Project)

Staple or Tape Here

[FR Doc. 2022–23171 Filed 10–24–22; 8:45 am]

BILLING CODE 6717–01–C

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0132; FRL–9411–09–OCSPP]

Certain New Chemicals; Receipt and Status Information for September 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 9/1/2022 to 9/30/2022.

DATES: Comments identified by the specific case number provided in this document must be received on or before November 25, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0132, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 09/01/2022 to 09/30/2022. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 9/1/2022 TO 9/30/2022

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–22–0021	1	9/7/2022	Danisco US, Inc	(G) Production of a new chemical substance.	(G) genetically modified microorganism for the production of a chemical substance.
P–18–0056A	10	9/14/2022	CBI	(S) Rubber Adhesion promoter. Use in the manufacturing process of tires. Acts as an oxygen scavenger in various applications. Industrial Use-Tire Manufacturing.	(S) Cobalt Neodecanoate Propionate complexes.
P–20–0003	5	7/28/2022	CBI	(S) Photoinitiator for printing (UV, LED, flexo, screen and inkjet ink).	(S) 2H–1517Benzopyran-2-one, 5,7-dimethoxy-, 3-(4 -C10–13-sec -alkylbenzoyl) derivs.
P–21–0076A	3	9/20/2022	CBI	(S) Additive for fluids used in oil drilling operations.	(G) Alcohols, C16–18 and C18-unsatd., reaction products with subsstituted alkyloxirane and alkyl acid.
P–21–0202A	2	9/13/2022	CBI	(G) An ingredient used in the manufacture of photoresist.	(G) Sulfonium, carbomonocycle bis[(trihaloalkyl)carbomonocycle], substituted carbomonocyclic ester.
P–22–0001A	2	9/12/2022	CBI	(G) Raw material for manufacturing chemicals; Raw material used in chemical manufacturing.	(G) Alkane, disubstituted.
P–22–0011A	4	8/31/2022	Lord Corporation	(G) Functionalized rubber in resin side of two component epoxy modified acrylic adhesive.	(G) Alkadiene, homopolymer, hydroxy-terminated, bis[N-[2-[(1-oxo-2-propen-1-yl)oxylethyl]carbamates].
P–22–0050A	4	9/6/2022	CBI	(G) Lubricant	(G) Alkene, alkoxy-, polymer with alkoxyalkene.
P–22–0057A	2	9/27/2022	CBI	(G) Additive in home care products	(G) Polysaccharide, polymer with 2-propenoic acid, sodium salt.
P–22–0082A	2	9/20/2022	CBI	(G) Component of photoresist	(G) Alkenoic acid, alkyl, carbopolycyclic alkyl ester, polymer with trihalo (trihaloalkyl) alkyl alkyl alkenoate.
P–22–0144A	3	9/15/2022	United Color Manufacturing	(G) Intermediate	(G) Alkylated PhenylNaphthylamine.
P–22–0163	2	9/22/2022	Cnano Technology USA, Inc.	(S) As an Additive Used in Battery Manufacture.	(S) Multiwalled Carbon Nanotubes.
P–22–0164	2	9/1/2022	CBI	(G) Reactive intermediate polyester polyol, diluent.	(S) Fatty acids, C18-unsatd., dimers, polymers with 1,4:3,6-dianhydro-D-glucitol, 1,3-propanediol and succinic acid.
P–22–0164A	3	9/12/2022	Danimer Bioplastics, Inc	(G) Reactive intermediate polyester polyol, diluent.	(S) Fatty acids, C18-unsatd., dimers, polymers with 1,4:3,6-dianhydro-D-glucitol, 1,3-propanediol and succinic acid.
P–22–0165	3	9/2/2022	Cytec Industries, Inc	(G) Industrial process chemical	(G) Alkyl acid, 2-hydroxy-,substituted alkyl ester.
P–22–0169	3	9/12/2022	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0170	3	9/12/2022	Solugen, Inc	(G) Additive used in consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0171	3	9/12/2022	Solugen, Inc	(G) Additive used in consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0172	3	9/12/2022	Solugen, Inc	(G) Additive used in consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0173	3	9/12/2022	Solugen, Inc	(G) Additive used in consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0174	3	9/12/2022	Solugen, Inc	(G) Additive used in consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0176	1	9/1/2022	Colonial Chemical, Inc	(G) Corrosion inhibitor	(G) 6-[(alkyl-1-oxohexyl)amino]-hexanoic acid, compd. with 2,2′,2″-nitrilotris[ethanol] (1:1).
P–22–0176A	2	9/7/2022	Colonial Chemical, Inc	(G) Corrosion inhibitor	(G) 6-[(alkyl-1-oxohexyl)amino]-hexanoic acid, compd. with 2,2′,2″-nitrilotris[ethanol] (1:1).
P–22–0177	1	9/6/2022	CBI	(G) Photolithography	(G) Sulfonium, tricarbocyclic-, alpha, alpha, beta, beta-polyhalopolyhydro-heteropolycyclic-5-alkanesulfonate (1:1).
P–22–0178	2	9/13/2022	CBI	(G) Adhesive for lamination	(G) Aromatic diacid, polymer with alkyldiols, hexanedioc acid, benzofurandione, and 1,1′-methylenebis[4-isocyanatobenzene].
P–22–0179	1	9/8/2022	Shin-Etsu Microsi	(G) Contained use for microlithography for electronic device manufacturing.	(G) Sulfonium, (alkylsubstitutedphenyl)diphenyl-, salt with 1-(heterosubstitutedalkyl)-2,2,2-triheterosubstitutedalkyl trisubstitutedbenzoate (1:1).
P–22–0180	1	9/8/2022	Shin-Etsu Microsi	(G) Contained use for microlithography for electronic device manufacturing.	(G) Dibenzothiophenium, 5-phenyl-, 4-[1-(heterosubstitutedalkyl)-2,2,2-triheterosubstitutedalkoxy]-4-oxoalkyl trisubstitutedbenzoate (1:1).
P–22–0181	1	9/12/2022	CBI	(G) biobased building block for polymer	(G) Fatty acids, polymers with polyethylene glycol ether with polyol.
P–22–0183	1	9/14/2022	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, reaction products with metal oxide salt, salts.

TABLE I—PMN/SNUN/MCANs APPROVED * FROM 9/1/2022 TO 9/30/2022—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–22–0184	3	9/22/2022	United Color Manufacturing	(G) Colorant	(G) Transition metal complex of (alkylated phenylamino-naphthalenylazo)-(methylphenylazo substituted)phenol and alkyl amine.
P–22–0185	1	9/16/2022	CBI	(S) Chemical intermediate	(S) 1,3,5-Cycloheptatriene.
P–22–0186	1	9/21/2022	CBI	(G) Oil Additive	(G) Phosphoric acid, dialkyl ester, transition metal salt.
P–22–0188	1	9/27/2022	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, reaction products with acid, salts.
P–22–0189	1	9/27/2022	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, reaction products with inorganic salt, salts.
P–22–0190	1	9/27/2022	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, reaction products with inorganic salt, salts.
P–22–0191	1	9/27/2022	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, reaction products with acid, salts.
SN–22–0004A	3	9/7/2022	HPC Holdings, Inc	(S) Carrier Fluid for coating-type vapor degreaser, Process Solvent (Closed Systems).	(S) Propane, 1,1,1,3,3,3-hexafluoro-2-methoxy-.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not subject to a CBI claim) on the TMEs and/or Biotech Exemptions received by EPA during this period: The EPA case number assigned to the TME and/or Biotech Exemption, the submission document type (initial or amended), the version number, the date the TME and/or Biotech Exemption was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the TME and/or Biotech Exemption, and the chemical substance identity.

TABLE II—TMEs AND BIOTECH EXEMPTIONS RECEIVED FROM 9/1/2022 TO 9/30/2022

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
T–22–0001	1	9/14/2022	CBI	(G) Functional mineral for plastics, automotive components.	(G) Mica-group minerals, reaction products with triethoxysilyl substituted-alkane.
T–22–0001A	2	9/26/2022	CBI	(G) Functional mineral for plastics, automotive components.	(G) Mica-group minerals, reaction products with triethoxysilyl substituted-alkane.

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE III—NOCs APPROVED * FROM 9/1/2022 TO 9/30/2022

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–10–0039	9/12/2022	8/23/2022	N	(S) Multi-wall carbon nanotubes.
P–11–0224	9/29/2022	8/29/2022	N	(G) Fluoro ether.
P–17–0306	9/29/2022	9/12/2022	N	(G) Fatty acid modified aromatic polyester polyol (this is the generic name published in the final snur for this substance).
P–18–0211	9/21/2022	9/20/2021	N	(G) Alkaneamine, (aminoalkyl)-, polymer with aziridine and 1,6-diisocyanatohexane, polyethylene glycol alkyl ether- and polyethylene-polypropylene glycol aminoalkyl alkyl ether- and alkenyl benzenated polyethylene glycol ph ether.
P–18–0398	9/13/2022	8/17/2022	N	(S) 1,2-ethanediamine, n − 1-(1-methylethyl)-n − 2-[2-[(1-methylethyl)amino]ethyl].
P–21–0187	9/29/2022	9/14/2022	N	(G) Glycerine, alkoxylated alkyl acid esters.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table IV of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE IV—TEST INFORMATION RECEIVED FROM 9/1/2022 TO 9/30/2022

Case No.	Received date	Type of test information	Chemical substance
P–16–0543	9/1/2022	Industrial Hygiene Exposure Report	(G) Halogenophosphoric acid metal salt.
P–21–0138	9/12/2022	Product Identity and Composition (OCSPP Tet Guideline 830.1550); Particle Size, Fiber Length, and Diameter Distribution Testing (OECD Test Guideline 110); Sediment and Soil Adsorption/ Desorption Isotherm Testing (OECD Test Guideline 106); Dissociation Constants in Water (OECD Test Guideline 112); Fish Bioconcentration Factor BCF Testing (OECD Test Guideline 305); Chronic Fish Testing; Freshwater and Saltwater Fish Acute Toxicity Testing (OECD Test Guideline 203); Modified Activated Sludge, Respiration Inhibition Testing (OCSPP Test Guideline 850.3300); Acute Dermal Toxicity Testing (OECD Test Guideline 402); Daphnid Chronic Toxicity Testing (OECD Test Guideline 211); Earthworm Subchronic Toxicity Testing (OCSPP Test Guideline 850.3100); Prenatal Developmental Toxicity Study (OECD Test Guideline 414).	(G) Lithium compound.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: October 18, 2022.

Todd Holderman,

Acting Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2022–23188 Filed 10–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10276–01–OCSPP]

Pesticide Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and/or ecological risk assessments for the registration review of polybutene resins.

DATES: Comments must be received on or before December 27, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0720, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov//commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of

the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in Table 1 in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and/or ecological risk assessments for the pesticides shown in Table 1 and opens a 60-day public comment period on the risk assessments.

TABLE 1—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Polybutene Resins; Case Number 4076	EPA–HQ–OPP–2022–0799	Michelle Nolan, *nolan.michelle@epa.gov,* (202) 566–2237.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in Table 1 in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

Information submission requirements. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English, and a written transcript must accompany any information submitted as an audio graphic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 19, 2022.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–23207 Filed 10–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10277–01–OCSPP]

Pesticide Registration Review; Pesticide Dockets Opened for Review and Comment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the EPA's preliminary work plans for the following chemicals: *Bacillus subtilis,* bromine, fluxapyroxad, and penthiopyrad. With this document, the EPA is opening the public comment period for registration review for these chemicals.

DATES: Comments must be received on or before December 27, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0720, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is the EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the agency may consider during the course of registration reviews. As part of the registration review process, the Agency has completed preliminary workplans for all pesticides listed in Table 1 in Unit IV. Through this program, the EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

The EPA is conducting its registration review of the chemicals listed in Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. Registration Reviews

A. What action is the Agency taking?

A pesticide's registration review begins when the agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. Pursuant to 40 CFR 155.50, this notice announces the availability of the EPA's preliminary work plans for the pesticides shown in Table 1 and opens a 60-day public comment period on the work plans.

TABLE 1—PRELIMINARY WORK PLANS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Bacillus subtilis; Case No. 6012	EPA–HQ–OPP–2022–0431	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, (202) 566–1516.
Bromine; Case number 4015	EPA–HQ–OPP–2021–0034	Erin Dandridge, *dandridge.erin@epa.gov*, (202) 566–0635.
Fluxapyroxad; Case Number 7064	EPA–HQ–OPP–2021–0633	DeMariah Koger, *koger.demariah@epa.gov*, (202) 566–2288.
Penthiopyrad; Case Number 7063	EPA–HQ–OPP–2022–0362	Lauren Weissenborn, *weissenborn.lauren@epa.gov*, (202) 566–2374.

B. Docket Content

The registration review docket contains information that the agency may consider in the course of the registration review. The agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.

- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the agency is asking that interested persons identify any additional information they believe the agency should consider during the registration reviews of these pesticides. The agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

The registration review final rule at 40 CFR 155.50(b) provides for a minimum 60-day public comment period on all preliminary registration review work plans. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary changes to a pesticide's workplan. All comments should be submitted using the methods in **ADDRESSES** and must be received by the EPA on or before the closing date. These comments will become part of the docket for the pesticides included in Table 1 in Unit IV. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

The agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The final registration review work plan will explain the effect that any comments had on the final work plan and provide the agency's response to significant comments.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 19, 2022.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–23186 Filed 10–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0751; FRL–10274–01–OCSPP]

Pesticide Registration Review; Decisions and Case Closures for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's interim or final registration review decisions for the following chemicals: *pasteuria* species, *pseudomonas syringae;* and trimethylamine and trimethylamine hydrochloride. In addition, this notice announces the closure of the registration review case for cryolite, furfural, mefluidide, and sabadilla alkaloids because the last U.S. registrations for these pesticides have been canceled.

ADDRESSES: The docket for this action, identified under docket identification (ID) number EPA–HQ–OPP–2017–0751, is available online at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed interim or final decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's interim or final registration review decisions for the pesticides shown in Table 1. The registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE 1—REGISTRATION REVIEW INTERIM AND FINAL DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Pasteuria; species Case Numbers: 6526, 6527, 6535	EPA–HQ–OPP–2021–0614	Andrew Queen *queen.andrew@epa.gov,* (202) 566–1539.
Pseudomonas syringae; Case Number 6007	EPA–HQ–OPP–2022–0088	Bibiana Oe, *oe.bibiana@epa.gov,* (202) 566–1538.
Trimethylamine and Trimethylamine Hydrochloride; Case No. 6304.	EPA–HQ–OPP–2021–0852	Monica Thapa, *thapa.monica@epa.gov,* (202) 566–1543.

The proposed decisions and proposed interim registration review decisions for the chemicals in the table above were posted to the docket and the public was invited to submit any comments or new information. EPA addressed the comments or information received during the 60-day comment period for the proposed interim decisions in the discussion for each pesticide listed in the table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim or final decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in the Table will remain open until all actions required in the decision have been completed.

This document also announces the closure of the registration review case for cryolite (Case Number 0087, Docket ID Number EPA–HQ–OPP–2011–0173), furfural (Case Number 7050, Docket ID Number EPA–HQ–OPP–2014–0764), mefluidide (Case Number 2370, Docket ID Number EPA–HQ–2015–0786), and sabadilla alkaloids (Case Number 3128, Docket ID Number EPA–HQ–OPP–2015–0063) because the last U.S. registrations for these pesticides have been canceled.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 19, 2022.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–23210 Filed 10–24–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Senior Executive Service Performance Review Board

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice of Senior Executive Service Performance Review Board.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is issuing this notice to inform the public of the names of the members of the Agency's Senior Executive Service (SES) Performance Review Board.

DATES: This SES Performance Review Board is effective October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Alisa Zimmerman, Acting General Counsel, 202–606–5488, *ogc@fmcs.gov,* 250 E St. SW, Washington, DC 20427.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of FMCS's Performance Review Board are:

1. Marla Hendriksson, Deputy Director for the Office of Partnership and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, Department of Health and Human Services
2. Javier Ramirez, Deputy Director Field Operations, Federal Mediation and Conciliation Service
3. Angie Titcombe, Director of Human Resources, Federal Mediation and Conciliation Services
4. Josh Flax, Deputy Director for Policy and Strategy, Federal Mediation and Conciliation Service

Dated: October 20, 2022.

Alisa Zimmerman,

Acting General Counsel.

[FR Doc. 2022–23209 Filed 10–24–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and of the Board's Regulation LL (12 CFR 238.31) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 8, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Capitol Federal Financial, Inc., and thereby indirectly acquire additional voting shares of Capitol Federal Savings Bank, both of Topeka, Kansas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–23212 Filed 10–24–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 8, 2022.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *Bangor Bancorp, MHC, Bangor, Maine;* to acquire voting shares of IncumbentFI, Inc., Wilmington, Delaware, and thereby engage in data processing, data storage and data transmission services pursuant to section 225.28(b)(14)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–23213 Filed 10–24–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 23, 2022.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *MVB Financial Corp., Fairmont, West Virginia;* to acquire Integrated Financial Holdings, Inc., Raleigh, North Carolina, and thereby indirectly acquire West Town Bank & Trust, North Riverside, Illinois, and acquire voting shares of West Town Payments, LLC, Raleigh, North Carolina, to engage in data processing activities pursuant to section 225.28 (b)(14)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–23214 Filed 10–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10079]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by November 25, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title:* Hospital Wage Index Occupational Mix Survey; *Use:* Section 304(c) of Public Law 106–554 amended section 1886(d)(3)(E) of the Social Security Act to require CMS to collect data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index, for application beginning October 1, 2004 (the FY 2005 wage index). The purpose of the occupational mix adjustment is to control for the effect of hospitals' employment choices on the wage index. For example, hospitals may choose to employ different combinations of registered nurses, licensed practical nurses, nursing aides, and medical assistants for the purpose of providing nursing care to their patients. The varying labor costs associated with these choices reflect hospital management decisions rather than geographic differences in the costs of labor.

CMS takes the data collected from the approximately 3,200 IPPS providers participating in the Medicare program and runs the data through mathematical formulas to create the occupational mix adjustment to the wage index. CMS informs hospitals of the occupational mix adjusted wage indexes through notice and comment rulemaking each year. *Form Number:* CMS–10079 (OMB control number: 0938–0907); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 3,200; *Number of Responses:* 3,200; *Total Annual Hours:* 1,536,000. (For policy questions regarding this collection contact Noel Manlove at 410–786–5161.)

Dated: October 20, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–23199 Filed 10–24–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Expedited Office of Management and Budget Review and Public Comment; Proposed Information Collection Activity; Placement and Transfer of Unaccompanied Children Into Office of Refugee Resettlement Care Provider Facilities (OMB #0970–0554)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting expedited review of an information collection request from the Office of Management and Budget (OMB) and inviting public comments on the proposed collection. This request will allow the Unaccompanied Children (UC) Program to expand specific policy and procedural protections to category 2 sponsors, children who wish to challenge placement in restrictive settings, and children seeking access to legal counsel.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act (PRA) 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: ACF is requesting emergency review and approval of this information collection by OMB, as authorized under 44 U.S.C. 3507 (subsection j). The proposed revisions to this information collection are necessary to allow the ORR UC Program to comply with a court order. The information collected is essential to the mission of the agency and an unanticipated event has occurred that could reasonably cause a court-ordered deadline to be missed if normal PRA clearance procedures are followed. On June 29, 2018, Plaintiffs filed their Federal class action lawsuit in the Central District of California, western division, captioned *Lucas R. et al* v. *Azar et al* (Case No. CV 18–5741–DMG (PLAx)), asserting claims under the Flores consent decree, the Trafficking Victims Protection Reauthorization Act, the Due Process clause, and the First Amendment. Plaintiffs allege violation of UC rights in decisions regarding family reunification, placement in restrictive facilities, administration of psychotropic medication, and access to legal assistance. On August 30, 2022, the Court issued a Preliminary Injunction in response to the Cross-Motions for Summary Judgement on the family reunification, restrictive placement, and legal services claims. As part of that injunction, ORR is obligated to expand specific policy and procedural protections to category 2 sponsors, children who wish to challenge placement in restrictive settings, and children seeking access to legal counsel by the time the Final Order takes effect. Those policy and procedural protections include specific changes regarding notification of rights and documentation of restrictive placement, both of which require a new instrument and revision to an existing instrument in this information collection. The Final Order takes effect on October 29, 2022.

ORR added a new instrument titled Notice of Administrative Review (Form P–18) that serves as written notice of receipt of a Placement Review Panel request and provides the UC with information on next steps to take when requesting a review and reconsideration of the UC's placement in a restrictive setting. The notice also requests that the UC and/or their representative provide a written statement and decision on whether they are requesting a hearing. If a hearing is requested, the UC and/or their representative are also asked to provide:

• The name, email address, and telephone number for the UC's attorney or child advocate.
• The UC's preferred language.
• Whether the UC will need an interpreter (of if the UC's representative will provide an interpreter).
• The names and email addresses for the witnesses the UC or their representative plan to call at the hearing.
• Whether the UC has any special needs.

Additionally, ORR made the below-listed revisions to the Notice of Placement in a Restrictive Setting (Form P–4/4s/4d/4p). Many of the new fields in this form are also contained in the 30-Day Restrictive Placement Case Review (Form S–16), which is approved under OMB 0970–0553. The below revisions effectively merge Forms P–4 and S–16 into one form. ORR plans to submit a nonsubstantive change request to discontinue Form S–16 soon.

• Reorganized the form into six main sections—UC Information, ORR's Determinations Related to Safety, Reasons for Restrictive Placement, Summary of Supporting Evidence for Restrictive Placement, Your Rights to Challenge Your Placement, and UC's Acknowledgement of Receipt.
• Added the following fields under the UC Information section:
  ○ Preferred Language.
  ○ Out-of-Network Facility Name.
  ○ If applicable, explain the reasons that the UC is placed in an out-of-network facility.
  ○ Date of Placement at Current Restrictive Facility.
  ○ Date of Initial Notice of Placement.
  ○ Date Next Notice of Placement is Due (within 30 days).
• Created the ORR's Determinations Related to Safety section and added the following checkboxes:
  ○ UC presents a danger to self or community.
  ○ UC poses a risk of escape.
• Revised the Reasons for Restrictive Placement section as follows:
  ○ Under Secure Facility:
    ▪ Removed checkbox ''Have committed, threatened to commit, or engaged in serious, self-harming behavior that poses a danger to self while in ORR custody.''
    ▪ Revised the checkbox ''Have a history of or display sexual predatory behavior, or have inappropriate sexual behavior,'' to instead read ''Have committed sexual abuse, where there is coercion by overt or implied threats of violence against another person and/or there is an immediate danger to others.''
    ▪ Added checkbox ''Are pending transfer of discharge/release to:''
  ○ Under Residential Treatment Center:
    ▪ Added checkbox ''Are pending transfer of discharge/release to:''
  ○ Under Staff Secure Facility:
    ▪ Replaced checkbox ''Could be stepped down from a secure facility'' with ''Are pending transfer of discharge/release to:''
• Under Summary of Supporting Evidence for Restrictive Placement:
  ○ Split text box into three separate text boxes, one each for the case manager, case coordinator, and Federal field specialist.
  ○ Added fields for case manager, case coordinator, and Federal field specialist names and their overall recommendations.
• Added additional information on how UC may request to change their placement in a restrictive setting under the Your Rights to Challenge Your Placement section.
• Added a field for the name and title of the care provider/issuing official.
• Added fields for the language used to explain the form to the UC, the name of the person who explained the form, and their interpreter ID#, if applicable.

For information about all currently approved forms under this OMB number, see: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202110-0970-001*.

Respondents: ORR grantee and contractor staff; UC; and other Federal agencies.

Annual Burden Estimates:

Note: These burden estimates include burden related to the revisions described above and currently approved forms for which we are not proposing any changes.

ESTIMATED BURDEN HOURS FOR RESPONDENTS

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Placement Authorization (Form P–1)	262	536	0.08	11,235
Authorization for Medical, Dental, and Mental Health Care (Form P–2)	262	536	0.08	11,235
Notice of Placement in a Restrictive Setting (Form P–4/4s)	15	114	0.33	564
Long Term Foster Care Placement Memo (Form P–5)	35	6	0.25	53
UC Referral (Form P–7)	25	4,909	1.00	122,725
Care Provider Checklist for Transfers to Influx Care Facilities (Form P–8)	262	19	0.25	1,245
Medical Checklist for Transfers (Form P–9A)	262	49	0.08	1,027
Medical Checklist for Influx Transfers (Form P–9B)	262	96	0.17	4,276
Transfer Request (Form P–10A)	262	67	0.42	7,373
Transfer Request (Form P–10A)	275	67	0.33	6,080
Influx Transfer Request (Form P–10B)	262	96	0.42	10,564
Transfer Summary and Tracking (Form P–11)	262	67	0.17	2,984
Program Entity (Form P–12)	262	12	0.50	1,572
UC Profile (Form P–13)	262	468	0.75	91,962
ORR Transfer Notification—ORR Notification to Immigration and Customs Enforcement Chief Counsel of Transfer of UC and Request to Change Address/Venue (Form P–14)	262	67	0.17	2,984
Family Group Entity (Form P–15)	25	120	0.08	240
Influx Transfer Manifest (Form P–16)	3	12	0.33	12
Influx Transfer Manual and Prescreen Criteria Review (Form P–17)	262	56,213	0.50	7,363,903

ESTIMATED BURDEN HOURS FOR RESPONDENTS—Continued

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Notice of Administrative Review (Form P–18)	200	1	0.83	166
Estimated Annual Burden Hours Total:				7,640,200

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno* Settlement Agreement, No. CV85–4544–RJK (C.D. Cal. 1996); 45 CFR part 411; *Lucas R. et al* v. *Azar et al* (Case No. CV 18–5741–DMG (PLAx)) Preliminary Injunction.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–23316 Filed 10–24–22; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

List of Petitions Received; National Vaccine Injury Compensation Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on September 1, 2022, through September 30, 2022. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville,

Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Tamia Lindgren, Gainesville, Florida, Court of Federal Claims No: 22–1174V
2. Fillistine Harvey on behalf of N. L., Oswego, Illinois, Court of Federal Claims No: 22–1184V
3. Tahira Robinson on behalf of K. S. Phoenix, Arizona, Court of Federal Claims No: 22–1194V
4. Chantal Banks, Shady Side, Maryland, Court of Federal Claims No: 22–1206V
5. Jerry Melvin and Deborah Melvin on behalf of L. M., Delaware, Ohio, Court of Federal Claims No: 22–1207V
6. Chris Creevy, Payson, Arizona, Court of Federal Claims No: 22–1208V
7. Jayne Melis on behalf of T. M. Chicago, Illinois, Court of Federal Claims No: 22–1209V
8. Mary Trepanier, Boston, Massachusetts, Court of Federal Claims No: 22–1210V
9. Audrey Riggs, Phoenix, Arizona, Court of Federal Claims No: 22–1211V
10. Pamela Carnes, Lafayette, Georgia, Court of Federal Claims No: 22–1213V
11. Dalia McCarter and Jeffrey McCarter on behalf of A. M. Port Jefferson, New York, Court of Federal Claims No: 22–1214V
12. Zi Jue Xu and Chun Gang Li on behalf of W. L. New York, New York, Court of Federal Claims No: 22–1216V
13. Jennifer Bechtel on behalf of K. B. Phoenix, Arizona, Court of Federal Claims No: 22–1217V
14. Halim Husain, Phoenix, Arizona, Court of Federal Claims No: 22–1218V
15. Dianne Laborde, Pineville, Louisiana, Court of Federal Claims No: 22–1219V
16. Scott Breault on behalf of A. B. Ocoee, Florida, Court of Federal Claims No: 22–1220V
17. Sharon Tibbitts, Jamestown, New York, Court of Federal Claims No: 22–1223V
18. Linda Rodgers, Woodbridge, Illinois, Court of Federal Claims No: 22–1224V
19. Leslie Martinez, Phoenix, Arkansas, Court of Federal Claims No: 22–1249V
20. Kenneth Begun, Jacksonville, North Carolina, Court of Federal Claims No: 22–1250V
21. Wendy Dougherty, Bridgeport, Texas, Court of Federal Claims No: 22–1252V
22. Melissa Cato, Montgomery, Alabama, Court of Federal Claims No: 22–1253V
23. Stephanie E. Sitton, Raleigh, North Carolina, Court of Federal Claims No: 22–1254V
24. Jaqueline Crouse, Oklahoma City, Oklahoma, Court of Federal Claims No: 22–1256V
25. L. O. Brookline, Massachusetts, Court of Federal Claims No: 22–1257V
26. Ruby Sharma-Dhital, Hartford, Connecticut, Court of Federal Claims No: 22–1258V
27. Dennis Eckert, Washington, District of Columbia, Court of Federal Claims No: 22–1259V
28. Mary Hay, St. Louis, Missouri, Court of Federal Claims No: 22–1260V
29. Greg Yurkow on behalf of A. Y. Flowood, Mississippi, Court of Federal Claims No: 22–1261V
30. Willem Plunkett, Bend, Oregon, Court of Federal Claims No: 22–1262V
31. David M. Coduto, San Carlos, California, Court of Federal Claims No: 22–1264V
32. Julie Wiest on behalf of J. W. Phoenix, Arizona, Court of Federal Claims No: 22–1265V
33. Allison L. Tassie, Louisville, Kentucky, Court of Federal Claims No: 22–1266V
34. Larry Duncan, Mitchell, Indiana, Court of Federal Claims No: 22–1267V
35. Alan Correira, Clearwater, Florida, Court of Federal Claims No: 22–1269V
36. William Parkinson, Aventura, Florida, Court of Federal Claims No: 22–1270V
37. Abigail Walters, Phoenix, Arizona, Court of Federal Claims No: 22–1272V
38. Adrian Montano, Phoenix, Arizona, Court of Federal Claims No: 22–1273V
39. Donna Stonesifer, Baltimore, Maryland, Court of Federal Claims No: 22–1275V
40. Brittany Flores, Greensboro, North Carolina, Court of Federal Claims No: 22–1276V
41. Megi Kola, Worcester, Massachusetts, Court of Federal Claims No: 22–1277V
42. Boyce Dean Spradlin, Somerset, Kentucky, Court of Federal Claims No: 22–1278V
43. Baleigh G. Scheibner, Raleigh, North Carolina, Court of Federal Claims No: 22–1279V
44. Amber Jones, Columbus, Georgia, Court of Federal Claims No: 22–1281V
45. Belinda Yanchik on behalf of the Estate of Betty Mae Spencer, Deceased, Kingston, Pennsylvania, Court of Federal Claims No: 22–1282V
46. Jessica Hampton, Scottsdale, Arizona, Court of Federal Claims No: 22–1283V
47. Saleem Baig, San Mateo, California, Court of Federal Claims No: 22–1285V
48. Claire Anne Weis, Virginia Beach, Virginia, Court of Federal Claims No: 22–1286V
49. Tricia Denzik, Columbia, Kentucky, Court of Federal Claims No: 22–1287V
50. Colleen McGrath, Albany, New York, Court of Federal Claims No: 22–1288V
51. Barbara Beckmann, Raleigh, North Carolina, Court of Federal Claims No: 22–1289V
52. Keith A. Larson, Carrington, North Carolina, Court of Federal Claims No: 22–1290V
53. Jama Dilbeck, Enid, Oklahoma, Court of Federal Claims No: 22–1291V
54. Ali Hay, Maryville, Illinois, Court of Federal Claims No: 22–1293V
55. Heather Rafle and Philip Rafle on behalf of S. R. Phoenix, Arizona, Court of Federal Claims No: 22–1294V
56. Cynthia Stocker, Hailey, Idaho, Court of Federal Claims No: 22–1295V
57. Donna J. Caldwell, Dover, Ohio, Court of Federal Claims No: 22–1296V
58. Amy Bigelow, Bloomington, Indiana, Court of Federal Claims No: 22–1297V
59. Gary Williams, Rancho Santa Margarita, California, Court of Federal Claims No: 22–1300V
60. Lori Hewett, Shallotte, North Carolina, Court of Federal Claims No: 22–1301V
61. Tammy Ross, Boca Raton, Florida, Court of Federal Claims No: 22–1302V
62. Carrie Stewart, Circleville, Ohio, Court of Federal Claims No: 22–1303V
63. Lisa Ostellino, Lenox, Massachusetts, Court of Federal Claims No: 22–1304V

64. Alyssa Tani, Philadelphia, Pennsylvania, Court of Federal Claims No: 22–1305V
65. David Yanovsky, Brick, New Jersey, Court of Federal Claims No: 22–1306V
66. Charolette Iverson, Phoenix, Arizona, Court of Federal Claims No: 22–1307V
67. Ronald Brown, Irwin, Pennsylvania, Court of Federal Claims No: 22–1308V
68. Mammie L. Young, Paris, Texas, Court of Federal Claims No: 22–1309V
69. Brooke Rivera on behalf of A. E. C. Clearwater, Florida, Court of Federal Claims No: 22–1310V
70. Mary Morgan, Pembroke Pines, Florida, Court of Federal Claims No: 22–1311V
71. Kanta Sethi, Houston, Texas, Court of Federal Claims No: 22–1312V
72. Victor Minera, Los Angeles, California, Court of Federal Claims No: 22–1314V
73. Courtney Caswell, Greensboro, North Carolina, Court of Federal Claims No: 22–1315V
74. Susan Niles, Hamburg, New York, Court of Federal Claims No: 22–1316V
75. Howard W. Baker, Jr. on behalf of the Estate of Cecilia M. Baker, Deceased, Centreville, Alabama, Court of Federal Claims No: 22–1318V
76. Sarah Armstrong, Raleigh, North Carolina, Court of Federal Claims No: 22–1319V
77. Meredith Baker, Fort Worth, Texas, Court of Federal Claims No: 22–1321V
78. Pamela Andrews, Roseville, Michigan, Court of Federal Claims No: 22–1324V
79. Parker Eskew, Phoenix, Arizona, Court of Federal Claims No: 22–1325V
80. Nathan Young, New York, New York, Court of Federal Claims No: 22–1327V
81. Marcus Howard, Arlington, Washington, Court of Federal Claims No: 22–1329V
82. Juan M. Guzman, Sacramento, California, Court of Federal Claims No: 22–1330V
83. Gloria Darmanin, Saugerties, New York, Court of Federal Claims No: 22–1331V
84. Judith Kauffman, Baltimore, Maryland, Court of Federal Claims No: 22–1332V
85. Shane Barron, Scott Barron and Nicola Boughton on behalf of Ronald J. Barron, Deceased, Mt. Pleasant, Iowa, Court of Federal Claims No: 22–1336V
86. Marlene Million, Boston, Massachusetts, Court of Federal Claims No: 22–1337V
87. Michelle Beede, Taunton, Massachusetts, Court of Federal Claims No: 22–1338V
88. Robert Ohanian, Fresno, California, Court of Federal Claims No: 22–1341V
89. Debbie H. Savage, Cape Charles, Virginia, Court of Federal Claims No: 22–1342V
90. Annie Kruse, Englewood, New Jersey, Court of Federal Claims No: 22–1343V
91. Moises Zuniga, Paxton, Illinois, Court of Federal Claims No: 22–1345V
92. Kimberly Ruth Archer, Portsmouth, Virginia, Court of Federal Claims No: 22–1347V
93. Brian Shaw, Stanfield, Arizona, Court of Federal Claims No: 22–1348V
94. David Hunter, Wellesley, Massachusetts, Court of Federal Claims No: 22–1350V
95. Jayne Hager, Freehold, New Jersey, Court of Federal Claims No: 22–1352V
96. Vanessa Garris, Seattle, Washington, Court of Federal Claims No: 22–1354V
97. Jennifer Schwiebert, Napoleon, Ohio, Court of Federal Claims No: 22–1356V
98. Kathleen Kadlec, New Alexandria, Pennsylvania, Court of Federal Claims No: 22–1357V
99. Fernando Tapia, San Mateo, California, Court of Federal Claims No: 22–1358V
100. Adam Mudaj, New York City, New York, Court of Federal Claims No: 22–1359V
101. Rajender Tomar, South Lebanon, Ohio, Court of Federal Claims No: 22–1360V
102. Regina A. Disantis, Wethersfield, Connecticut, Court of Federal Claims No: 22–1361V
103. Drew Pearce, Phoenix, Arizona, Court of Federal Claims No: 22–1362V
104. Sarah Koyanagi, Bronx, New York, Court of Federal Claims No: 22–1363V
105. Joseph Frank and Paige Frank on behalf of P. F. Boston, Massachusetts, Court of Federal Claims No: 22–1364V
106. Kristina Jesso and Kenneth Jesso on behalf of H. J. Boston, Massachusetts, Court of Federal Claims No: 22–1365V
107. James Fenstermacher, Boston, Massachusetts, Court of Federal Claims No: 22–1366V
108. Vanya Chatty, Washington, District of Columbia, Court of Federal Claims No: 22–1369V
109. Juliana Owens on behalf of S. O., Phoenix, Arizona, Court of Federal Claims No: 22–1370V
110. Jennifer Knight on behalf of L. K., Phoenix, Arizona, Court of Federal Claims No: 22–1371V
111. Frederick Hamilton and Carla Hamilton on behalf of A. H., Phoenix, Arizona, Court of Federal Claims No: 22–1372V
112. Kathryn Ann Weeks, Zephyrhills, Florida, Court of Federal Claims No: 22–1373V
113. Lisa Sullivan, Meadowbrook, Pennsylvania, Court of Federal Claims No: 22–1374V
114. Daniela Morawick, Somerset, New Jersey, Court of Federal Claims No: 22–1375V
115. Jeffrey Ollman, Boston, Massachusetts, Court of Federal Claims No: 22–1376V
116. Nicole Brickhouse, Chester, Pennsylvania, Court of Federal Claims No: 22–1377V
117. Jacob W. Rogers, Boscobel, Wisconsin, Court of Federal Claims No: 22–1378V
118. Ryan Hess, Phoenix, Arizona, Court of Federal Claims No: 22–1381V
119. Mark Radke, Watkinsville, Georgia, Court of Federal Claims No: 22–1384V
120. David Walker, Chattanooga, Tennessee, Court of Federal Claims No: 22–1385V
121. Araceli Evers, Toms River, New Jersey, Court of Federal Claims No: 22–1387V
122. Deborah Carslile, Somers Point, New Jersey, Court of Federal Claims No: 22–1388V
123. Leroy Garrett, Redgranite, Wisconsin, Court of Federal Claims No: 22–1389V
124. William Eskew, Phoenix, Arizona, Court of Federal Claims No: 22–1391V
125. Stephen Harlow, Bloomfield Hills, Michigan, Court of Federal Claims No: 22–1392V
126. Stephanie Kreuze, Grandville, Michigan, Court of Federal Claims No: 22–1394V
127. Erin Merchant on behalf of A. M., Plymouth, Minnesota, Court of Federal Claims No: 22–1395V
128. Sherry Matthews, North Little Rock, Arkansas, Court of Federal Claims No: 22–1396V
129. Liane Wunderlich, Union, New Jersey, Court of Federal Claims No: 22–1397V
130. Constance Ricketson, Anderson, South Carolina, Court of Federal Claims No: 22–1398V

131. Travis Edens, Albuquerque, New Mexico, Court of Federal Claims No: 22–1399V
132. Keri McCarty, Beaverton, Oregon, Court of Federal Claims No: 22–1400V
133. Kimberly G. Raferty, Palo Alto, California, Court of Federal Claims No: 22–1401V
134. Joshua J. Jones, Fox Lake, Wisconsin, Court of Federal Claims No: 22–1402V
135. Thomas Mack, Los Angeles, California, Court of Federal Claims No: 22–1404V
136. Michael Roma, Cranston, Rhode Island, Court of Federal Claims No: 22–1406V
137. Annamma Varughese, Cooper City, Florida, Court of Federal Claims No: 22–1408V
138. Dianne Fitzgibbons, Groveland, Massachusetts, Court of Federal Claims No: 22–1409V
139. Gary Garner, Prince Frederick, Maryland, Court of Federal Claims No: 22–1410V
140. Michael Ringland, Bethesda, Maryland, Court of Federal Claims No: 22–1411V
141. Irene Perkin, Sault Ste. Marie, Michigan, Court of Federal Claims No: 22–1413V
142. Marguerite Taylor, South Bend, Indiana, Court of Federal Claims No: 22–1414V
143. Timothy Thomas, Greensboro, North Carolina, Court of Federal Claims No: 22–1416V
144. Hilary Bezona, Glastonbury, Connecticut, Court of Federal Claims No: 22–1417V
145. Annette Estes (Mace), Ellicott City, Maryland, Court of Federal Claims No: 22–1418V
146. Desare'a Michele Rosastri, Golden, Colorado, Court of Federal Claims No: 22–1420V

[FR Doc. 2022–23165 Filed 10–24–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Reflect Changes Being Made Within the Center for Medicare and Medicaid Innovation (CMMI)

AGENCY: Centers for Medicare & Medicaid Services, Center for Medicare and Medicaid Innovation.

SUMMARY: To reflect organizational changes within the Center for Medicare and Medicaid Innovation (CMMI).

SUPPLEMENTARY INFORMATION: Statement of Organization, Functions, and Delegations of Authority Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) (last amended at **Federal Register**, Vol. 75, No. 56, pp. 14176–14178, dated March 24, 2010; Vol. 76, No. 203, pp. 65197–65199, dated October 20, 2011; Vol. 78, No. 86, p. 26051, dated May 3, 2013; Vol. 79, No. 2, pp. 397–398, dated January 3, 2014; and Vol. 84, No. 32, p. 4470, dated February 15, 2019) is amended to reflect organizational changes within the Center for Medicare and Medicaid Innovation (CMMI).

Part F, Section FC. 10 (Organization) is revised as follows:

Center for Medicare and Medicaid Innovation (CMMI), State and Population Health (FCPC)

Part F, Section FC. 20 (Functions) for the organization is as follows:

Executive Operations Staff (EOS)

The Executive Operations Staff (EOS) directs and leads administrative operations and provides support to CMMI management and staff on the full range of management and related administrative issues (*i.e.,* personnel and recruitment issues, staff development, performance management, awards/recognition program, organizational analysis, correspondence, regulations, legislative and Freedom of Information Act activities, facilities management, and time and attendance). EOS is proposing the following changes:

The correspondence and clearance work will be realigned from EOS to PPG, Division of Alternative Payment Model Infrastructure (DAPMI). The purpose is to streamline and centralize the correspondence and clearance process.

The travel & conference, purchase card & supplies, and overtime & compensatory activities will be transitioned to EOS from BSG, Division of Budget & Administrative Services. The purpose is to unify the Center's business operations and services, enhance continuity in administrative services, and enable BSG's budget division to dedicate more effort to budget activities.

Coordinating FAC–COR training activities will be transitioned to EOS from BSG, Division of Central Contract Services. The purpose is to build a consistent training group within the Center that can track and execute COR training needs and enable BSG's contracts division to dedicate more effort to centralized contract activities.

The interagency agreement (IAA) super-user role will transition from EOS to BSG, Division of Central Contract Services. The purpose is to unify and streamline the Center's centralized contract services support.

The role as the Center's focal CMS Access Administrator (CAA) will be transitioned from BSG, Division of IT Operations & Security, to EOS to unify the Center's business operations and services and enhance continuity in Executive Operations services.

Business Services Group (BSG)

The Business Services Group provides leadership, direction, and guidance to the Center on matters impacting operations for the Center's models and other initiatives, including budget, financial, audit/compliance, travel, acquisition, IT, and project management operations. BSG is proposing the following changes:

Division of Budget & Administrative Services (DABAS)

As discussed above, transition travel & conference, purchase card & supplies, and overtime & compensatory activities to EOS. The purpose is to unify the Center's business operations and services, enhance continuity in administrative services, and enable BSG's budget division to dedicate more effort to budget activities.

Division of Central Contract Services (DCCS)

As discussed above, the interagency super-user role will transition from EOS to BSG, Division of Central Contract Services. The purpose is to unify and streamline the Center's centralized contract services support.

Coordination of FAC–COR training activities transition to EOS from BSG, Division of Central Contract Services (DCCS). The purpose is to build a consistent training group within the Center that can track and execute COR training needs and enable BSG's contracts division to dedicate more effort to centralized contract activities.

Division of IT Operations & Security (DITOS)

As discussed above, the role of the Center's focal CMS Access Administrator (CAA) will be transitioned from BSG, Division of IT Operations & Security (DITOS) to EOS to unify the Center's business operations and services and enhance continuity in Executive Operations Services.

The Innovation Payment Contract (IPC) will move from DITOS to DABAS.

Division of Application Design and Development (DADD)

Model Intake will move from the Division of Application Design and Development (DADD) to the Division of Program and Project Management (DPPM).

Division of Program and Project Management (DPPM)

The Division of Program and Project Management (DPPM) will be consolidated with Division of IT Operations & Security (DITOS) and renamed the Division of Systems Support, Operation, and Security (DSSOS).

The Division of Program and Project Management (DPPM) will be abolished.

The proposed reorganization will have four Divisions within BSG. We propose to rename three of the four divisions. The 4th Division retains the original name.

Prevention and Population Health Group (PPHG)

The Prevention and Population Health Group (PPHG) develops, tests, and implements models focused on advancing prevention and population health within the delivery system. PPHG's portfolio includes models focused on individual and community-based prevention, social determinants of health, Medicaid focused models, and opioids. There exist a number of synergies between the portfolios in PPHG and SIG including: leveraging new provider types and expanding the care team; enabling multi-payer whole system transformation; addressing and integrating behavioral health; addressing social determinants; engaging with states and with Medicaid as key partners. PPHG is proposing the following changes:

PPHG and SIG will be consolidated and renamed to the State and Population Health Group (SPHG). The purpose is to bring all of the Center's opioids work under one Group and capitalize on programmatic and operational synergies between two portfolios, and allow for better management over the combined work.

All PPHG divisions are being retained, with new names for two divisions to align to SPHG.

State Innovations Group (SIG)

The State Innovations Group (SIG) leverages CMS' role as a payer to catalyze delivery system transformation at the State level. SIG's portfolio includes models targeting State-based delivery system transformation efforts, multi/all payer models, and opioids. SIG's portfolio includes models targeting State-based delivery system transformation efforts, multi/all payer models, and opioids. Several synergies exist between SIG and PPHG, including leveraging new provider types and expanding the care team; enabling multi-payer whole system transformation; addressing and integrating behavioral health; addressing social determinants; engaging with states and Medicaid as key partners. SIG is proposing the following changes:

PPHG and SIG will be consolidated and renamed to the State and Population Health Group (SPHG). The purpose is to bring all of the Center's opioids work under one Group and capitalize on programmatic and operational synergies between two portfolios, and allow for better management over the combined work.

All SIG divisions are being retained, with new names for two divisions to align to SPHG. The FTEs for these divisions remain the same via the realignment. CMMI proposes to eliminate only the Group Director and Deputy Director level leadership positions. CMMI vacant management positions will be repurposed into new management slots. The changes here will have no effect on the staff or budget.

Division of State Innovations Models

The Division of State Innovations Models will be realigned to SPHG and renamed to the Division of State Based Initiatives (DSBI).

Division of All-Payer Models

The Division of All-Payer Models will be realigned to SPHG and renamed to the Division of Multi-Payer Models (DMPM).

Seamless Care Models Group (SCMG)

The Seamless Care Models Group identifies, designs, and tests innovative health care payment and delivery models that enable health care professionals to work together to care for patients across the continuum of health and different care settings. These models test accountability for population health and total cost of care in both fee-for-service and Medicare Advantage, and explore improvements to Medicare Part D. In addition to models for the general Medicare population, SCMG tests innovative payment structures for special beneficiary populations with unique needs, such as those with specific diseases or living in rural areas. Given the diversity of the portfolio, SCMG is seeking to streamline work captured within the group to focus on population risk and to realign work into more sensible model topic divisions. SCMG is proposing the following changes:

Division of Advanced Primary Care

Realignment of models dedicated to creating value-based care at the physician group practice level housed in the Division of Advanced Primary Care to the Patient Care Models Group (PCMG).

Division of Delivery System Demonstrations

Realignment of health plan innovation models in Medicare Part C and Part D from the Division of Financial Risk into the Division of Delivery System Demonstrations.

Rename the Division of Delivery System Demonstrations to the Division of Health Plan Innovation.

Division of Special Populations and Projects

Realign staff and rural health projects (*e.g.,* Rural Community Hospital and Frontier Community Health Integration Project Demonstrations) from the Division of Delivery System Demonstrations to the Division of Special Populations and Projects given this Division's focus on special beneficiary populations.

Patient Care Models Group (PCMG)

The Patient Care Models Group identifies, designs, and tests innovative health care payment and delivery models to transform traditional fee-for-service payment into value-based design through total cost of care and prospective episodic payment, along with other payment structures, that leverage risk at critical points along an acute care continuum. These models largely target high-cost, fragmented specialty care along with models dedicated specifically to creating risk for physicians or providers as the accountable entity. PCMG also designs and implements payment models for post-acute and seriously ill populations. PCMG works on improving the accuracy of payment in fee-for-service, such as drug pricing, to move current payment levels closer to value and increase the accuracy of value payment targets built on fee-for-service payments.

PCMG is proposing the following changes:

Division of Technical Model Support (DTMS)

PCMG will eliminate the Division of Technical Model Support (DTMS), which has historically provided support functions of legal review and drafting of legal documents, data analytics, and

operation approach, in light of the centralization of these support functions under PPG.

Division of Advanced Primary Care From SCMG

As discussed above, PCMG will acquire the Division of Advanced Primary Care from SCMG, along with its primary care models, as the physician is the accountable entity under these models. This creates five model operations divisions within PCMG.

Policy and Programs Group (PPG)

The Policy and Programs Group (PPG) leads CMMI's portfolio analysis process including inventorying concepts as they are considered for inclusion in the portfolio, cataloging final documentation on innovations tested by CMMI.

PPG is proposing the following changes:

Division of Alternative Payment Model Infrastructure

As discussed above, the correspondence and clearance work will realign from EOS to the Division of Alternative Payment Model Infrastructure. The purpose is to restructure the clearance process to involve the initial legal policy review and coordination with the clearance team, allowing for more targeted distribution and effective outcomes.

Division of Data Analytics

The mission and functions of the Division of Data Analytics will be reframed by providing structured data analytics, guidance, and technical support for new model development, existing model operations, data dissemination to model participants, payment policies and methodologies (*e.g.,* risk adjustment), and educating staff on data availability, resources, and analytic methodologies.

Learning and Diffusion Group (LDG)

The Learning and Diffusion Group (LDG) provides leadership and strategic planning for a broad set of learning activities aimed at achieving rapid and broad-scale adoption of effective payment and care delivery models that improve health care and health for all Americans. LDG is proposing the following changes:

Division of Model Learning Systems (DMLS)

The proposed reorganization will consolidate all model-specific learning work into the Division of Model Learning Systems (DMLS).

LDG will administer model-specific learning system work from DMLS, enabling more seamless knowledge sharing and insight, efficient communication across model teams, and flexibility in work coverage. Model-specific learning system work will continue to include contract procurement and management, learning system design, implementation, evaluation, and refinement.

Division of Improvement Networks and Regional Engagement (DINRE)

The proposed reorganization will consolidate all cross-model stakeholder and engagement work, cross model learning data analytics, and model communication platforms into the Division of Improvement Networks and Regional Engagement (DINRE).

The Division of Improvement Networks and Regional Engagement (DINRE) will be renamed to Division of Analysis and Networks (DAN), to reflect its new portfolio better.

Division of Cross-Model Learning and Improvement (DCMLI)

Abolish the Division of Cross-Model Learning and Improvement (DCMLI) after reallocating its work to a remaining division.

Authority: 44 U.S.C. 3101.

Dated: October 20, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–23206 Filed 10–24–22; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Institute on Aging Special Emphasis Panel; AD Sequencing.

Date: November 16, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 20, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23197 Filed 10–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS National and Regional Resources (R24).

Date: December 5, 2022.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lisa A. Dunbar, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 20, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23193 Filed 10–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 Institute of General Medical Sciences Special Emphasis Panel; Review of NIH IDeA Networks of Biomedical Research Excellence (INBRE) applications.

Date: November 29, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 20, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23196 Filed 10–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 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 Institute on Aging Special Emphasis Panel; The Dog Aging Project.

Date: November 21, 2022.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, *MIKHAILI@MAIL.NIH.GOV.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 20, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23192 Filed 10–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity PAR review.

Date: November 22, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, 2 Democracy, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 20, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23194 Filed 10–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

Flagler, Putnam, St. Johns, and Volusia Counties for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Flagler, Putnam, St. Johns, and Volusia Counties for debris removal [Category A] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23149 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued September 29, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

Orange, Osceola, Polk, and Seminole Counties for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Orange, Osceola, Polk, and Seminole Counties for debris removal [Category A] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23148 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 5, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

DeSoto, Flagler, Hillsborough, Putnam, Seminole, St. Johns, and Volusia Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Indian River and Monroe Counties for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23152 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4669–DR; Docket ID FEMA–2022–0001]

American Samoa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the territory of American Samoa (FEMA–4669–DR), dated September 15, 2022, and related determinations.

DATES: The declaration was issued September 15, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 15, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the territory of American Samoa resulting from high surf, high winds, and flooding during the period of July 12 to July 15, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the territory of American Samoa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the territory. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benigno B. Ruiz, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the territory of American Samoa have been designated as adversely affected by this major disaster:

All areas in the territory of American Samoa are eligible for assistance under the Public Assistance Program.

All areas in the territory of American Samoa are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23127 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued September 24, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Camuy, Guanica, Lajas, and Sabana Grande for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23132 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4674–DR; Docket ID FEMA–2022–0001]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4674–DR), dated September 30, 2022, and related determinations.

DATES: The declaration was issued September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 30, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from flooding and mudslides during the period of July 13 to July 14, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Charles Monroe Maltbie III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

Buchanan and Tazewell Counties for Public Assistance.

All areas within the Commonwealth of Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23156 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4670–DR; Docket ID FEMA–2022–0001]

Muscogee (Creek) Nation; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Muscogee (Creek) Nation (FEMA–4670–DR), dated September 20, 2022, and related determinations.

DATES: The declaration was issued September 20, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 20, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage to the lands associated with the Muscogee (Creek) Nation resulting from severe storms, tornadoes, and flooding during the period of May 2 to May 8, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists for the Muscogee (Creek) Nation.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Muscogee (Creek) Nation. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Roland W. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

Muscogee (Creek) Nation for Public Assistance.

The Muscogee (Creek) Nation is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23128 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4667–DR; Docket ID FEMA–2022–0001]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4667–DR), dated August 26, 2022, and related determinations.

DATES: The declaration was issued August 26, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 26, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from flooding during the period of May 8 to May 11, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Yolanda J. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

Copper River REAA, Iditarod REAA, and Kuspuk REAA for Public Assistance.

All areas within the State of Alaska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23125 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3586–EM; Docket ID FEMA–2022–0001]

North Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North Carolina (FEMA–3586–EM), dated October 1, 2022, and related determinations.

DATES: The declaration was issued October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 29, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of North Carolina resulting from Hurricane Ian beginning on September 28, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of North Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, John F. Boyle, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of North Carolina have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program for all 100 North Carolina counties and the Eastern Band of Cherokee Indians.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23121 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4644–DR; Docket ID FEMA–2022–0001]

Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4644–DR), dated March 11, 2022, and related determinations.

DATES: This change occurred on October 3, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Charles M. Maltbie III, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Catharine O. Fan as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23122 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: The declaration was issued September 29, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 29, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in the State of Florida resulting from Hurricane Ian beginning on September 23, 2022, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible cost. For a period of 30 days from the start of the incident period, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Charlotte, Collier, DeSoto, Hardee, Hillsborough, Lee, Manatee, Pinellas, and Sarasota Counties for Individual Assistance.

Charlotte, Collier, DeSoto, Hardee, Hillsborough, Lee, Manatee, Pinellas, and Sarasota Counties for debris removal (Category A) under the Public Assistance program.

All 67 counties, the Miccosukee Tribe of Indians of Florida, and the Seminole Tribe of Florida for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Florida are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23146 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0001]

Notice of Adjustment of Countywide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2022, will be increased.

DATES: This adjustment applies to major disasters declared on or after October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: In assessing damages for area designations under 44 CFR 206.40(b), FEMA uses a countywide per capita indicator to evaluate the impact of the disaster at the county level. FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the countywide per capita impact indicator to $4.44 for all disasters declared on or after October 1, 2022.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 8.3 percent for the 12-month period that ended in August 2022. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 13, 2022.

Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23160 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4672–DR; Docket ID FEMA–2022–0001]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–4672–DR), dated September 23, 2022, and related determinations.

DATES: This amendment was issued September 29, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 29, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

> I have determined that the damage in certain areas of the State of Alaska resulting from a severe storm, flooding, and landslides during the period of September 15 to September 20, 2022, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').
>
> Therefore, I amend my declaration of September 23, 2022, to authorize Federal funds for emergency protective measures at 100 percent of the total eligible costs for the first 30 days of the incident period.
>
> This adjustment to state and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050,Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23145 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 10, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

> Orange and Osceola Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program). Brevard County for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct

federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23154 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 4, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 4, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in the State of Florida resulting from Hurricane Ian beginning on September 23, 2022, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declaration of September 29, 2022, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, under the Public Assistance program at 100 percent of the total eligible costs for an additional 30-day period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23151 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4668–DR; Docket ID FEMA–2022–0001]

Salt River Pima-Maricopa Indian Community; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Salt River Pima-Maricopa Indian Community (FEMA–4668–DR), dated September 2, 2022, and related determinations.

DATES: The declaration was issued September 2, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 2, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage to the lands associated with the Salt River Pima-Maricopa Indian Community resulting from severe storms during the period of July 17–18, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists for the Salt River Pima-Maricopa Indian Community.

In order to provide federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation for the Salt River Pima-Maricopa Indian Community. Consistent with the requirement that federal assistance be supplemental, any federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew F. Grant, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

Salt River Pima-Maricopa Indian Community for Individual Assistance.

Salt River Pima-Maricopa Indian Community for Public Assistance.

The Salt River Pima-Maricopa Indian Community is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23126 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued September 23, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Arecibo, Barceloneta, Cabo Rojo, Loiza, and Manati for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23131 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3583–EM; Docket ID FEMA–2022–0001]

Puerto Rico; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Puerto Rico (FEMA–3583–EM), dated September 18, 2022, and related determinations.

DATES: The declaration was issued September 18, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the Commonwealth of Puerto Rico resulting from Tropical Storm Fiona beginning on September 17, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Robert Little III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program for all 78 municipalities in the Commonwealth of Puerto Rico.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23158 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3583–EM; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Puerto Rico (FEMA–3583–DR), dated September 18, 2022, and related determinations.

DATES: This amendment was issued October 5, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 21, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23117 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued October 2, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Bayamón, Camuy, Cayey, Ceiba, Coamo, Corozal, Guánica, Guayama, Guaynabo, Gurabo, Hormigueros, Juncos, Lajas, Maunabo, Mayagüez, Orocovis, Patillas, Peñuelas, Ponce, Rincón, Sabana Grande, Villalba, Yabucoa, and Yauco for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23141 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued October 7, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Adjuntas, Aguada, Aguas Buenas, Aibonito, Añasco, Barranquitas, Caguas, Canóvanas, Ciales, Cidra, Comerío, Fajardo, Humacao, Juana Díaz, Lares, Las Marías, Las Piedras, Manati, Maricao, Moca, Morovis, Naguabo, Naranjito, San Lorenzo, Santa Isabel, and Vega Alta for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23143 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 7, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

Palm Beach County for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23153 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued October 5, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 21, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23142 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: The declaration was issued September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in the Commonwealth of Puerto Rico resulting from Hurricane Fiona beginning on September 17, 2022, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible cost. For a period of 30 days from the start of the incident period, you are

authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Fargione, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this major disaster:

The municipalities of Adjuntas, Aguas Buenas, Aibonito, Arroyo, Barranquitas, Bayamón, Caguas, Canóvanas, Carolina, Cataño, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerío, Corozal, Dorado, Fajardo, Florida, Guayama, Guayanilla, Guaynabo, Gurabo, Humacao, Jayuya, Juana Díaz, Juncos, Lares, Las Piedras, Luquillo, Maricao, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Peñuelas, Ponce, Río Grande, Salinas, San Juan, San Lorenzo, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, and Yauco for Individual Assistance.

All 78 municipalities for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the Commonwealth of Puerto Rico are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23129 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued September 27, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Aguada, Aguadilla, Culebra, San Sebastián, and Quebradillas for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23139 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued September 26, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Hatillo, Isabela, Las Marías, Moca, and Rincón for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23138 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3584–EM; Docket ID FEMA–2022–0001]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3584–EM), dated September 24, 2022, and related determinations.

DATES: This amendment was issued September 25, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of September 24, 2022.

Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lafayette, Lake, Levy, Leon, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Putnam, Santa Rosa, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23119 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued September 25, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

San Germán Municipality for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23134 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4662–DR; Docket ID FEMA–2022–0001]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–4662–DR), dated July 27, 2022, and related determinations.

DATES: The declaration was issued July 27, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 27, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms and straight-line winds on May 12, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew P. Meyer, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Antelope, Boone, Burt, Cedar, Cuming, Custer, Dixon, Garfield, Greeley, Holt, Knox, Logan, Pierce, Polk, Sherman, Thurston, Valley, Wayne, Wheeler, and York Counties for Public Assistance.

All areas within the State of Nebraska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23124 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued September 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Añasco, Hormigueros, and Mayaguez for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23130 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

Brevard, Hendry, and Monroe Counties for Individual Assistance (already designated Public Assistance).

Okeechobee County for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Glades and Okeechobee Counties for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23155 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0001]

Notice of Adjustment of Statewide per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for

disasters declared on or after October 1, 2022, will be increased.

DATES: This adjustment applies to major disasters declared on or after October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be increased to $1.77 for all disasters declared on or after October 1, 2022.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 8.3 percent for the 12-month period that ended in August 2022. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 13, 2022.

Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23159 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3585–EM; Docket ID FEMA–2022–0001]

South Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of South Carolina (FEMA–3585–EM), dated September 29, 2022, and related determinations.

DATES: The declaration was issued September 29, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 29, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of South Carolina resulting from Hurricane Ian beginning on September 25, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of South Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kevin A. Wallace Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of South Carolina have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program for all 46 South Carolina counties.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23120 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4672–DR; Docket ID FEMA–2022–0001]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4672–DR), dated September 23, 2022, and related determinations.

DATES: The declaration was issued September 23, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from a severe storm, flooding, and landslides during the period of September 15 to September 20, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for emergency protective measures (Category B) under the

Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

Bering Strait REAA, Kashunamiut REAA, Lower Kuskokwim REAA, and Lower Yukon REAA for Individual Assistance.

Bering Strait REAA, Kashunamiut REAA, Lower Kuskokwim REAA, and Lower Yukon REAA for emergency protective measures (Category B) under the Public Assistance program.

All areas within the State of Alaska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23144 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3582–EM; Docket ID FEMA–2022–0001]

Mississippi; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Mississippi (FEMA–3582–EM), dated August 30, 2022, and related determinations.

DATES: The declaration was issued August 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 30, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Mississippi resulting from a water crisis beginning on August 30, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Mississippi.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program for a period of 90 days.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Allan Jarvis, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Mississippi have been designated as adversely affected by this declared emergency:

Hinds County for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program at 75 percent federal funding for a period of 90 days.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23157 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This change occurred on September 25, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Fargione as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23133 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0001]

Notice of Adjustment of Minimum Project Worksheet Amount

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the minimum Project Worksheet Amount under the Public Assistance program for disasters and emergencies declared on or after October 1, 2022, will be increased.

DATES: This adjustment applies to major disasters and emergencies declared on or after October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: 44 CFR 206.202(d)(2) provides that FEMA will annually adjust the minimum Project Worksheet amount under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase to $3,800 for the minimum amount that will be approved for any Project Worksheet under the Public Assistance program for all major disasters and emergencies declared on or after October 1, 2022.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 8.3 percent for the 12-month period that ended in August 2022. This is based on information released by the Bureau of Labor Statistics at the U.S. Department of Labor on September 13, 2022.

Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23161 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 3, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

Highlands and Lake Counties for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Charlotte, Collier, Hardee, Lee, Manatee, Polk, and Sarasota Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Hendry, Highlands, and Lake Counties for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23150 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0001]

Notice of Maximum Amount of Assistance Under the Individuals and Households Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice of the maximum amount for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2022.

DATES: This adjustment applies to emergencies and major disasters declared on or after October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Frank Matranga, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 212–1000.

SUPPLEMENTARY INFORMATION: Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5174, prescribes that FEMA must annually adjust the maximum amount for assistance provided under the Individuals and Households Program (IHP). FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Stafford Act with respect to any single emergency or major disaster is $41,000 for housing assistance and $41,000 for other needs assistance. The increase in award amount is for any single emergency or major disaster declared on or after October 1, 2022. In addition, in accordance with 44 CFR 61.17(c), this increases the maximum amount of available coverage under any Group Flood Insurance Policy (GFIP) issued.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 8.3 percent for the 12-month period, which ended in August 2022. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 13, 2022.

Catalog of Federal Domestic Assistance No. 97.048, Federal Disaster Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23162 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3584–EM; Docket ID FEMA–2022–0001]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3584–EM), dated September 24, 2022, and related determinations.

DATES: The declaration was issued September 24, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida resulting from Tropical Storm Ian beginning on September 23, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

Brevard, Broward, Charlotte, Collier, Desoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Osceola, Palm Beach, Pasco, Pinellas, Polk, Sarasota, and St. Lucie and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23118 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This amendment was issued October 4, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2022.

Lincoln County for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23123 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued September 29, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Arecibo, Arroyo, Cabo Rojo, Guayanilla, Jayuya, Salinas, San Germán, Toa Alta, and Utuado for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–23140 Filed 10–24–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

FY 2022 Senior Executive Service Performance Review Boards

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the FY 2022 Senior Executive Service (SES) Performance Review Boards (PRBs) for the Department of Homeland Security (DHS). The purpose of the PRBs is to make recommendations to the appointing authority (*i.e.,* Component head) on the performance of senior executives (career, noncareer, and limited appointees), including recommendation on performance ratings, performance-based pay adjustments, and performance awards. The PRBs will also make recommendations on the performance of Transportation Security Executive Service, Senior Level, and Scientific and Professional employees. To make its recommendations, the PRBs will review performance appraisals, initial summary ratings, any response by the employee, and any higher-level official's findings.

DATES: This Notice is applicable as of October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Christian Fajardo, Human Resources Specialist, Office of the Chief Human Capital Officer, *christian.fajardo@hq.dhs.gov,* 771–200–0392.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c) and 5 CFR 430.311, each agency must establish one or more PRBs to make recommendations to the appointing authority (*i.e.,* Component head) on the performance of its senior executives. Each PRB must consist of three or more members. More than one-half of the membership of a PRB must be SES career appointees when reviewing appraisals and recommending performance-based pay adjustments or performance awards for career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

List of Names (Alphabetical Order)

Abdelall, Brenda
Acosta, Juan L
Adamcik, Carol A
Aguilar, Max
Alfonso-Royals, Angelica
Alles, Randolph D
Almeida, Corina
Anderson, Sandra D
Antalis, Casie
Antognoli, Anthony
Armstrong, Gloria R
Baden, Mary
Baidwan, Meant S
Baker, Jeremy D
Baroukh, Nader
Barrera, Staci A
Barrera, Staci E
Barrett, Lawrence R
Basham, Craig
Belcher, Brian C
Berg, Peter
Berg, Peter B
Berger, Katrina W
Bhagowalia, Sanjeev
Bible, Daniel A
Bible, Kenneth
Blackwell, Juliana J
Blessey, Caroline
Bobich, Jeffrey M
Bonner, Bryan
Borka, Robert
Borkowski, Mark S
Boulden, Laurie
Boyd, John
Boyer, Stephen A
Brane, Michelle
Braun, Jacob H
Breitzke, Erik P
Brewer, Julie S
Bright, Andrea J
Brito, Roberto
Brown, Billy
Browne, Rene E
Brundage, William
Bryan, Michelle C
Bucholtz, Kathleen L
Bullock, Edna
Burgess, Kenneth
Burks, Atisha
Burriesci, Kelli A
Bush, William B
Cagen, Steven W
Caine, Jeffrey

Callahan, Mary Ellen
Cameron, Michael K
Canegallo, Kristie
Canevari, Holly E
Canty, Rachel E
Cappello, Elizabeth A
Carnes, Alexandra
Carpio, Philip F
Carraway, Melvin J
Chaleki, Thomas D
Cheatle, Kimberly A
Cheng, Wen-Ting
Clark, Alaina
Clark, Kenneth N
Cleary Stannard, Jennifer S
Cline, Richard K
Cloe, David
Clutter, Mason
Companion, Tod T
Cook, Charles
Cormier, Tracy J
Coronado, Luis
Corrado, Janene M
Cotter, Daniel
Courey, Marc B
Courtney, Paul
Coven, Phyllis
Cox, Adam
Cox, Debra S
Cross, Catherine C
Crumpacker, Jim H
Culliton-Gonzalez, Katherine
Cunningham, John D
Dainton, Albert J
Dargan, John L
Das, Sharmistha
Daskal, Jennifer
Davidson, Michael J
Dawson, Inga I
Dembling, Ross W
DeNayer, Larry C
Di Pietro, Joseph R
DiFalco, Frank J
Dobitsch, Stephanie M
Doran, Thomas J
Dorko, Jeffrey
Dorr, Robert
Doyle, Kerry
Dunbar, Susan C
Dunlap, James
Dupree, Lynn
Eaton, Joseph J
Ederheimer, Joshua A
Edwards, Benjamin R
Eldredge, Deborah N
Ellison, Jennifer
Emerson, Michael D
Emrich, Matthew D
Enriquez Mcdivitt, Mariam
Escobar Carrillo, Felicia A
Espinosa, Marsha
Essaheb, Kamal
Evetts, Mark V
Falk, Scott K
Fenton, Jennifer M
Ferraro, Nina M
Fields, Kathy
Fitzhugh, Peter C
Fitzmaurice, Stacey D
Fitzpatrick, Ronnyka
Flores, Pete R
Fong, Heather
Francis, Steve K
Fujimura, Paul
Gabbrielli, Tina
Gaches, Michael
Gandhi, Pritesh
Gantt, Kenneth D
George, Michael
Gersten, David
Gladwell, Angela R
Glass, Veronica
Gorman, Chad M
Gould, Austin J
Gountanis, John
Granger, Christopher
Grazzini, Christopher
Griggs, Christine
Groom, Molly
Gunter, Brett A
Guzman, Nicole
Habersaat, Mark S
Hall, Christopher J
Harris, Melvin
Harvey, Melanie K
Hatch, Peter
Havranek, John F
Heinz, Todd W
Henderson, Rachelle B
Hess, David A
Higgins, Jennifer B
Highsmith, AnnMarie R
Hinkle-Bowles, Paige
Holzer, James
Hoover, Crinley S
Horton, Michael G
Horyn, Iwona B
Hott Jr., Russell E
Howard, Tammy
Hoy, Serena
Huffman, Benjamine C
Hughes, Clifford T
Hunter, Adam
Huse, Thomas F
Hysen, Eric
Jackson, Arnold D
James, Michele M
Jenkins, Donna
Johnson, James V
Johnson, Tae D
Jones, Eric C
Joves, Alexander
Kahangama, Iranga A
Katz, Evan C
Kaufman, Steven
Kerner, Francine
Kim, Ted
King, Matthew H
King, Tatum S
Klein, Matthew
Koumans, Marnix R
Kronisch, Matthew L
Kuepper, Andrew
Kuhn, Karen A
LaJoye, Darby R
Lambeth, John
Langley, Monica
Lanum, Scott F
Larrimore, David
Laurance, Stephen A
Lawrence, Jamie
Lechleitner, Patrick J
Leckey, Eric
Lee, Grace
Lee, Kimya S
Leonard, John P
Letowt, Philip J
Lewis, James
Loiacono, Adam V
Lotspeich, Katherine
Lugo, Alice
Luke, Adam
Lundgren, Karen E
Lynch, Steven M
Lynum, Kara
Lyon, Shonnie R
Maday, Brian
Magrino, Christopher
Maher, Joseph B
Malik, Irfan
Mapar, Jalal
Marcott, Stacy
Martin, Joseph F
Maurer, Tim
Maykovich, Vincent
McComb, Richard
McCullar, Shannon
McDermott, Thomas
McDonald, Christina E
McDonough, Bryn
McElwain, Patrick J
McEntee, Jonathan
McGough, Daniel
McGovern, Helen Mary
McLane, JoAnn
Meckley, Tammy M
Medina, Yvonne R
Meyer, Joel T
Meyer, Jonathan
Michelini, Dennis J
Miles, John D
Miller, Alice
Miller, Gail
Mina, Peter E
Mitchell, Kathryn C
Moman, Christopher C
Morant, Cardell T
Murphy, Mark
Mussington, David
Myers, Heidi Y
Nally, Kevin J
Navarro, Donna M
Neitzel, Beth
Newman, Robert B
Nunn, Willie
Ocker, Ronald J
O'Connor, Kimberly
Olson, David
Ortiz, Raul L
Padilla, Kenneth
Padilla Jr, Manuel
Palmer, David J
Paramore, Faron K
Paschall, Robert D
Patel, Kalpesh A
Patterson, Leonard E
Pavlik-Keenan, Catrina

Perez, Nelson
Perriott, Harvey
Petit, Nanci
Picarelli, John
Piccone, Colleen C
Pineiro, Marlen
Podonsky, Glenn S
Pohlman, Teresa R
Porto, Victoria
Powell, Jonathan
Price, Corey A
Prosnitz, Susan M
Punteney, James
Quinn, Timothy J
Radgowski, Jeffrey
Raines, Ariana M
Rapp, Marc A
Raymond, John J
Renaud, Daniel M
Renaud, Tracy L
Rezmovic, Jeffrey M
Ritter, David
Roncone, Stephen A
Rosenblum, Marc R
Rowe Jr., Ronald L
Rubino, Jaclyn
Russell, Anthony
Russell, Gabriel
Ryan, Michael P
Rynes, Joel C
Sabatino, Diane J
Sahakian, Diane V
Salazar, Rebecca A
Salazar, Ronald M
Saltalamachea, Michael
Salvano-Dunn, Dana
Scanlon, Julie A
Scardaville, Michael
Scott, Kika M
Scudder, Ryan J
Sequin, Debbie W
Seidman, Ricki
Sejour, Soldenise
Selby, Cara M
Sevier, Adrian
Shearer, Ruth C
Short, Victoria D
Silas, Z. Traci
Siler, Tracy
Silvers, Robert
Singh, Neil S
Skelton, Kerry T
Smislova, Melissa
Smith, David M
Smith, Frederick B
Smith, Stacy M
Solnet, Jeffrey
Stanton, Joshua B
Stephens, Celisa M
Stevenson, Tirelle D
Stiefel, Nathaniel I
Stough, Michael S
Street, Stacey
Stuntz, Shelby
Sulc, Brian
Swartz, Neal J
Sykes, Gwendolyn
Szczech, Gracia
Tabaddor, Afsaneh
Tapscott, Wallicia
Todd, Sarah
Tomney, Christopher J
Toris, Randolph B
Try, Gregory W
Tulis, Dana
Turi, Keith
Valverde, Michael
Van Houten, Ann
Venture, Veronica
Vespe, Erin E
Vinograd, Samantha
Wainstein, Ken
Walters, Thomas J
Washington, Karinda
Wasowicz, John A
Watkins, Tracey L
Watson, Andre R
Wawro, Joseph D
Wells, James
Whalen, Mary Kate
Wheaton, Kelly D
Williams, Marta
Windham, Nicole
Witte, Diane L
Wolfe, Herbert
Wong, Sharon M
Wright, Christopher J
Yarwood, Susan A

Dated: October 19, 2022.

Gregory Ruocco,

Director, Executive Resources, Office of the Chief Human Capital Officer.

[FR Doc. 2022–23115 Filed 10–24–22; 8:45 am]

BILLING CODE 9112–FC–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6351–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2023

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates ‘‘Difficult Development Areas’’ (DDAs) and ‘‘Qualified Census Tracts’’ (QCTs) for purposes of the Low-Income Housing Credit (LIHTC) under Internal Revenue Code (IRC) section 42. The United States Department of Housing and Urban Development (HUD) makes new DDA and QCT designations annually.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Public Finance and Regulatory Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW, Room 8216, Washington, DC 20410–6000; telephone number 202–402–5878, or send an email to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to section 42, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224; telephone number 202–317–4137. For questions about the ‘‘HUBZone’’ program, contact Lori Gillen, Director, HUBZone Program, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW, Suite 8800, Washington, DC 20416; telephone number 202–386–7382, or send an email to *hubzone@sba.gov.* (These are not toll-free telephone numbers). Additional copies of this notice are available through HUD User at, toll-free, 800–245–2691 for a small fee to cover duplication and mailing costs. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies Available Electronically: This notice and additional information about DDAs and QCTs including the lists of DDAs and QCTs are available electronically on the internet at *https://www.huduser.gov/portal/datasets/qct.html.*

SUPPLEMENTARY INFORMATION:

I. This Notice

Under IRC section 42(d)(5)(B)(iii)(I), for purposes of the LIHTC, the Secretary of HUD must designate DDAs, which are areas with high construction, land, and utility costs relative to area median gross income (AMGI). This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. HUD makes the designations of DDAs in this notice based on modified Fiscal Year (FY) 2022 Small Area Fair Market Rents (Small Area FMRs, SAFMRs), FY 2022 nonmetropolitan county FMRs, FY 2022 income limits, and 2020 Census population counts, as explained below.

Similarly, under IRC section 42(d)(5)(B)(ii)(I), the Secretary of HUD must designate QCTs, which are areas where either 50 percent or more of the households have an income less than 60 percent of the AMGI for such year or have a poverty rate of at least 25

percent. This notice designates QCTs based on new income and poverty data released in the American Community Survey (ACS). Specifically, HUD relies on the most recent three sets of ACS data to ensure that anomalous estimates, due to sampling, do not affect the QCT status of tracts.

II. Data Used To Designate DDAs

HUD uses data from the 2020 Census on total population of metropolitan areas, metropolitan ZIP Code Tabulation Areas (ZCTAs),[1] and nonmetropolitan areas in the designation of DDAs. The Office of Management and Budget (OMB) published updated metropolitan areas in OMB Bulletin No. 18–04 on September 14, 2018.[2] FY 2022 FMRs and FY 2022 income limits HUD uses to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median family income levels) within MSAs. HUD calculates Small Area FMRs for the ZCTAs, or portions of ZCTAs within the metropolitan areas defined by OMB Bulletin No. 18–04.

III. Data HUD Uses To Designate QCTs

HUD uses data from the 2020 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of states in the designation of QCTs. The FY 2022 income limits HUD uses to designate QCTs are based on these MSA definitions with modifications to account for substantial differences in rental housing markets (and in some cases median family income levels) within MSAs. In this QCT designation, HUD uses the OMB metropolitan area definitions published in OMB Bulletin No. 18–04, without modification for purposes of evaluating how many census tracts can be designated under the population cap but uses the HUD-modified definitions and their associated area median family incomes for determining QCT eligibility.

Because the 2020 Decennial Census did not include questions on respondent household income, HUD uses ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 65,000 persons, such as census tracts. Due to sample-related anomalies in estimates from year to year, HUD utilizes three sets of ACS tabulations to ensure that anomalous estimates do not affect QCT status.

IV. Background

The U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of IRC section 42. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC section 42, a summary of the section is provided below. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

V. Summary of the Low-Income Housing Credit

A. Determining Eligibility

The LIHTC is a tax incentive intended to increase the availability of low-income rental housing. IRC section 42 provides an income tax credit to certain owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Section 42 allows each state a credit ceiling based on a statutory formula indicated at IRC section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be allocated to qualified states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC section 42 credits derived from the credit ceiling, states may also provide IRC section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided based on the use of tax-exempt bond proceeds do not reduce the credits available from the credit ceiling. *See* IRC section 42(h)(4).

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. Prior to the enactment of the Consolidated Appropriations Act, 2018 (the 2018 Act), under IRC section 42(g), a building was required to meet one of two tests to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of AMGI, or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is ''rent-restricted'' if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (*i.e.,* 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The 2018 Act added a third test, the average income test. *See* IRC section 42(g)(1), as amended by Public Law 115–141, Division T, section 103(a)(1) (March 23, 2018). A building meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project located in a high-cost housing area as described in IRC section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The taxpayer designates the imputed income limitation for each unit. The designated imputed income limitation of any unit is determined in 10-percentage-point increments, and may be designated as 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. The average of the imputed income limitations designated must not exceed 60 percent of AMGI. *See* IRC section 42(g)(1)(C).

B. Calculating the LIHTC

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The tax credit rates are determined monthly under procedures specified in IRC section 42 and cannot be less than 9 percent for new buildings that are not federally subsidized, and not less than 4 percent for buildings that are federally

[1] The 2023 SDDAs follow the 2010 ZCTA boundaries in order to remain consistent with the FY2022 FMRs. The method HUD used to allocate population counts from the 2020 Census to these ZCTAs is described below.

[2] The OMB metropolitan area definitions released on March 6, 2020 (0MB Bulletin No. 20–01) will be used for the first time in the calculations of income limits in FY 2023 and thus used for QCT and DDA designations for the first time in the 2024 designations. Available at: *www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.*

subsidized. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, or for credits awarded from the state's per capita allocation, to buildings designated by the state agency, eligible basis may be increased up to 130 percent from what it would otherwise be. This means that the available credits also may be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent (70 percent × 130 percent).

C. Defining Difficult Development Areas (DDAs) and Qualified Census Tracts (QCTs)

As stated above, IRC section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas. *See* IRC section 42(d)(5)(B)(iii).

Similarly, IRC section 42 defines a QCT as an area designated by the Secretary of HUD where, for the most recent year for which census data are available on household income in such tract, either 50 percent or more of the households in the tract have an income which is less than 60 percent of the AMGI or the tract's poverty rate is at least 25 percent. All designated QCTs in a single metropolitan area or nonmetropolitan area (taken together) may not contain more than 20 percent of the population of that metropolitan or nonmetropolitan area. Thus, unlike the restriction on DDA designations, QCTs are restricted by the total population of each individual area as opposed to the aggregate population across all metropolitan areas and nonmetropolitan areas. *See* IRC section 42(d)(5)(B)(ii).

IRC section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs). *See* IRC section 42(m).

VI. Explanation of HUD Designation Method

A. 2023 Difficult Development Areas

In developing the 2023 list of DDAs, as required by IRC section 42(d)(5)(B)(iii), HUD compared housing costs with incomes. HUD used 2020 Census population for ZCTAs, and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin 18–04 on September 14, 2018, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY 2022 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and modified FMRs based on the FY 2022 FMRs used for the Housing Choice Voucher (HCV) program. For metropolitan DDAs, HUD used Small Area FMRs based on three annual releases of ACS data, to compensate for statistical anomalies which affect estimates for some ZCTAs. For non-metropolitan DDAs, HUD used the FY 2022 FMRs published on August 6, 2021 and effective on October 1, 2021 (86 FR 43260), as updated by the April 10, 2022 publication effective April 1, 2022 (87 FR 13744).

In formulating the FY 2022 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for differences in rents among areas within each current MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs were previously in separate FMR areas. All counties added to metropolitan areas are treated as HMFAs with rents and incomes based on their own county data, where available. HUD no longer requires recent-mover rents to differ by five percent or more in order to form a new HMFA. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY 2022 FMR areas and FMRs are available at *https://www.huduser.gov/portal/datasets/fmr.html#2022.* Complete details on HUD's process for determining FY 2022 income limits are available at *https://www.huduser.gov/portal/datasets/il.html#2022*).

HUD's unit of analysis for designating metropolitan DDAs consists of ZCTAs, whose Small Area FMRs are compared to metropolitan VLILs. For purposes of computing VLILs in metropolitan areas, HUD considers entire MSAs in cases where these were not broken up into HMFAs; and HMFAs within the MSAs that were broken up for such purposes. HUD used the 2010 ZCTA boundaries to designate the 2023 SDDAs in order to remain consistent with the FY 2022 Small Area FMRs. To allocate 2020 Census population to the 2010 ZCTA boundaries, HUD first translated the 2020 decennial Census population into 2010 census tract boundaries using the Census Bureau's 2010 to 2020 block relationship file and aggregating to 2010 census tracts. The tract populations were then allocated to ZCTAs using the proportion of each tract's 2010 population within each ZCTA, using the Census Bureau's 2010 ZCTA to 2010 Census Tract Relationship File.

Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the ZCTA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA designations follows:

1. *Calculate FMR-to-Income Ratios.* For each metropolitan ZCTA and each nonmetropolitan county, HUD

calculated a ratio of housing costs to income. HUD used a modified FY 2022 two-bedroom Small Area FMR for ZCTAs, a modified FY 2022 two-bedroom FMR for non-metropolitan counties, and the FY 2022 four-person VLIL for this calculation.

The modified FY 2022 two-bedroom Small Area FMRs for ZCTAs differ from the FY 2022 Small Area FMRs in four ways. First, HUD did not limit the Small Area FMR to 150 percent of its metropolitan area FMR. Second, HUD did not limit annual decreases in Small Area FMRs to ten percent, which was first applied in the FY 2018 FMR calculations. Third, HUD adjusted the Small Area FMRs in New York City using the New York City Housing and Vacancy Survey, which is conducted by the U.S. Census Bureau, to adjust for the effect of local rent control and stabilization regulations. No other jurisdictions have provided HUD with data that could be used to adjust Small Area FMRs for rent control or stabilization regulations.[3] Finally, the Small Area FMRs are not limited to the State non-metropolitan minimum FMR.

The FY 2022 two-bedroom FMR for non-metropolitan counties was modified only by removing the state non-metropolitan minimum FMR.

The numerator of the ratio, representing the development cost of housing, was the area's FY 2022 FMR, or Small Area FMR in metropolitan areas. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom rental unit.

The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50).

2. *Sort Areas by Ratio and Exclude Unsuitable Areas.* The ratios of the FMR, or Small Area FMR, to the LIHTC income-based rent limit were arrayed in descending order, separately, for ZCTAs and for nonmetropolitan counties. ZCTAs with populations less than 100 were excluded in order to avoid designating areas unsuitable for residential development, such as ZCTAs containing airports.

3. *Select Areas with Highest Ratios and Exclude QCTs.* The DDAs are those areas with the highest ratios that cumulatively comprise 20 percent of the 2020 population of all metropolitan areas and all nonmetropolitan areas. For purposes of applying this population cap, HUD excluded the population in areas designated as 2023 QCTs. Thus, an area can be designated as a QCT or DDA, but not both.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Qualified Census Tracts

In developing the list of QCTs, HUD used 2020 Census 100-percent count data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2014–2018, 2015–2019 and 2016–2020 ACS tabulations;[4] the FY 2022 Very Low-Income Limits (VLILs) computed at the HMFA level to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 18–04 on September 14, 2018, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically IRC section 42(d)(5)(B)(iv)(II), refers to the same section of the IRC that defines income for purposes of tenant eligibility and unit maximum rent, specifically IRC section 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting in FY 2006 and thereafter, are established at the HMFA level. HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (IRC section 42(d)(5)(B)(ii)(III)), which states that MSAs should be treated as singular areas.

HUD determined the QCTs as follows:

1. *Calculate 60 percent AMGI.* To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of AMGI or have a poverty rate of 25 percent or more. Due to potential statistical anomalies in the ACS 5-year estimates, one of these conditions must be met in at least 2 of the 3 ACS 5-year tabulations for a tract to be considered eligible for QCT designation. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county FY 2022 VLIL adjusted for inflation to match the ACS estimates, which are adjusted to the value of the dollar in the last year of the 5-year group.

2. *Determine Whether Census Tracts Have Less than 50 percent of Households Below 60 percent AMGI.* For each census tract, whether or not 50 percent of households have incomes below the 60 percent income standard (income criterion) was determined by:

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[3] HUD encourages other jurisdictions with rent control laws that affect rents paid by recent movers into existing units to contact HUD about what data might be provided or collected to adjust Small Area FMRs in those jurisdictions.

[4] The 2014–2018 and 2015–2019 ACS data were released using 2010 census tract boundaries, while the 2016–2020 ACS data use 2020 census tract boundaries. To reconcile these datasets, HUD used population-weighted averages of the median household income and poverty rate estimates from the 2014–2018 and 2015–2019 ACS wherever a 2020 census tract intersected multiple 2010 census tracts. HUD did not consider these derived ACS estimates to be statistically reliable if any of the 2010 census tracts comprising more than 10 percent of the population of the 2020 census tract failed to meet the reliability standard (*i.e.,* had a margin of error greater than half of the estimate for the estimate in question).

(a) calculating the average household size of the census tract, (b) adjusting the income standard to match the average household size, and (c) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in each of the three years of ACS tabulations (2014–2018, 2015–2019 and 2016–2020). HUD did not consider estimates of median household income to be statistically reliable unless the margin of error was less than half of the estimate (or a Margin of Error Ratio, MoER, of 50 percent or less). If at least two of the three estimates were not statistically reliable by this measure, HUD determined the tract to be ineligible under the income criterion due to lack of consistently reliable median income statistics across the three ACS tabulations. Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. *Estimate Poverty Rate.* For each census tract, HUD determined the poverty rate in each of the three releases of ACS tabulations (2014–2018, 2015–2019 and 2016–2020) by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined. As with the evaluation of tracts under the income criterion, HUD applies a data quality standard for evaluating ACS poverty rate data in designating the 2023 QCTs. HUD did not consider estimates of the poverty rate to be statistically reliable unless both the population for whom poverty status has been determined and the number of persons below poverty had MoERs of less than 50 percent of the respective estimates. If at least two of the three poverty rate estimates were not statistically reliable, HUD determined the tract to be ineligible under the poverty rate criterion due to lack of reliable poverty statistics across the ACS tabulations.

4. *Designate QCTs Where 20 percent or Less of Population Resides in Eligible Census Tracts.* QCTs are those census tracts in which 50 percent or more of the households meet the income criterion in at least two of the three years evaluated, or 25 percent or more of the population is in poverty in at least two of the three years evaluated, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. *Designate QCTs Where More than 20 percent of Population Resides in Eligible Census Tracts.* In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. The statistically reliable income and poverty criteria are each averaged over the three ACS tabulations (2014–2018, 2015–2019 and 2016–2020). Statistically reliable values that did not exceed the income and poverty rate thresholds were included in the average.

b. Eligible tracts are placed in one of two groups based on the averaged values of the income and poverty criteria. The first group includes tracts that satisfy both the income and poverty criteria for QCTs for at least two of the three evaluation years; a different pair of years may be used to meet each criterion. The second group includes tracts that satisfy either the income criterion in at least two of the three years, or the poverty criterion in at least two of three years, but not both. A tract must qualify by at least one of the criteria in at least two of the three evaluation years to be eligible.

c. HUD ranked tracts in the first group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the first group from highest to lowest by the average of the poverty rates. HUD averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

d. HUD ranked tracts in the second group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the second group from highest to lowest by the average of the poverty rates. HUD then averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

e. HUD stacked the ranked first group on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

f. Working down the single, concatenated, ranked list of eligible tracts, HUD identified census tracts as designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If HUD does not designate a census tract because doing so would raise the percentage above 20 percent, HUD then considers subsequent eligible census tracts to determine if one or more eligible census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 18–04, defining metropolitan areas:

> ''OMB establishes and maintains the delineations of Metropolitan Statistical Areas, . . . solely for statistical purposes. . . . OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the delineations[.] In cases where . . . an agency elects to use the Metropolitan . . . Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the delineations are appropriate for such use. An agency using the statistical delineations in a nonstatistical program may modify the delineations, but only for the purposes of that program. In such cases, any modifications should be clearly identified as delineations from the OMB statistical area delineations in order to avoid confusion.''

Following OMB guidance, HUD's estimation procedure for the FMRs and income limits incorporates the current OMB definitions of metropolitan Core-Based Statistical Areas (CBSAs) based on the CBSA standards, as implemented with 2015–2019 ACS data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where counties were added to an existing or newly defined metropolitan area. In CBSAs where HUD establishes subareas, it is HUD's view that the geographic extent of the housing markets is not the same as the geographic extent of the CBSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HUD defines HMFAs according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

VII. Future Designations

HUD designates DDAs annually as updated HUD income limit and FMR data are made public. HUD designates

QCTs annually as new income and poverty rate data are released.

A. Effective Date

The 2023 lists of QCTs and DDAs are effective:

(1) for allocations of credit after December 31, 2022; or

(2) for purposes of IRC section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2022.

If an area is not on a subsequent list of QCTs or DDAs, the 2023 lists are effective for the area if:

(1) the allocation of credit to an applicant is made no later than the end of the 730-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC section 42(h)(4), if:

(a) the bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) the building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) the multiphase composition of the project (*i.e.,* total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) the aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the QAP of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) all applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

B. Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose QCT or DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2023 DDA that is NOT a designated DDA in 2024 or 2025. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2023. Credits are allocated to Project A on October 30, 2025. Project A is eligible for the increase in basis accorded a project in a 2023 DDA because the application was filed BEFORE January 1, 2024 (the assumed effective date for the 2024 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2023 DDA that is NOT a designated DDA in 2024 or 2025. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2023. Credits are allocated to Project B on March 30, 2026. Project B is NOT eligible for the increase in basis accorded a project in a 2023 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2024 (the assumed effective date of the 2024 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(Case C) Project C is located in a 2023 DDA that was not a DDA in 2022. Project C was placed in service on November 15, 2022. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2023. The tax-exempt bonds that will support the permanent financing of Project C are issued on September 30, 2023. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2023 DDA, because the project was placed in service BEFORE January 1, 2023.

(Case D) Project D is located in an area that is a DDA in 2023 but is NOT a DDA in 2024 or 2025. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2023. Tax-exempt bonds are issued for Project D on April 30, 2025, but Project D is not placed in service until January 30, 2026. Project D is eligible for the increase in basis available to projects located in 2023 DDAs because: (1) one of the two events necessary for triggering the effective date for buildings described in section 42(h)(4)(B) of the IRC (the two events being tax-exempt bonds issued and buildings placed in service) took place on April 30, 2025, within the 730-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the tax-exempt bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2023 DDA that is NOT a designated DDA or QCT in 2024.

The first phase of Project E received an allocation of credits in 2023, pursuant to an application filed March 15, 2023, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the allocating agency by the same entity on March 15, 2024. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2024. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2023 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2023 DDA that is NOT a designated DDA in 2024 or 2025. The first phase of Project F received an allocation of credits in 2023, pursuant to an application filed March 15, 2023, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2025. Credits are allocated to the second phase of Project F on October 30, 2025. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2023 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

VIII. Findings and Certifications

Environmental Impact

This notice involves the statutorily required establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs and QCTs as required under IRC section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methods used in making such designations. As a result, this notice is not subject to review under the order.

Solomon J. Greene,

Principal Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2022–23211 Filed 10–24–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–53]

30-Day Notice of Proposed Information Collection: Manufactured Home Construction and Safety Standards Program; OMB Control No.: 2502–0233; Correction

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice; correction.

SUMMARY: The Department of Housing and Urban Development published a document in the **Federal Register** of October 19, 2022, an information collection notice concerning the safety standards program for mobile home construction. The document contained an incorrect comment closing date.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 19, 2022, in FR Doc 2022–22681, on page 63518, in the second column, correct the **DATES** caption to read:

DATES: Comments Due Date: November 18, 2022.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–23189 Filed 10–24–22; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1313 (Review)]

1,1,1,2-Tetrafluoroethane (R–134a) From China

Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on 1,1,1,2-tetrafluoroethane (R–134a) from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 1, 2022 (87 FR 11475) and determined on June 6, 2022, that it would conduct an expedited review (87 FR 57517, September 20, 2022).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on October 20, 2022. The views of the Commission are contained in USITC Publication 5378 (October 2022), entitled *1,1,1,2-Tetrafluoroethane (R–134a) from China: Investigation No. 731–TA–1313 (Review).*

By order of the Commission.

Issued: October 20, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23205 Filed 10–24–22; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1314 (Review)]

Phosphor Copper from South Korea

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on phosphor copper from South Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 1, 2022 (87 FR 11467) and determined on June 6, 2022 that it would conduct an expedited review (87 FR 57517, September 20, 2022).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on October 19, 2022. The views of the Commission are contained in USITC Publication 5377 (October 2022), entitled *Phosphor Copper from South Korea: Investigation No. 731–TA–1314 (Review).*

By order of the Commission.

Issued: October 19, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23103 Filed 10–24–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Video Processing Devices and Products Containing the Same, DN 3650;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of VideoLabs Inc. on October 20, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain video processing devices and products containing the same. The complainant names as respondent: HP Inc. of Palo Alto, CA. The complainant requests that the Commission issue a limited exclusion order and a cease and desist order and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3650'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). 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

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 20, 2022.

Katherine M. Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23202 Filed 10–24–22; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

DATES: Written comments on this notice must be received by December 27, 2022, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF's Computer and Information Science and Engineering (CISE) Broadening Participation in Computing (BPC) Pilot Survey.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for post-award output and outcome monitoring system.

Abstract: Guided by its Strategic Plan, the National Science Foundation (NSF) has had a longstanding commitment to broadening participation of underrepresented groups and diverse institutions in science, technology, engineering, and math (STEM). In recent years, the Computer and Information Science and Engineering (CISE) Directorate has made a concerted effort to address underrepresentation of various groups in the field of computer science, including women, persons with disabilities, Blacks and African Americans, Hispanics and Latinos, American Indians, Alaska Natives, Native Hawaiians, and Other Pacific Islanders. Underrepresentation in the computer science field has resulted in unwelcoming work and academic environments, the belief among those in positions of influence (*e.g.,* counselors, teachers, faculty, and recruiters) that some people are not well suited to computing or are less likely to excel, and a lack of policies promoting equity within educational institutions and private companies.

This underrepresentation has important implications for society. Computing is one of the fastest growing sectors of the economy, and the lack of diversity deprives the field of a wealth of experience, knowledge, expertise, and perspective. The CISE Strategic Plan for Broadening Participation (November 2012) recognizes that the ''*. . . causes of longstanding underrepresentation are complex and deeply rooted in the cultures of different demographic groups as well as in our society, in our educational institutions, and in our popular media. They will not be easily or quickly changed.*''

The NSF CISE Directorate requests the Office of Management and Budget (OMB) approval of this clearance to initiate new data collections to be conducted as part of an external evaluation of the CISE BPC pilot. These collections, to be conducted by the evaluation contractor, include:

Survey of BPC pilot projects. A one-time web-based survey of all BPC pilot projects funded between FY19 to FY21. The purpose is to corroborate and confirm key findings from reviews of existing project documentation (*e.g.,* types of strategies that BPC pilots are using to address systemic barriers, as described in Research Performance Progress Reports), as well as to collect data about topics not covered by existing documentation. The survey data will enable NSF to assess the feasibility and value of specific data elements that might be included in recommendations for how to document the characteristics and outcomes of BPC pilots in future years.

Interviews with BPC pilot projects. Interviews with representatives from a purposeful sample of 30 BPC pilot projects funded between FY19 to FY21. The interviews, to be conducted using a virtual meeting platform at a time convenient for the participants, will provide in-depth information about specific topics of interest to NSF (*e.g.,* how BPC pilot project plans and Departmental plans are being implemented, effective strategies for broadening participation across a range of preK–20 settings). An added purpose is to corroborate findings obtained

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

through prior reviews of existing documents and dive more deeply on selected areas that are of interest to CISE staff and other stakeholders.

This data collection is necessary to provide NSF with timely and actionable information about the characteristics, broad strategies and activities, short-term outputs, and outcomes associated with the approximately 800 awards funded through the CISE broadening participation in computing (BPC) pilot. The information collected will provide a better understanding of: (1) the outputs and outcomes of the BPC pilot projects and whether they are correlated with national trends related to computing, (2) the feasibility of measuring the types of impacts associated with BPC pilots; and (3) promising strategies.

Use of the Information: Aggregate results from the survey and interviews will be summarized in reports developed by the evaluation contractor that will be provided to NSF. While the individual survey and interview responses will be identifiable to the contractor, the reports provided to NSF will only include overall results. Westat will not report any No individual survey or individual responses will be reported to NSF, and no information about individuals participating in the surveys and interviews will be released to anyone outside the contractor's organization. The data collected and reported on will be used for planning, management, and evaluation purposes. These data are needed for effective administration, program monitoring, evaluation, and for strategic reviews and measuring attainment of NSF's program and strategic goals, as identified by the President's Accountable Government Initiative, the Government Performance and Results Act Modernization Act of 2010, Evidence-Based Policymaking Act of 2018, and NSF's Strategic Plan.

Expected Respondents: The respondents are either Principal Investigators (PIs) and/or other key personnel on grants funded through the NSF CISE pilot. The survey will include all PIs with awards that required a BPC plan funded from FY 19 to FY 21 (approximately 800 total). The interviews will include PIs and/or other key personnel from a sample of 30 projects.

Estimate of Burden:

Estimates of Annualized Cost to Respondents for the Hour Burdens

The overall annualized cost to the respondents is estimated to be $21,070. The following table shows the estimated burden and costs to respondents, who are generally computer science teachers at the postsecondary level. This estimated hourly rate is based on a report from the Bureau of Labor Statistics' Occupational Employment and Wages, May 2021).[1] According to this report, the average hourly rate is $43.08.

Collection title	Total number of respondents	Burden hours per respondent	Total hour burden	Average hourly rate	Estimated annual cost
Survey of BPC pilot projects	800	.5	400	$43	$17,200
Interviews with BPC pilot projects	90	1	90	43	3,870
Total	890		490		21,070

Estimated Number of Responses per Report:

Data collection for the collections involves all awardees in the programs involved for the survey and a sample of 90 representatives from 30 projects for the interviews.

Dated: October 20, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–23208 Filed 10–24–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943; NRC–2022–0153]

Crow Butte Resources, Inc.; In Situ Uranium Recovery Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact and environmental assessment supplement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final finding of no significant impact (FONSI) and accompanying supplement to the NRC staff's environmental assessment (EA) for the license renewal of the Crow Butte Resources, Inc. (CBR) in situ uranium recovery (ISR) facility located Dawes County, Nebraska. Based on the analysis in the EA supplement, the NRC staff has concluded that there will be no significant impacts to cultural resources from the renewal of CBR's license and, therefore, a FONSI remains appropriate.

DATES: The EA supplement referenced in this document is available on October 25, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0153 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0153. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The EA supplement can be found in ADAMS under Accession No. ML22278A108.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *Project Website:* Information related to the CBR project can be accessed on

[1] *https://www.bls.gov/oes/current/oes251021.htm.*

the NRC's CBR website at *https://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/crow-butte.html.*

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0867; email: *Jean.Trefethen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing the final FONSI and accompanying supplement to the NRC staff's EA for the license renewal of CBR's ISR facility. The EA supplement describes the NRC staff's efforts to address the deficiencies identified in the Atomic Safety and Licensing Board's partial initial decision (LBP–16–7), which found that the NRC staff did not meet its identification obligations under the National Historic Preservation Act (NHPA) and was deficient under the National Environmental Policy Act (NEPA) "for failing to take a hard look at potential TCPs [traditional cultural properties] within the Crow Butte license area[.]" Specifically, the EA supplement describes the methodology, implementation, and results of the 2021 tribal cultural survey to identify sites of significance to the Oglala Sioux Tribe. It also documents the NRC staff's evaluation of the identified sites according to the criteria for listing in the National Register of Historic Places (NRHP) and the NRC staff's assessment of potential impacts of the license renewal on the identified sites under the NHPA (for sites eligible for the NRHP) or NEPA (for other sites of significance to the Tribe). Based on these evaluations in the EA supplement, the NRC staff concludes that there will be no significant impacts to cultural resources identified during the 2021 tribal cultural survey. Accordingly, based on the 2014 EA (ADAMS Accession No. ML14288A517) and the EA supplement, the NRC staff has concluded that an environmental impact statement is not necessary and a FONSI remains appropriate.

II. Finding of No Significant Impact

Based on its review of the proposed action, in accordance with the requirements in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," the NRC staff has concluded that the proposed action, renewal of NRC Source Materials License No. SUA–1534 for CBR's ISR facility located in Crawford, Nebraska, will not have a significant impact on the cultural resources discussed in the EA supplement and will not significantly affect the quality of the human environment. Therefore, the NRC staff has determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

III. Additional Information

The NRC published a notice of the availability of the draft EA supplement and draft FONSI in the **Federal Register** on August 26, 2022 (87 FR 52597) for a 30-day public comment period. The public comment period closed on September 26, 2022. The ADAMS accession numbers for the public comments on the draft EA supplement and draft FONSI, and the NRC staff's responses to the public comments, are provided in an appendix to the final EA supplement.

Dated: October 19, 2022.

For the Nuclear Regulatory Commission.

John M. Moses,

Deputy Director, Division of Rulemaking, Environmental and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2022–23113 Filed 10–24–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: Date of notice: October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 8 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–17 and CP2023–16.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23215 Filed 10–24–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 12 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–18 and CP2023–17.

Ruth Stevenson,

Chief Counsel, Ethics and Legal Compliance.

[FR Doc. 2022–23109 Filed 10–24–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–496, OMB Control No. 3235–0554]

Proposed Collection; Comment Request; Extension: Rule 6a–4, Form 1–N

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,

100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 6a–4 and Form 1–N, summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval. The Code of Federal Regulation citation to this collection of information is 17 CFR 240.6a–4 and 17 CFR 249.10 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'').

Section 6 of the Act [1] sets out a framework for the registration and regulation of national securities exchanges. Under the Commodity Futures Modernization Act of 2000, a futures market may trade security futures products by registering as a national securities exchange. Rule 6a–4 [2] sets forth these registration procedures and directs futures markets to submit a notice registration on Form 1–N.[3] Form 1–N calls for information regarding how the futures market operates, its rules and procedures, corporate governance, its criteria for membership, its subsidiaries and affiliates, and the security futures products it intends to trade. Rule 6a–4 also requires entities that have submitted an initial Form 1–N to file: (1) amendments to Form 1–N in the event of material changes to the information provided in the initial Form 1–N; (2) periodic updates of certain information provided in the initial Form 1–N; (3) certain information that is provided to the futures market's members; and (4) a monthly report summarizing the futures market's trading of security futures products. The information required to be filed with the Commission pursuant to Rule 6a–4 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The respondents to the collection of information are futures markets.

The Commission estimates that the total annual burden for all respondents to provide periodic amendments to keep the Form 1–N accurate and up to date as required under Rule 6a–4(b)(1) would be 30 hours (15 hours/respondent per year × 2 respondents) and $200 of miscellaneous clerical expenses. The Commission estimates that the total annual burden for all respondents to provide annual amendments under Rule 6a–4(b)(3) would be 30 hours (15 hours/respondent/year × 2 respondents) and $200 of miscellaneous clerical expenses. The Commission estimates that the total annual burden for all respondents to provide three–year amendments under Rule 6a–4(b)(4) would be 14 hours (20 hours/respondent × 0.67 respondents per year) and $88 in miscellaneous clerical expenses. The Commission estimates that the total annual burden for the filing of the supplemental information and the monthly reports required under Rule 6a–4(c) would be 12 hours (6 hours/respondent per year × 2 respondents) and $120 of miscellaneous clerical expenses. Thus, the Commission estimates the total annual burden for complying with Rule 6a–4 is 86 hours and $608 in miscellaneous clerical expenses.

Compliance with Rule 6a–4 is mandatory. Information received in response to Rule 6a–4 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing by December 27, 2022.

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.

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: October 19, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–23101 Filed 10–24–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78f.

[2] 17 CFR 240.6a–4.

[3] 17 CFR 249.10.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96107; File No. SR–FINRA–2022–029]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Set Forth in SR–FINRA–2020–027 and the Temporary Amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015

October 19, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the expiration date of the temporary amendments set forth in SR–FINRA–2020–027 and the temporary amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015 from October 31, 2022, to January 31, 2023.[4] The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] If FINRA seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond January 31, 2023, FINRA will submit a separate rule filing to further extend the temporary extension of time. The amended FINRA rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, FINRA filed proposed rule changes, SR–FINRA–2020–015 and SR–FINRA–2020–027, which respectively provide temporary relief from some timing, method of service and other procedural requirements in FINRA rules and allow FINRA's Office of Hearing Officers (''OHO'') and the National Adjudicatory Council (''NAC'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. In July 2022, FINRA filed a proposed rule change, SR–FINRA–2022–018, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from July 31, 2022, to October 31, 2022.[5] Due to the continued presence and uncertainty of COVID–19, FINRA proposes to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 and the temporary amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015 from October 31, 2022, to January 31, 2023.[6]

Due to the public health concerns and restrictions resulting from the outbreak of COVID–19, along with a corresponding backlog of disciplinary cases,[7] FINRA filed, and subsequently extended to October 31, 2022, SR–FINRA–2020–027[8] to temporarily amend FINRA Rules 1015, 9261, 9524, and 9830 to grant OHO and the NAC authority[9] to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the COVID–19-related public health risks posed by an in-person hearing.[10]

Although there has been a downward trend in the number of COVID–19 cases since FINRA filed SR–FINRA–2022–018 in July 2022, FINRA believes there is a continued need for temporary relief beyond October 31, 2022. In this regard, FINRA notes that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[11] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[12] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking[13] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[14]

In addition, as set forth in the previous filings, FINRA relies on the guidance of its health and safety consultant, in conjunction with COVID–19 data and guidance issued by public health authorities, to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.[15] FINRA strives to hold in-person hearings when it is safe to do so, but because FINRA conducts hearings at locations throughout the United States, FINRA believes that it may be difficult to conduct in-person hearings at certain locations based on that data and guidance.

As a result, FINRA believes there will be a continued need for temporary relief beyond October 31, 2022. Accordingly, FINRA proposes to extend the expiration date of the temporary amendments originally set forth in SR–FINRA–2020–027 and the temporary

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[5] *See* Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–018).

[6] In June 2022, the Commission approved FINRA's rule proposal to make permanent the temporary amendments to the electronic service and filing rules originally set forth in SR–FINRA–2020–015, with some modifications, as described in the approval order. *See* Securities Exchange Act Release No. 95147 (June 23, 2022), 87 FR 38803 (June 29, 2022) (Order Approving File No. SR–FINRA–2022–009). Those amendments became effective on August 22, 2022. *See Regulatory Notice* 22–16 (July 2022). In addition to the electronic service and filing rules, SR–FINRA–2020–015 also included other temporary amendments pertaining to certain adjudicatory and review processes. All of these other temporary amendments expired on the effective date of SR–FINRA–2022–009, except for the provisions to allow NAC oral arguments by video conference (FINRA Rule 9341(d)).

[7] For example, FINRA began temporarily postponing in-person hearings as a result of the COVID–19 impacts on March 16, 2020.

[8] The same COVID–19 public health concerns and restrictions led FINRA to file SR–FINRA–2020–015, which included the temporary amendments to allow NAC oral arguments by videoconference. *See* Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–015).

[9] For OHO hearings under FINRA Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For NAC hearings under FINRA Rules 1015 and 9524, this temporary authority is granted to the NAC or the relevant Subcommittee. With respect to both OHO and NAC hearings, the temporary authority of the adjudicator is discretionary, so in-person hearings may continue to take place where safe and appropriate.

[10] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–027); Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–031); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–004); *supra* note 5.

[11] *See* CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00* (last visited Oct. 11, 2022).

[12] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Oct. 11, 2022).

[13] These new Omicron variants include BA.4.6, BF.7, and BA.2.75. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (last visited Oct. 11, 2022).

[14] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop.*

[15] As noted in SR–FINRA–2020–027, the temporary proposed rule change grants discretion to OHO and the NAC to order a video conference hearing. In deciding whether to schedule a hearing by video conference, OHO and the NAC may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO and the NAC may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015 from October 31, 2022, to January 31, 2023.[16] As previously noted, FINRA strives to hold in-person hearings when it is safe to do so and the extension of temporary relief therefore does not mean a video conference hearing will be ordered in every case.[17] Given the uncertainty regarding COVID–19, however, the extension of these temporary amendments allowing for specified OHO and NAC hearings to proceed by video conference will ensure that FINRA's critical adjudicatory functions continue to operate effectively in these circumstances—enabling FINRA to fulfill its statutory obligations to protect investors and maintain fair and orderly markets—while also protecting the health and safety of hearing participants.[18]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

[16] *See supra* note 5.

[17] In fact, FINRA began to hold in-person hearings at a single location last year. In July 2021 FINRA held its first in-person hearing since the temporary amendments were implemented. A subsequent surge in case numbers for the Delta variant of the COVID–19 virus caused FINRA's outside health and safety consultant to recommend in early August 2021 against in-person hearings. Accordingly, the Chief Hearing Officer converted hearings scheduled after mid-September 2021 from in-person to video conference on a case-by-case basis. In July 2022 FINRA scheduled another in-person hearing but shortly before it began the parties jointly requested that the hearing be conducted via video conference instead, and the Chief Hearing Officer used her discretion to order that the hearing be conducted by video conference.

[18] Since the temporary amendments were implemented, OHO and the NAC have conducted several hearings by video conference. As of October 10, 2022, OHO has conducted 17 disciplinary hearings by video conference (decisions have been issued in all of these cases). In six of these disciplinary hearings, all of the parties agreed to proceed by video conference; the other 11 were ordered to proceed by video conference by the Chief Hearing Officer. OHO currently has hearings scheduled in five additional disciplinary matters. No determination has yet been made regarding whether these five hearings will be in-person or by video conference. Also, as of October 10, 2022, the NAC, through the relevant Subcommittee, has conducted 16 oral arguments by video conference in connection with appeals of FINRA disciplinary proceedings pursuant to FINRA Rule 9341(d), as temporarily amended. Furthermore, the NAC has conducted via video conference a one-day evidentiary hearing in a membership application proceeding pursuant to FINRA Rule 1015, as temporarily amended. The NAC also has conducted via video conference three evidentiary hearings in eligibility matters pursuant to FINRA Rule 9524, as temporarily amended.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is also consistent with Section 15A(b)(8) of the Act,[20] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change, which extends the expiration date of the temporary amendments to FINRA rules set forth in SR–FINRA–2020–027 and the temporary amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015, will continue to aid FINRA's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO and NAC hearings to proceed by video conference, FINRA might be required to postpone some or almost all hearings for a significant period of time. FINRA must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to FINRA's ability to fulfill its statutory obligations and allows hearing participants to avoid the COVID–19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that FINRA can take immediate action to stop ongoing customer harm and will allow the NAC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in the original filings, this temporary relief allowing OHO and NAC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID–19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 15 U.S.C. 78*o*–3(b)(8).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR–FINRA–2020–027 and, with respect to FINRA Rule 9341(d), in SR–FINRA–2020–015, the proposed rule change is intended solely to extend temporary relief necessitated by the continued presence of COVID–19 and the related health and safety risks of conducting in-person activities. FINRA believes that the proposed rule change will prevent unnecessary impediments to FINRA's critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As FINRA requested in connection with SR–FINRA–2020–015 and related extensions,[23] FINRA has also asked the

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] *See* SR–FINRA–2020–015, 85 FR 31836. Although FINRA did not request that the Commission waive the 30-day operative delay for SR–FINRA–2020–027, FINRA did request that the Commission waive the 30-day operative delay for SR–FINRA–2020–042, SR–FINRA–2021–006, SR–FINRA–2021–019, SR–FINRA–2021–031, SR–FINRA–2022–004, and SR–FINRA–2022–018 which extended the expiration date of the temporary amendments originally set forth in SR–FINRA–2020–027.

Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.

FINRA has indicated that extending the relief provided originally in SR–FINRA–2020–015 and SR–FINRA–2020–027 will continue to provide FINRA the ability to safely conduct hearings in connection with its core functions during the COVID–19 outbreak. Importantly, extending the relief provided in these prior rule changes immediately upon filing and without a 30-day operative delay will allow FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.[24] The Commission also notes that this proposal, like SR–FINRA–2020–015 and SR–FINRA–2020–027, provides only temporary relief during the period in which FINRA's operations are impacted by COVID–19. As proposed, the changes would be in place through January 31, 2023.[25] FINRA also noted in both SR–FINRA–2020–015 and SR–FINRA–2020–027 that the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[26] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2022–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2022–029 and should be submitted on or before November 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–23085 Filed 10–24–22; 8:45 am]

BILLING CODE 8011–01–P

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[24] *See supra* Item II.A.1; *see also* SR–FINRA–2020–015, 85 FR 31833.

[25] As noted above, *see supra* note 4, FINRA stated that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[26] *See* SR–FINRA–2020–015, 85 FR 31833; *see also* SR–FINRA–2020–027, 85 FR 55712.

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96104; File No. SR–NASDAQ–2022–054]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Waive Certain Port-Related Fees at Equity 7, Section 115 and Equity 7, Section 130

October 19, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily waive certain port-related fees at Equity 7, Section 115 and Equity 7, Section 130, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* 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 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 115 and Equity 7, Section 130 to provide a temporary fee waiver for newly added OUCH order entry ports (production and Nasdaq Testing Facility ''NTF'' environments) with the updated version of the OUCH Order entry protocol,[3] referred to as ''OUCH 5.0.'' The Exchange has proposed [4] to introduce this new upgraded version of the OUCH Order entry protocol that will enable the Exchange to make functional enhancements and improvements to specific Order Types [5] and Order Attributes.[6]

Temporary Fee Waiver Pursuant to Equity 7, Section 115

First, the Exchange proposes to amend Equity 7, Section 115 to provide a 30-day waiver of the OUCH production port fee for up to five [7] newly added OUCH ports with the updated version of the OUCH Order entry protocol, OUCH 5.0. The fee waiver would be offered for a three-month period, beginning on the date when OUCH 5.0 first becomes available on the Exchange, which such date the Exchange shall announce in a Equity Trader Alert. At the end of the three-month period, users would no longer be eligible for the waiver. A user may only receive the 30-day waiver once per port (up to a maximum of five ports) within the three-month window. The Exchange proposes to offer this temporary waiver to encourage new, prospective customers to adopt and returning customers to migrate to the updated version of the OUCH Order entry protocol.

Temporary Fee Waiver Pursuant to Equity 7, Section 130

Second, the Exchange proposes to amend Equity 7, Section 130 to provide a 30-day waiver of the $300 NTF fee in Section 130(d)(1)(B) for up to five [8] newly added OUCH NTF ports with the updated version of the OUCH Order entry protocol, OUCH 5.0. This fee waiver would also be offered for a three-month period, beginning on a date specified by the Exchange in an Equity Trader Alert. At the end of the three-month period, users would no longer be eligible for the waiver. A user may only receive the 30-day waiver once per port (up to a maximum of five ports) within the three-month window. The NTF provides subscribers with a virtual System test environment that closely approximates the production environment on which they may test their automated systems that integrate with the Exchange. For example, the NTF provides subscribers a virtual System environment for testing upcoming releases and product enhancements, as well as testing firm software prior to implementation. The Exchange proposes to offer this temporary waiver to encourage customers to test the updated version of the OUCH Order entry protocol free of charge.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its fee schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

The Exchange believes that it is reasonable to provide temporary fee waivers for up to five newly added OUCH order entry ports (production and Nasdaq Testing Facility ''NTF'' environments) with the updated version of the OUCH Order entry protocol, OUCH 5.0. The Exchange believes it is important to provide users an opportunity to test OUCH 5.0 free of charge. The temporary fee waivers would encourage users to test and adopt the enhanced OUCH Order entry protocol.

The Exchange believes that the proposed temporary fee waivers are an equitable allocation of reasonable dues, fees and other charges and not unfairly discriminatory because the Exchange will apply the same temporary fee waivers to all similarly situated members. The waivers will reduce fees for and benefit all users that add OUCH 5.0 order entry ports (production and NTF environments) within the three-month window.

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 not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participants at a competitive disadvantage. The proposed change to temporarily waive fees for newly added OUCH 5.0 order entry ports (production and NTF environments) will apply uniformly to all similarly situated participants. The temporary fee waivers are available to all users and would enable users to test the OUCH enhancements at no cost.

[3] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. *See https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[4] *See* Securities Exchange Act Release No. 95768 (September 14, 2022), 87 FR 57534 (September 20, 2022).

[5] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to Nasdaq. See Equity 1, Section 1(a)(7).

[6] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[7] The fee waiver is limited to a maximum of five OUCH production ports per Web Central Registration Depository (''CRD'') membership.

[8] The fee waiver is limited to a maximum of five OUCH NTF ports per CRD membership.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

Intermarket Competition

The Exchange believes that the proposed temporary fee waivers will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock.

The proposed fee waivers are reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. The proposed fee waivers would facilitate adoption of enhancements to the Exchange's System and Order entry protocols, which is pro-competitive because the enhancements bolster the efficiency, functionality, and overall attractiveness of the Exchange in an absolute sense and relative to its peers. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members, participants, or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and Rule 19b–4(f)(2)[13] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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–NASDAQ–2022–054 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–NASDAQ–2022–054. 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–NASDAQ–2022–054 and should be submitted on or before November 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–23087 Filed 10–24–22; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before November 25, 2022.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: Small Business Administration SBA Form 912 is used to collect information needed to make character determinations with respect to applicants for monetary loan assistance or applicants for participation in SBA programs. The information collected is used as the basis for conducting name checks at national Federal Bureau of Investigations (FBI) and local levels.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is

necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control 3245–0178.

Title: Statement of Personal History.

Description of Respondents: Applicants participating in SBA programs.

Estimated Annual Responses: 142,000.

Estimated Annual Hour Burden: 35,500.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–23178 Filed 10–24–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Meeting

AGENCY: Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

DATES: Tuesday, November 15, 2022, at 4:00 p.m. EST.

ADDRESSES: Meeting will be held via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: Rachel Karton, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *Rachel.newman-karton@sba.gov*; 202–619–1816.

If anyone wishes to be a listening participant or would like to request accommodations, please contact Rachel Karton at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section l0(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

Purpose

The purpose of the meeting is to discuss the following pertaining to the SBDC Program:

- Annual Plan
- Outreach and Engagement with the SBDC State Directors

Additionally, SBA will be seeking three volunteers from the Advisory Board to participate as judges for the National Small Business Week Small Business Development Centers Excellence and Innovation Award.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–23163 Filed 10–24–22; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 857 (Sub–No. 2)]

Colorado Landowners—Adverse Abandonment—Great Western Railway of Colorado, LLC in Weld County, Colo.

On October 5, 2022, a group of landowners (Landowners) [1] filed an application [2] under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) authorize the third-party, or adverse, abandonment of 6.2 miles of rail line extending from milepost 0.0 at Johnstown, Colo., to milepost 6.2 near Welty, Colo. (the Line), owned by Great Western Railway of Colorado, LLC (Great Western). The Line traverses U.S. Postal Service Zip Codes 80534 and 80513.

According to the Landowners, the Line was constructed in 1902 and 1903 to transport sugar beets from a sugar beet dump facility, which closed in the 1970s. In 2008, Great Western filed a verified notice of exemption to abandon the Line. *See Great W. Ry. of Colo., LLC—Aban. Exemption—in Weld Cnty., Colo.,* Docket No. AB 857 (Sub-No. 1X). After notice of the exemption was served and published in the **Federal Register**, the Board issued a notice of interim trail use or abandonment authorizing negotiations for interim trail use/rail banking of the Line under the Board's regulations at 49 CFR 1152.29 and granted six one-year extensions of the deadline to exercise abandonment authority. However, in 2014, Great Western filed a letter stating that it had decided to reopen the Line and would not be consummating the abandonment.

[1] The 27 landowners are listed in Appendix 1 to the application.

[2] The application is considered filed 20 days after the Landowners filed a September 15, 2022 amendment to a September 13, 2022 revised environmental and historic report. *See Colo. Landowners—Adverse Aban.—Great W. Ry. of Colo., LLC, in Weld Cnty., Colo.,* AB 857 (Sub-No. 2), slip op. at 1 (STB served Sept. 7, 2022).

According to the Landowners, the Line has not been used for Board-regulated rail transportation for approximately 43 years and there is no reasonable prospect for such use in the foreseeable future. The Landowners state that no shippers have used the Line since 1979, and that the Line has been used only for random and sporadic rail car storage between 2008 and 2016. The Landowners further claim that Great Western has performed no maintenance on the railroad right-of-way, such that use of the Line for rail transportation is impossible and/or cost prohibitive. The Landowners state that they are seeking the adverse abandonment to pave the way for action under Colorado law to free the land from Great Western's easement.

In a decision served on February 11, 2022, the Landowners were granted exemptions from several statutory provisions and waivers of certain Board regulations that were unnecessary to the adverse abandonment application or that sought information not available to the Landowners.

The Landowners state that, to their knowledge, the Line does not contain any federally granted rights-of-way. Any documentation in the Landowners' possession will be made available promptly to those requesting it. The Landowners' entire case-in-chief for adverse abandonment was filed with the application.

The Landowners state that the interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed adverse abandonment or protests (including protestant's entire opposition case) by November 21, 2022. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR 1152.25. The Landowners' reply is due by December 5, 2022.

Any request for an interim trail use/rail banking condition under 16 U.S.C. 1247(d) and 49 CFR 1152.29 must be

filed by November 21, 2022,[3] and should address whether the issuance of a certificate of interim trail use in this case would be consistent with the grant of an adverse abandonment application.

All filings in response to this notice must refer to Docket No. AB 857 (Sub–No. 2) and must be filed with the Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading filed with the Board must be served on the Landowners' representatives: Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422–1336; and Thomas S. Stewart, Stewart, Wald & McCulley, 2100 Central Street, Suite 22, Kansas City, MO 64108.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Office of Environmental Analysis (OEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation.[4] A copy of the EA (or EIS) will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

Persons seeking further information concerning abandonment procedures may contact the Board's Rail Customer and Public Assistance program at (202) 245–0238 or refer to the text of the abandonment regulations at 49 CFR part 1152.

Board decisions and notices are available at *www.stb.gov.*

Decided: October 20, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2022–23191 Filed 10–24–22; 8:45 am]

BILLING CODE 4915–01–P

[3] Filing fees for trail use requests can be found at 49 CFR 1002.2(f)(27).

[4] On October 14, 2022, Great Western filed a reply challenging, among other things, the sufficiency of Landowners' environmental and historic reports submitted to date and the Landowners' compliance with certain service and publication requirements. To the extent that these objections need to be addressed, the Board will do so in a future decision in this docket.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0002–N–16]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB) for review and comment. These ICRs describe the information collections and their expected burdens. On June 16, 2022, FRA published a notice providing a 60-day period for public comment on the ICRs.

DATES: Interested persons are invited to submit comments on or before November 25, 2022.

ADDRESSES: Written comments and recommendations for the proposed ICRs should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer at email: *Hodan.Wells@dot.gov* or telephone: (202) 868–9412.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On June 16, 2022, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICRs for which it is now seeking OMB approval. *See* 87 FR 36366. FRA received no comments in response to this notice.

Before OMB decides whether to approve the proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(a); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Special Notice for Repairs.

OMB Control Number: 2130–0504.

Abstract: Under 49 CFR part 216, FRA and State inspectors may issue a Special Notice for Repairs to notify a railroad in writing of an unsafe condition involving a locomotive, car, or track. The railroad must notify FRA in writing when the equipment is returned to service or the track is restored to a condition permitting operations at speeds authorized for a higher class, specifying the repairs completed. FRA and State inspectors use this information to remove from service freight cars, passenger cars, and locomotives until they can be restored to a serviceable condition. They also use this information to reduce the maximum authorized speed on a section of track until repairs can be made.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.8; FRA F 6180.8A.

Respondent Universe: 754 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 7.

Total Estimated Annual Burden: 3 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $194.

Title: Bridge Safety Standards.

OMB Control Number: 2130–0586.[1]

Abstract: The Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94, Dec. 4, 2015), Section 11405, ''Bridge Inspection Reports,'' provides a means for a State or a political subdivision of a State to obtain a public version of a bridge inspection report generated by a railroad for a bridge located within its respective jurisdiction. While the FAST Act specifies that requests for such reports are to be filed with the Secretary of Transportation, the responsibility for fulfilling these requests is delegated to FRA.[2] FRA developed a form titled ''Bridge Inspection Report Public Version Request Form'' (FRA F 6180.167) to facilitate such requests by States and their political subdivisions.

Additionally, the collection of information set forth under 49 CFR 214.105(c) establishes standards and practices for safety net systems. Safety nets and net installations must be drop-tested at the job site after initial installation and before being used as a fall-protection system, after major repairs, and at 6-month intervals if left at one site. If a drop-test is not feasible and is not performed, then the railroad or railroad contractor, or a designated certified person, must provide written certification the net complies with the safety standards under § 214.105. FRA and State inspectors use the information to enforce Federal regulations. The information maintained at the job site promotes safe bridge worker practices while providing flexibility at bridge work job sites.

Furthermore, the collection of information set forth under 49 CFR part 237 normalized and established Federal requirements for railroad bridges.[3] In particular, the collection of information is used by FRA to confirm that railroads/track owners adopt and implement bridge management programs to properly inspect, maintain, modify, and repair all bridges that carry trains for which they are responsible. Railroads/track owners must conduct annual inspections of railroad bridges, as well as special inspections that must be carried out if natural or accidental events cause conditions that warrant such inspections. Further, railroads/track owners must incorporate provisions for internal audits into their bridge management programs and must conduct internal audits of bridge inspection reports. FRA uses the information collected to ensure that railroads/track owners meet Federal standards for bridge safety and comply with all the requirements of part 237.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses (railroads and track owners), States, the District of Columbia (DC), and political subdivisions of States.

Form(s): FRA F 6180.167.

Respondent Universe: 784 track owners, 50 States and DC, and 200 political subdivisions of States.

Frequency of Submission: On occasion and annual.

Total Estimated Annual Responses: 200,480.

Total Estimated Annual Burden: 34,616 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $2,680,686.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2022–23105 Filed 10–24–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2022–0013]

Notice of Partial Buy America Waiver for Vans and Minivans

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

ACTION: Notice of Buy America Waiver.

SUMMARY: In response to multiple individual requests for a Buy America nonavailability waiver for non-ADA-accessible vans or minivans that can be used in federally funded vanpool programs, and because the Federal Transit Administration (FTA) has been unable to identify any manufacturer of non-ADA-accessible vans or minivans that fully comply with Buy America, FTA is issuing a partial, time-limited, general nonavailability waiver from the requirements of Buy America as described in this notice.

DATES: This waiver is effective October 25, 2022 and expires two years from this date, or upon publication of a rescission notice if FTA determines that a fully Buy America-compliant vehicle has become available, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Jason Luebbers, FTA Attorney-Advisor, at (202) 366–8864 or *Jason.Luebbers@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under FTA's Buy America statute, FTA may obligate funds for a project to procure rolling stock only if the cost of components and subcomponents produced in the United States is more than 70 percent of the cost of all components of the rolling stock, and if final assembly of the rolling stock occurs in the United States. 49 U.S.C. 5323(j)(2)(C). A manufacturer of rolling stock must submit to pre-award and post-delivery audits and independent inspections to verify its compliance with Buy America on a per-procurement basis. *Id.* Section 5323(m).

FTA may waive Buy America requirements for a product if, among other reasons, a compliant version of the product is not produced in a sufficient and reasonably available amount or is not of a satisfactory quality. *Id.* Section 5323(j)(2)(B). If FTA denies a request for a nonavailability waiver, FTA must provide the waiver applicant with a written certification that: the item is produced in the United States in a sufficient and reasonably available amount; the item produced in the United States is of a satisfactory quality; and includes a list of known manufacturers in the United States from which the item can be obtained. *Id.* Section 5323(j)(6).

On October 20, 2016, FTA granted a general public interest waiver for mass-produced, unmodified non-ADA-accessible vans and minivans, only from its domestic content requirement, for three years or until a compliant manufacturer came forward, whichever came first. (81 FR 72667). At that time FTA had identified some models of van or minivan for which final assembly occurred in the United States but could not identify a van or minivan that also satisfied the domestic content requirement. The waiver expired on September 30, 2019. Since expiration, FTA has received requests to reissue the 2016 waiver from grant recipients, the American Public Transportation Association (APTA), and turnkey vanpool service provider Enterprise.

In 2021, FTA received three applications for waivers of the domestic content requirement, but not the final assembly requirement, for non-ADA-accessible vans and minivans to be used in vanpool service, based on the

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[1] The burden associated with § 214.105(c)(4), formerly covered under OMB Control No. 2130–0535, is now combined with the burden under OMB Control No. 2130–0586.

[2] 49 CFR 1.89(a).

[3] 75 FR 41281 (July 15, 2010).

nonavailability of compliant vehicles. A vanpool vehicle is a vehicle with seating capacity for at least six adults not including the driver. 49 U.S.C. 5323(i)(2)(C)(ii)(I). The three applicants are Coast Transit Authority of Biloxi, Mississippi; the Metropolitan Transportation Commission of San Francisco, California; and the Ann Arbor Area Transportation Authority in Michigan. All three applications are to support procurements of service contracts with ''Commute with Enterprise'' to carry out vanpool programs of between 40 and 250 vehicles.

Today, final assembly for some mass-produced, unmodified non-ADA-accessible van and minivan models occurs in the United States. However, these models either do not comply with FTA's domestic content requirement or FTA recipients cannot verify the domestic content because their manufacturers are unwilling to sign the required Buy America certification regarding minimum domestic content or submit to FTA's pre-award and post-delivery audit requirements.

On July 19, 2022, FTA published a notice (87 FR 43101) proposing a nonavailability waiver for non-ADA accessible vans and minivans and seeking public comment. FTA proposed that, in lieu of applying Buy America's domestic content standard for rolling stock, FTA instead would require non-ADA-accessible vans and minivans to have U.S.-manufactured engines or motors and U.S. final assembly, as reported to the National Highway Traffic Safety Administration (NHTSA) under the American Automobile Labelling Act (AALA). *See* 49 U.S.C. 32304 and 49 CFR part 583. FTA requested comments from all interested parties regarding the proposed waiver and whether it should be modified from FTA's proposal, and why.

Response to Comments

FTA received submissions from 126 discrete commenters in Docket FTA–2022–0013, including comments from a variety of transit agencies, national associations, vanpool operators, state Departments of Transportation, and the general public. Comments were almost entirely supportive of the waiver, concurring that no known manufacturers currently meet all of FTA's Buy America requirements. Most commenters requested that FTA expand the waiver, either in scope, duration, or both. Only one commenter opposed the waiver.

Commenters supportive of the waiver noted the following benefits: support for U.S. jobs by requiring U.S. final assembly and U.S.-manufactured engines or motors; climate benefits and decreased congestion through reducing the number of vehicles on the road; expansion or maintenance of vanpool service and vanpool fleets; increased mobility for communities; and greater ability to hire drivers for the relatively smaller class of vehicle compared to buses. Commenters noted the roles vans and minivans play in providing mobility access in large urban, small urban, and rural communities, for a variety of social service programs, and for elderly passengers and riders with disabilities who do not need an ADA-accessible van. Below is a summary of the categories of comments received and FTA's responses.

Requests To Expand or Clarify the Scope of Waiver

FTA received a number of comments seeking to expand or clarify the scope of the waiver. A number of commenters advocated for expanding the definition of vanpool or expanding the waiver to cover other classes of vehicle. One commenter noted that carpooling does not require six passenger seats and advocated for waiver eligibility for passenger vehicles with fewer seats. Several commenters advocated for waiver eligibility for larger classes of vehicles, such as cutaways. Finally, three commenters noted that several models of sport utility vehicle (SUV) meet the statutory definition of a vanpool vehicle, but not the common meaning of van or minivan, and requested that the waiver scope be revised to include SUVs.

FTA declines to expand the waiver beyond the scope of the waiver requests it received: that is, to unmodified non-ADA-accessible vans and minivans that meet the statutory definition of a vanpool vehicle. For purposes of FTA funding programs, a vanpool vehicle must have seating capacity for at least six adults, not including the driver. 49 U.S.C. 5323(i)(2)(C)(ii)(I). The vanpool vehicle definition is statutory, and the waiver requests FTA received were for vanpool vehicles. Vehicles with fewer seats do not meet the statutory definition of vanpool vehicles and therefore are beyond the scope of this waiver action. FTA has not received any request to waive requirements for larger vehicles like cutaway vans and buses, which also are beyond the scope of this action. FTA agrees with the comment that an SUV that meets the statutory definition of a ''vanpool vehicle'' would be covered by this waiver. FTA finds it unnecessary, however, to change the terminology of the waiver based on this comment.

FTA received several comments related to ADA-accessible vehicles and their exclusion from the proposed waiver. One commenter stated that no ADA-accessible vans or minivans are Buy America compliant and requested that the waiver also apply to those vehicles. Another commenter stated concern that the waiver promoted non-ADA-compliant vehicles at the expense of ADA-compliant ones.

ADA-accessible vans and minivans typically are created by converting a ''standard model'' van or minivan by applying aftermarket manufacturing steps and adding or replacing vehicle components, such as a wheelchair lift. Because of these further manufacturing steps and component changes, ADA-accessible vans and minivans have different characteristics from the unmodified vehicles. FTA has not received any requests to waive Buy America requirements for ADA-accessible vehicles. For these reasons, ADA-accessible vans and minivans are beyond the scope of this action.

One commenter requested FTA clarify the meaning of ''unmodified'' and asked whether the installation of advanced driver-assistance systems (ADAS) disqualified otherwise eligible vehicles from waiver eligibility.

FTA uses the term unmodified to mean the mass-produced models of vans and minivans produced by automotive manufacturers that have not undergone aftermarket manufacturing. For purposes of this waiver, FTA uses the term primarily to distinguish from ADA-accessible vans and minivans that are created by converting base vehicles to make them wheelchair-accessible through aftermarket manufacturing processes. The installation of hardware and components necessary for ADAS, such as lidar, radar, computing and data storage, cameras, and other integrations, does not disqualify an otherwise eligible van or minivan from eligibility under this waiver. However, the addition of ADAS equipment may raise entirely separate issues related to technology standards or safety standards depending on the level of autonomy achieved and the components involved. FTA recommends consulting with the appropriate FTA regional office before using FTA funds to acquire and install ADAS in vehicles.

One commenter asked whether zero-emission vehicles such as electric vehicles would be eligible under the waiver. Zero emission vehicles, including electric vehicles, are eligible if they otherwise satisfy the conditions of the waiver.

Requests To Remove the Requirement That Engines or Motors Be U.S.-Manufactured

Ten commenters disfavored the waiver requirement that engines or motors be produced in the United States as reported under the AALA. Many of those commenters cited supply chain difficulties and long lead times for commercial vans and minivans as a rationale for removing the country-of-origin requirement for engines and motors. One commenter stated that FTA should remove the country-of-origin requirement for motors to promote the adoption of electric vehicles. Several commenters noted that some vehicles currently used in vanpool fleets would not be eligible under this requirement, and that requiring U.S.-manufactured engines and motors would impact fleet usage.

FTA's intent in granting this waiver is to strike a balance between making vanpool-capable vehicles available to public transportation providers, and at the same time maximizing U.S. manufacturing activity in accordance with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers.* FTA understands that requiring U.S.-manufactured engines and motors will limit vehicle selection for recipients and may impact turnkey service contractors with existing fleets, compared to if FTA did not require domestic manufacturing at all. However, there are a number of van and minivan models currently available that meet FTA's waiver requirements. The requirement that engines or motors are of U.S. origin strikes a balance between availability and supporting U.S. manufacturing, and therefore, FTA declines to revise it.

Requests To Lengthen the Waiver Period or Perform an Availability Analysis Before Allowing the Waiver To Expire

Sixty-nine commenters—many of them citing COVID–19 supply chain issues and reduced dealership inventory—requested that FTA extend the waiver beyond the proposed two-year period. Many commenters pointed out that FTA's 2016 waiver for vans and minivans lasted for three years. Forty-nine commenters requested that the proposed waiver continue indefinitely until such time as a fully Buy America compliant vehicle becomes available.

FTA's two-year waiver is time-limited, consistent with the waiver principles and criteria contained in the Office of Management and Budget's (OMB) Initial Implementation Guidance, M–22–11. Furthermore, FTA notes that this waiver applies to contracts entered into during the two-year period, independent of the delivery date of vehicles. For these reasons, FTA declines to extend the waiver period.

Objection to Proposed Waiver

One commenter objected to the proposed waiver, noting that manufacturers had three years under the 2016 waiver to produce a compliant vehicle, and FTA providing another waiver would send the wrong message to industry. The commenter also stated that transit agencies do not conduct adequate market research for their procurements and overall do not do a reasonable job of buying rolling stock.

By law, if FTA denies a request for a nonavailability waiver, FTA must certify a list of known manufacturers from which the required item can be obtained. 49 U.S.C. 5323(j)(6). FTA is presently unable to make that certification because FTA cannot identify a Buy America compliant, unmodified, non-ADA-accessible van or minivan produced in the United States. No bidder or offeror certified compliance with Buy America requirements in response to the procurements conducted by the three waiver applicants. Additionally, FTA conducted outreach to manufacturers with the highest levels of U.S. or Canadian [1] content and U.S. final assembly, and those manufacturers expressed disinterest in participating in FTA-funded procurements due to domestic content and auditing requirements.

FTA's waiver is intended to maximize the domestic content of the vans and minivans procured with Federal assistance, consistent with U.S. Department of Transportation policy goals. FTA will rescind the two-year waiver if, during the waiver period, the FTA determines that a Buy America compliant van or minivan is available.

Finding on Waiver

In accordance with subsection 70916(c) of the Build America, Buy America Act (Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 117–58), FTA consulted with the National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (MEP), which determined that no domestic entity currently manufactures the subject vans and minivans in compliance with Buy America requirements, and that supplier scouting by MEP is not warranted.

Therefore, for the reasons stated in FTA's July 19, 2022, notice of proposed nonavailability waiver and based on comments received from the public, FTA is granting the waiver as proposed.

For mass-produced, unmodified non-ADA accessible vans and minivans with seating capacity for at least six adults not including the driver, in lieu of applying the Buy America standards for rolling stock, FTA will require:

(1) Final assembly must be in the United States, as reported to NHTSA under the AALA;

(2) The country of origin of the engine or (in the case of electric vehicles), motor must be the United States, as reported to NHTSA under the AALA;

(3) The waiver is available to all FTA grant recipients;

(4) The waiver expires two years from the date this notice is published in the **Federal Register,** or upon FTA's publication of a **Federal Register** notice rescinding the waiver after determining that a fully Buy America-compliant vehicle has become available, whichever occurs first.

For the duration of this partial general nonavailability waiver, FTA recipients do not need to submit individual applications for nonavailability waivers for these vehicles.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–23198 Filed 10–24–22; 8:45 am]

BILLING CODE 4910–57–P

[1] Reporting under the AALA distinguishes between the United States and Canada for the location of final assembly and the country of origin of engines and transmissions, but it does not distinguish between the United States and Canada for content levels. 49 U.S.C. 32304(b)(A); 49 CFR 583.5.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0045]

Agency Information Collection Activities; Notice and Request for Comment; Influence of Drivers' Internal Reasoning on Speeding

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

ACTION: Notice and request for comments on a proposed collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a proposed collection of information. Before a Federal agency can collect certain information from the public, it

must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information. This document describes a collection of information for which NHTSA intends to seek OMB approval on the Influence of Drivers' Internal Reasoning on Speeding.

DATES: Comments must be submitted on or before December 27, 2022.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2022–0045 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Stacy Jeleniewski, Ph.D., Office of Behavioral Safety Research (NPD–310), (202) 366–2752 (office), (202) 981–3173 (cell), *Stacy.Jeleniewski@dot.gov,* National Highway Traffic Safety Administration, W46–491, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,*e.g.* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Influence of Drivers' Internal Reasoning on Speeding.

OMB Control Number: New.

Form Numbers: NHTSA Form 1659.

Type of Request: Approval of a New Information Collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: NHTSA is seeking approval to conduct a survey of 1,500 licensed drivers in Washington State age 18 and older regarding speeding. The study will coordinate with the Washington Traffic Safety Commission and Washington Department of Licensing to survey drivers in the State who received one or more speeding convictions in the last three years and drivers not convicted of speeding in that same time-frame. Participation in the study will be voluntary. The study will use a self-administered web-based survey with a paper survey option available. The survey will include general and speeding-specific questions about moral reasoning (judgments about rightfulness and wrongfulness), legal reasoning (judgments about lawfulness and unlawfulness), and attitudes and perceptions of laws, enforcement, and sanctions. Past speeding behavior and intent to speed in the future will also be assessed.

In conducting the proposed research, the survey will use computer-assisted web interviewing (*i.e.,* a programmed, self-administered, web survey) to facilitate ease of use and maximize data accuracy. Although web will be the primary data collection mode, a paper questionnaire will be sent to households that do not respond to the web invitations. The proposed survey will be anonymous, and the survey will not collect any personal identifying information. This collection only requires respondents to report their answers; there are no record-keeping costs to the respondents. Individuals receiving a survey invitation will receive compensation in return for their activities.

The results of this research will assist NHTSA in better understanding how to develop successful programs to improve driver safety. The technical report will be distributed to a variety of audiences interested in improving highway safety. This collection will inform the development of countermeasures, particularly in the areas of communications and outreach intended to reduce speeding.

Description of the Need for the Information and Proposed Use of the Information: NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of traffic safety programs. Title 23, United States Code, Section 403 gives the Secretary of Transportation (NHTSA by delegation) authorization to use funds appropriated to conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information, with respect to all aspects of highway and traffic safety systems and conditions relating to vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics; accident causation and investigations; and human behavioral factors and their effect on highway and traffic safety. Speeding behavior is an area for which NHTSA has developed comprehensive

programs to meet its injury reduction goals. The major components of speeding safety programs are education, enforcement, and outreach, with legislative efforts added to the mix.

Speeding continues to be a major safety problem. In 2019, speeding was a contributing factor in 26% of fatal, 12% of injury, and 9% of property-damage-only crashes. Motor vehicle crashes in 2019 where at least one driver was speeding accounted for 9,478 fatalities. That same year, 326,000 people were injured in speeding-related traffic crashes.[1] To address the safety problem, NHTSA has provided State Highway Safety Offices and safety advocates with information on attitudes and behaviors of drivers who speed, including changes across time, and classified speeder types.[2 3] NHTSA is continuing these efforts and attempting to assist the development of more tailored countermeasures by conducting this new study to evaluate additional psychological factors that may predict speeding behavior.

In order to design countermeasures that address directly the factors that influence speeding behavior and intention to engage in this behavior, it is necessary to understand as much as possible about the internal reasoning of drivers who speed. Insight into factors such as judgments about whether speeding is morally right or wrong and perceptions of the legitimacy of the speed laws, enforcement, and sanctions can help to develop tailored and effective interventions. This study will examine these factors by conducting a survey of speeders and non-speeders. NHTSA will use the findings to assist States, localities, and communities in developing and refining countermeasures that will aid in their efforts to reduce speeding behavior and speeding-related crashes and injuries.

NHTSA will disseminate the information from this study in a technical report. The technical report will provide aggregate (summary) statistics and tables as well as the results of statistical analysis of the information, but it will not include any personally identifiable information (PII). The technical report will be shared with State highway offices, local governments, and those who develop traffic safety communications that aim to reduce speeding behavior and speeding-related crashes.

Affected Public: Participants are eligible for the survey if they are (1) licensed drivers in the State of Washington at the time the sample is drawn; (2) age 18 and older; (3) randomly selected from the total drivers in Washington State in three groups based on the number of speeding convictions on their driver record (0; 1; and 2+).

Estimated Number of Respondents: Participation in this study will be voluntary. The study anticipates contacting up to 4,545 adult licensed drivers from Washington State to obtain no more than 1,500 completed surveys.

Frequency of Collection: The study will be conducted one time during the three-year period for which NHTSA is requesting approval.

Estimated Total Annual Burden Hours: NHTSA estimates the approximate time to complete the survey is 20 minutes per participant. Details of the burden hours for each wave in the survey are included in Table 1 below. When rounded up to the nearest whole hour for each data collection effort, the total estimated annual burden from the project activities for 1,500 participants is 501 hours.

TABLE 1—ESTIMATED TOTAL BURDEN FOR SURVEY

Wave	Number of contacts	Participant type	Estimated burden per sample unit (in minutes)	Frequency of burden	Number of sample units	Total burden hours *
Wave 1 (Initial Invitation)	4,545	Recruited participant—Eligible respondent	20	1	495	165
Wave 2 (Reminder Postcard #1).	4,050	Recruited participant—Eligible respondent	20	1	297	99
Wave 3 (1st Survey Mailing—NHTSA Form 1659).	3,753	Recruited participant—Eligible respondent	20	1	376	126
Wave 4 (Reminder Postcard #2).	3,377	Recruited participant—Eligible respondent	20	1	188	63
Wave 5 (2nd Survey Mailing—NHTSA Form 1659).	3,189	Recruited participant—Eligible respondent	20	1	144	48
Total						501

* Rounded up to the nearest hour.

Estimated Total Annual Burden Cost: Participation in this study is voluntary, and there are no costs to respondents beyond the time spent completing the questionnaires.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2022–23086 Filed 10–24–22; 8:45 am]

BILLING CODE 4910–59–P

[1] National Center for Statistics and Analysis. (2021, October). *Speeding: 2019 data* (Traffic Safety Facts. Report No. DOT HS 813 194). National Highway Traffic Safety Administration.

[2] Richard, C.M., Campbell, J.L., Lichty, M.G., Brown, J.L., Chrysler, S., Lee, J.D., Boyle, L., & Reagle, G. (2012, August). *Motivations for speeding, Volume I: Summary report.* (Report No. DOT HS 811 658). Washington, DC: National Highway Traffic Safety Administration.

[3] Schroeder, P., Kostyniuk, L., & Mack, M. (2013, December). *2011 National Survey of Speeding Attitudes and Behaviors.* (Report No. DOT HS 811 865). Washington, DC: National Highway Traffic Safety Administration.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0124]

Pipeline Safety: Liquefied Natural Gas (LNG) Research and Development (R&D) Public Meeting and Forum

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of virtual public meeting and forum.

SUMMARY: This notice announces a virtual public meeting and forum titled: ''Liquefied Natural Gas Research and Development Public Meeting and Forum.'' The public meeting and forum will serve as an opportunity for pipeline stakeholders to discuss research gaps and challenges in the LNG industry. Furthermore, it will also serve as a venue for PHMSA, public interest groups, industry, academia, intergovernmental partners, and the public to collaborate on PHMSA's future R&D agenda.

DATES: The LNG R&D Public Meeting and Forum will be held on November 15 and 16, 2022. Members of the public who wish to attend the public meeting and forum must register by November 14, 2022. Individuals requiring accommodations, such as sign language interpretation or other aids, are asked to notify PHMSA no later than November 9, 2022. Individuals will be able to sign up to participate in specific workgroups by November 7, 2022, on a first come first serve basis. To facilitate a collaborative and productive discussion in the working groups, each working group will have a maximum capacity of 50 participants.

ADDRESSES: This public meeting and forum will be held virtually. The agenda and instructions on how to attend will be published once they are finalized on the following public meeting registration page: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=162.* Presentations will be available on the meeting website and on the *E-gov* website, *https://regulations.gov,* at docket number PHMSA–2022–0124, no later than 30 days following the meeting. You may submit comments, identified by Docket No. PHMSA–2022–0124, by any of the following methods:

- *E-Gov Web: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Mail:* Docket Management System: U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.
- *Instructions:* Identify the Docket No. PHMSA–2022–0124, at the beginning of your comments. If you submit your comments by mail, please submit two copies. If you wish to receive confirmation that PHMSA received your comments, you must include a self-addressed stamped postcard. Internet users may submit comments at: *http://www.regulations.gov.*
- *Note:* All comments received are posted without edits to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.
- *Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to provide confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential;'' (2) send PHMSA a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Kandilarya Barakat, 1200 New Jersey Avenue SE, DOT: PHMSA—PHP–80, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket.
- *Privacy Act:* DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Smith by phone at 202–330–1132 or via email at *robert.w.smith@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The mission of PHMSA is to protect people and the environment by advancing the safe transportation of energy products and other hazardous materials that are essential to our daily lives. PHMSA oversees the transportation of hazardous materials, including energy products, through all modes of the transportation industry—and is focused on the Biden-Harris Administration's whole-of-government approach to addressing safety, mitigating climate change, and improving the environment. PHMSA collaborates with stakeholders from the public, academia, interagency, international partners, and pipeline industry that share PHMSA's goal of advancing knowledge and technology in the pursuit of improved LNG facility safety. PHMSA's research agenda will adapt to address existing and future LNG safety initiatives such as addressing performance-based risk reduction during site location, design, construction, operations, maintenance, and fire protection, and methane mitigation activities.

Due to the importance of energy products and other hazardous materials to our economy and standard of living, it is essential that research projects promote safety, environmental protection, and reliable and efficient performance of our transportation system. The United States has experienced a significant increase in LNG export over the last decade. The expansion of the domestic and international LNG transportation industry has highlighted the need to ensure the U.S. is leading the world with best safety and environmental mitigation practices. According to the U.S. Energy Information Administration (EIA), ''U.S. LNG export capacity increased from less than 1 billion cubic feet (Bcf) per day (Bcf/d) in 2015 to 10.78 Bcf/d at the end of 2020. Total peak export capacity in 2021 was about 12.98 Bcf/d. In 2015, total U.S. LNG

exports were about 28 Bcf to seven countries. In 2021, U.S. LNG exports reached a record high of about 3,561 Bcf to 45 countries, and LNG exports accounted for 54% of total U.S. natural gas exports.'' [1]

This expansion of LNG demand is expected to continue in the near term and brings with it additional safety challenges which must be understood and remedied to mitigate safety impacts and potential environmental damage from releases and incidents. Therefore, LNG transportation research will examine regulatory requirements and standards incorporated into the Code of Federal Regulations (CFR) for LNG and performance gap analyses so as to keep pace with the growing demand to export LNG. In addition, future research outputs must consider LNG's status as an alternate transportation fuel for multiple modes of transportation particularly as operators transition from conventional oil-based fuels to LNG for marine vessels in order to reduce air pollution.

To this end, PHMSA hopes to discuss and receive public feedback in four areas: (1) LNG facility design and construction, including process, piping, and control system design; process hazard analysis; vapor handling; structural members; and construction testing requirements; (2) LNG facility siting, including passive and active protection and potential safety gaps in 49 CFR 193 and industry technical standards; (3) LNG facility fire protection system design, including firewater system design, fire and gas detection technology, emergency shutdown systems, and hazard controls; and (4) LNG operation and maintenance, including plans and procedures (best practices), safe work practices, human factors, incident investigation and reporting, reporting requirements, inspection and testing, maintenance and repairs—including fugitive and vented methane emissions mitigation, corrosion protection, and personnel protection.

II. Public Meeting and Forum Details and Agenda

The virtual meeting and forum will take place November 15 and 16, 2022. The morning of the first day of the virtual public meeting will include a general session with panel discussions among government, industry, research consortiums, and environmental advocacy stakeholders on LNG facility safety R&D research topics. The afternoon of the first day and the entirety of the second day will be the virtual public forum which will consist of smaller workgroups that members of the public will have an opportunity to sign up for in advance. The workgroups will explore the specific research gaps and topics discussed above in Section I.

III. Public Participation

The virtual public meeting and forum will be open to the public. Members of the public who wish to attend must register on the meeting website, including their names and organization affiliation. PHMSA is committed to providing all participants with equal access to these meetings. If you need disability accommodations, please contact Robert Smith by phone at 202–330–1132 or via email at *robert.w.smith@dot.gov.*

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notification of last-minute changes that impact scheduled meetings. Therefore, individuals should check the meeting website listed in the **ADDRESSES** section of this notice or contact Robert Smith by phone at 202–330–1132 or via email at *robert.w.smith@dot.gov* regarding any possible changes.

PHMSA invites public participation and public comment on the topics addressed in this public meeting and forum. Please review the **ADDRESSES** section of this notice for information on how to submit written comments.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–23147 Filed 10–24–22; 8:45 am]

BILLING CODE 4910–60–P

[1] *https://www.eia.gov/energyexplained/natural-gas/liquefied-natural-gas.php* (updated as of May 19, 2022).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Activities: Information Collection Renewal; Submission for OMB Review; General Reporting and Recordkeeping Requirements by Savings Associations

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). An agency may not conduct or sponsor, and a respondent is 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 renewal of its information collection titled ''General Reporting and Recordkeeping Requirements by Savings Associations.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before November 25, 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, 1557–0266, Office of the Comptroller of the Currency, 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) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0266'' 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.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On April 21, 2022, the OCC published a 60-day notice for this information collection, 87 FR 23916. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection

Review'' from the drop-down menu. 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 ''1557–0266'' or ''General Reporting and Recordkeeping Requirements by Savings Associations.'' 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, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, 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 *et seq.*), 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 disclose information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: General Reporting and Recordkeeping Requirements by Savings Associations.

OMB Control No.: 1557–0266.

Type of Review: Regular review.

Abstract: Federal savings associations must comply with the following regulations, which require them to establish prudent internal controls, so that examiners will have an accurate picture of the savings assocations' performance and condition:

- 12 CFR 144.8 (communications between members of a Federal mutual savings association);
- 12 CFR 163.47(e) (pension plans—records); and
- 12 CFR 163.76(c) (offers and sales of securities at an office of a Federal savings association—form of certification).

Federal savings associations use the required reports and records for internal management control purposes, and examiners use them to determine whether savings associations are being operated safely, soundly, and in compliance with regulations. Without these reporting and recordkeeping requirements, it would be difficult for Federal savings associations to establish prudent internal controls and would limit the ability of examiners to determine the accurate performance and condition of Federal savings associations.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 266.

Estimated Total Burden: 26,833 hours.

Frequency of Response: On occasion.

Comments: On April 21, 2022, the OCC published a 60-day notice for this information collection, 87 FR 23916. No comments were received. Comments continue to be invited on:

(a) Whether the collections of information 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. 2022–23116 Filed 10–24–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Regulation E—Electronic Fund Transfer Act; Prepaid Account Provisions

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). An agency 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 its information collection titled ''Regulation E—Electronic Fund Transfer Act; Prepaid Card Provisions.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before November 25, 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, 1557–0346, Office of the Comptroller of the Currency, 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) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0346'' 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.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On June 29, 2022, the OCC published a 60-day notice for this information collection, 87 FR 38827. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the

''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. 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 ''1557–0346'' or ''Regulation E—Electronic Fund Transfer Act; Prepaid Card Provisions.'' 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, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, 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 *et seq.*), 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 disclose information to a third party. The OCC asks that OMB approve the revision of the collection in this notice.

Title: Regulation E—Electronic Fund Transfer Act; Prepaid Account Provisions.

OMB Control No.: 1557–0346.

Type of Review: Regular review.

Abstract: The Electronic Fund Transfer Act (EFTA) [1] and Regulation E [2] require disclosure of basic terms, costs, and rights relating to electronic fund transfer services debiting or crediting a consumer's account.

The prepaid accounts final rules issued by the Consumer Financial Protection Bureau (CFPB) [3] require financial institutions to make disclosures available to consumers before a consumer acquires a prepaid account. This notice outlines the requirements of the 2016 rule as amended by the 2017 and 2018 rules. The remainder of Regulation E is approved under OMB Control No. 1557–0176.

Under 12 CFR 1005.18(b), a financial institution is required to make available a short form and a long form disclosure before the consumer acquires a prepaid account, subject to certain exceptions. Section 1005.18(f)(3) generally requires that certain disclosures, including the name of the financial institution and the URL of its website, and a telephone number the consumer may use to contact the financial institution about the prepaid account, be made on the actual prepaid account access device.

Financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) may meet the requirement of providing the long form disclosure after acquisition by allowing the long form disclosure to be delivered electronically, without receiving consumer consent under the E-Sign Act,[4] if the disclosure is not provided inside the prepaid account packaging material and the financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information. If a financial institution provides pre-acquisition disclosures in writing and a consumer subsequently completes the acquisition process online or by telephone, the financial institution is not required to provide the disclosures again either electronically or orally.

Section 1005.18(b)(9)(i) includes a requirement that a financial institution provide pre-acquisition disclosures in a foreign language if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in that foreign language. That requirement is not applicable to payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party or directly by an employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account recipients.

Under § 1005.18(c)(1), a financial institution need not furnish periodic statements to the consumer if the provider uses the alternative method of compliance. Under this alternative method, the periodic statements must include: (1) the consumer's account balance, through a readily available phone number; (2) the means by which the consumer can obtain an electronic account history, such as the address of a website; and (3) a written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 24 months preceding the date the financial institution receives the consumer's request. Section 1005.18(c)(5) requires that financial institutions disclose to consumers a summary total of the amount of fees assessed against the consumer's prepaid account for both the prior month as well as the calendar year to date. This information must be disclosed on any periodic statement and any history of account transactions provided or made available by the financial institution.

For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements of Regulation E for any prepaid account for which it has not successfully completed its consumer identification and verification process, provided certain disclosures are given. Regarding accounts where the consumer's identity is later verified, financial institutions must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with relevant Regulation E provisions. For accounts in programs where there is no verification process, financial institutions must either explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers or explain that there are no such protections and that such financial institutions comply with the process (if any) that they disclose.[5]

Pursuant to § 1005.18(h)(1), except as provided in § 1005.18(h)(2) and (3), the effective date for the prepaid accounts rules is April 1, 2019. If, as a result of § 1005.18(h)(1), a financial institution changes the terms and conditions of a prepaid account, such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must notify consumers with accounts acquired before April 1, 2019, at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information fewer than 30 days in advance of the change becoming

[1] 15 U.S.C. 1693 *et seq.*

[2] 12 CFR part 1005.

[3] 81 FR 83934 (November 22, 2016), 82 FR 18975 (April 25, 2017), and 83 FR 6364 (February 13, 2018).

[4] Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

[5] 12 CFR 1005.18(e)(3)(ii)(C).

effective or after it has become effective, the financial institution is permitted instead to provide notice of the change within 30 days of obtaining the consumer's contact information.

If a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the E-Sign Act, or is not otherwise already mailing or delivering to the consumer written account-related communications, the financial institution may provide to the consumer a notice of a change in terms and conditions or required or voluntary updated initial disclosures under Reg. E taking effect in electronic form without regard to the consumer notice and consent requirements of the E-Sign Act.

Section 1005.18(h)(2)(ii) requires that financial institutions notify any consumer who acquires a prepaid account after the effective date specified in packaging produced prior to the effective date of any changes as a result of § 1005.18(h)(1) taking effect that would have caused a change-in-terms notice to be required under § 1005.8(a) (or § 1005.18(f)(2) for existing customers) within 30 days of acquiring the customer's contact information. In addition, financial institutions must mail or deliver updated initial disclosures pursuant to §§ 1005.7 and 1005.18(f)(1) within 30 days of obtaining the consumer's contact information. Financial institutions that are affected should not incur significant costs associated with notifying consumers and providing updated initial disclosures. Consumers who have consented to electronic communication may receive the notices and updated disclosures electronically at a minimal cost to financial institutions. A financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(h)(2)(ii) or (iii).

Section 1005.19(b) requires certain issuers to submit to the CFPB, on a rolling basis, prepaid account agreements (including fee schedules) that are offered, amended, or withdrawn. Prepaid account issuers are permitted to delay submitting a change in the list of names of other relevant parties to a particular prepaid account agreement until the earlier of such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements to the CFPB or May 1 of each year (for updates between the last submission and April 1 of that year). Changes in agreement provisions or fee information may be integrated into the text of the agreement or provided through fee addenda.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 1,106.

Estimated Annual Burden: 6,605 hours.

Frequency of Response: On occasion.

Comments: On June 29, 2022, the OCC published a 60-day notice for this information collection, 87 FR 38827. No comments were received. Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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. 2022–23114 Filed 10–24–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Retail Foreign Exchange Transactions

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 the renewal of an information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is 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 renewal of an information collection titled "Retail Foreign Exchange Transactions."

DATES: Comments must be submitted on or before December 27, 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: 1557–0250, 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) 293–4835.

Instructions: You must include "OCC" as the agency name and "1557–0250" 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,* and hover over the "Information Collection Review" drop down menu. 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 "1557–0250" or "Retail Foreign Exchange Transactions." 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, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, 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 *et seq.*), Federal agencies must obtain approval from 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: Retail Foreign Exchange Transactions.

OMB Control No.: 1557–0250.

Type of Review: Regular.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 15.

Total Annual Burden: 22,418 hours.

Abstract:

Background

The OCC's rule pertaining to retail foreign exchange transactions (''retail forex'') (12 CFR part 48) allows national banks and Federal savings associations to offer or enter into retail foreign exchange transactions. In order to engage in these transactions, institutions must comply with various reporting, disclosure, and recordkeeping requirements included in that rule.

Reporting Requirements

The reporting requirements in 12 CFR 48.4 state that, prior to initiating a retail forex business, a national bank or Federal savings association must provide the OCC with prior notice and obtain a written supervisory no-objection letter. In order to obtain a supervisory no-objection letter, a national bank or Federal savings association must have written policies, procedures, and risk measurement and management systems and controls in place to ensure that retail forex transactions are conducted in a safe and sound manner. The national bank or Federal savings association also must provide other information required by the OCC, such as documentation of customer due diligence, new product approvals, and haircuts applied to noncash margins.

Disclosure Requirements

Under 12 CFR 48.5, a national bank or Federal savings association must promptly provide the customer with a statement reflecting the financial result of the transactions and the name of any introducing broker to the account. The institution must follow the customer's specific instructions on how the offsetting transaction should be applied.

Twelve CFR 48.6 requires that a national bank or Federal savings association furnish a retail forex customer with a written disclosure before opening an account through which the customer will engage in retail forex transactions. It further requires a national bank or Federal savings association to secure an acknowledgment from the customer that the disclosure was received and understood. Finally, the section requires a national bank or Federal savings association to disclose its profitable accounts ratio and its fees and other charges.

Twelve CFR 48.10 requires a national bank or Federal savings association to issue monthly statements to each retail forex customer and send confirmation statements following transactions.

Twelve CFR 48.13(c) prohibits a national bank or Federal savings association engaging in retail forex transactions from knowingly handling the account of any related person of another retail forex counterparty unless it receives proper written authorization, promptly prepares a written record of the order, and transmits to the counterparty copies of all statements and written records. Twelve CFR 48.13(d) prohibits a related person of a national bank or Federal savings association engaging in retail forex transactions from having an account with another retail forex counterparty unless it receives proper written authorization and copies of all statements and written records for such accounts are transmitted to the counterparty.

Twelve CFR 48.15 requires a national bank or Federal savings association to provide a retail forex customer with 30 days prior notice of any assignment of any position or transfer of any account of the retail forex customer. It also requires a national bank or Federal savings association to which retail forex accounts or positions are assigned or transferred to provide the affected customers with risk disclosure statements and forms of acknowledgment and obtain the signed acknowledgments within 60 days.

The customer dispute resolution provisions in 12 CFR 48.16 require certain endorsements, acknowledgments, and signatures. The section also requires that a national bank or Federal savings association, within 10 days after receipt of notice from the retail forex customer that the customer intends to submit a claim to arbitration, provide the customer with a list of persons qualified in the dispute resolution.

Policies and Procedures; Recordkeeping

Twelve CFR 48.7 and 48.13 require that a national bank or Federal savings association engaging in retail forex transactions keep full, complete, and systematic records and to establish and implement internal rules, procedures, and controls. Section 48.7 also requires that a national bank or Federal savings association keep account, financial ledger, transaction, and daily records, as well as memorandum orders, post-execution allocation of bunched orders, records regarding its ratio of profitable accounts, possible violations of law, records for noncash margin, and monthly statements and confirmations. Twelve CFR 48.9 requires policies and procedures for haircuts for noncash margin collected under the rule's margin requirements and annual evaluations and modifications of the haircuts.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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. 2022–23166 Filed 10–24–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

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 the respondent is 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, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before November 25, 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, 1557–0248, Office of the Comptroller of the Currency, 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) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0248'' 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.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On July 12, 2022, the OCC published a 60-day notice for this information collection. 87 FR 41384. No comments were received. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. 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 ''1557–0248'' or ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' 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, OCC 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 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information that 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. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control No.: 1557–0248.

Type of Review: Regular.

Affected Public: Businesses or individuals.

Frequency of Response: On occasion.

Burden Estimate:

Number of Respondents: 9,025.

Total Annual Burden: 3,850.

Abstract: This generic information collection request (ICR) provides the OCC with a means to solicit qualitative user feedback in an efficient, timely manner, in accordance with the Federal government's commitment to improving service delivery. Qualitative feedback is information that provides insights on perceptions and opinions but does not include statistical survey or quantitative results that can be attributed to the surveyed population. This qualitative feedback provides insights into stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; and/or focuses attention on areas where communication, training, or changes in operations might improve delivery of products or services. It also enables ongoing, collaborative, and actionable communications between the OCC and its stakeholders, while also making it possible for the OCC to use feedback to improve program management.

The OCC's solicitations for feedback target areas such as timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues related to service delivery. The OCC uses the responses to inform efforts to improve or maintain the quality of service offered to the public. If the OCC does not collect this information, it will not have access to vital feedback from stakeholders.

Under this generic ICR, the OCC will submit a specific information collection for approval only if the collection meets the following conditions:

- It is voluntary;
- It imposes a low burden on respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and a low cost on both respondents and the Federal government;

- It is non-controversial and does not raise issues of concern to other Federal agencies;
- It is targeted to solicit opinions from respondents who have experience with the program or will have experience with the program in the near future;
- It includes personally identifiable information (PII) only to the extent necessary, and the OCC does not retain the PII; [1]
- It gathers information intended to be used internally only for general service improvement and program management purposes and is not intended for release outside of the OCC;
- It does not gather information to be used for the purpose of substantially informing influential policy decisions;
- It gathers information that will yield qualitative information and will not be designed or expected to yield statistically reliable results or used to reach general conclusions about the surveyed population; and
- Feedback collected provides useful information but does not yield data that can be attributed to the overall population.

If these conditions are not met, the OCC will submit an information collection request to OMB for approval through the normal PRA process.

The OCC will not use this type of generic clearance for the collection of qualitative feedback for any quantitative information collection.

As a general matter, this generic information collection will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature.

Comments: On July 12, 2022, the OCC published a 60-day notice for this information collection, 87 FR 41384. No comments were received. Comments continue to be solicited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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/or purchase of services expended to provide information.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2022–23099 Filed 10–24–22; 8:45 am]

BILLING CODE 4810–33–P

[1] The OCC may retain PII only in limited circumstances and, if it does so, the OCC must comply with applicable requirements, restrictions, and prohibitions of the Privacy Act of 1974 and other privacy and confidentiality laws that govern the collection, retention, use, and/or disclosure of such PII.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[Docket No.: OFAC–2022–0005]

Agency Information Collection Activities; Proposed Collection; Comment Request for Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

DATES: Written comments must be submitted on or before December 27, 2022 to be assured of consideration.

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

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments.

Email: OFACReport@treasury.gov with Attn: Request for Comments (Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts).

Instructions: All submissions received must include the agency name and refer to Docket Number OFAC–2022–0005 and the Office of Management and Budget (OMB) control number 1505–0255. Comments received will be made available to the public via *https://www.regulations.gov* or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Title: Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

OMB Number: 1505–0255.

Type of Review: Extension without change of a currently approved collection.

Description: Section 566.504(b) of the Hizballah Financial Sanctions Regulations, 31 CFR part 566 (HFSR) provides that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution whose name is added to the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (the ''CAPTA List'') on OFAC's website (*www.treasury.gov/ofac*) as subject to a prohibition on the maintaining of such accounts, must file a report with OFAC that provides full details on the closing of each such account, and on all transactions processed or executed through the account pursuant to § 566.504, including the account outside of the United States to which funds remaining in the account were transferred. This report must be filed with OFAC within 30 days of closure of the account. This collection of information assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable-through accounts for foreign financial institutions listed on the CAPTA List pursuant to 31 CFR part 566. The reports will be reviewed by OFAC and may be used for compliance and enforcement purposes by the agency.

Affected Public: The likely respondents affected by this collection of information are U.S. financial institutions maintaining correspondent accounts or payable-through accounts for foreign financial institutions.

Estimated Number of Respondents: OFAC assesses that the estimate for the

number of unique reporting respondents is approximately 1.

Frequency of Response: The estimated annual frequency of responses is approximately 1 response per respondent.

Estimated Total Number of Annual Responses: The estimated total number of responses per year is approximately 1.

Estimated Time per Response: OFAC assesses that there is an average time estimate of 2 hours per response.

Estimated Total Annual Burden Hours: The estimated total annual reporting burden is approximately 2 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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.

Authority: 44 U.S.C. 3501 *et seq.*

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–23169 Filed 10–24–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On October 19, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individual

1. OREKHOV, Yury Yuryevich, One at Palm Jumeirah, SA Unit 701, Blue Water Island, Dubai, United Arab Emirates; DOB 30 Mar 1980; POB Almaty, Kazakhstan; nationality Russia; citizen Russia; Gender Male; Passport 756454133 (Russia); alt. Passport 531182863 (Russia) (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249 (April 19, 2021) (E.O. 14024) for operating or having operated in the technology sector of the Russian Federation economy.

Entities

1. NDA NORD–DEUTSCHE INDUSTRIEANLAGENBAU GMBH, Rothenbaumchaussee 83, D–20148, Hamburg, Germany; Organization Established Date 27 Jun 2007; Registration Number HRB102166 (Germany) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

2. OPUS ENERGY TRADING LLC, Aspin Commercial Tower Trade Center, First 335–117, Dubai, United Arab Emirates; Organization Established Date 02 Mar 2022; Registration Number 1689571 (United Arab Emirates) [RUSSIA–EO14024] (Linked To: OREKHOV, Yury Yuryevich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Yury Yuryevich Orekhov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: October 19, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–23179 Filed 10–24–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of a Meeting; Electronic Tax Administration Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC) will hold a public meeting via ''Zoom'' on Thursday, Nov. 3, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Parman, Office of National Public Liaison, at (202) 317–6247, or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting via conference call of the ETAAC will be held on Thursday, Nov. 3, 2022, from 12:30 p.m. to 1 p.m. EDT. The purpose of the ETAAC is to provide continuing advice regarding the development and implementation of the IRS organizational strategy for electronic tax administration. ETAAC is an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft and refund fraud. It supports the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. Please call or email Sean Parman to confirm your attendance. Mr. Parman can be reached at 202–317–6247 or *PublicLiaison@irs.gov.* Should you wish the ETAAC to consider a written statement, please call 202–317–6247 or email: *PublicLiaison@irs.gov.*

Dated: October 19, 2022.

John A. Lipold,

Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.

[FR Doc. 2022–23173 Filed 10–24–22; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Board of Directors; Request for Nominations

AGENCY: Unified Carrier Registration Plan.

ACTION: Notice.

SUMMARY: The Unified Carrier Registration (UCR) Plan Board of Directors is requesting nominations of qualified individuals in the Western service area of the Federal Motor Carrier Safety Administration (FMCSA) for appointment by the FMCSA to the UCR Plan Board of Directors to fill one vacancy for a term which expires on May 31, 2023. The nominees must be from among the Chief Administrative Officers of State Agencies responsible for overseeing the administration of the UCR Agreement. The UCR is also requesting nominations of qualified individuals representing a motor carrier that falls within the smallest fleet fee bracket for appointment by the FMCSA to the UCR Plan Board of Directors to fill one vacancy for a term which expires on May 31, 2024.

DATES: Nominations of or expressions of interest by qualified individuals to be considered by the FMCSA for appointment to fill these two vacancies in the Board of Directors of the Unified Carrier Registration Plan must be received on or before November 15, 2022.

ADDRESSES: Nominations of or expressions of interest by qualified individuals to be considered by the FMCSA for appointment to the Board of the UCR Plan may be received by any of the following methods—internet, regular mail, courier, or hand-delivery.

Mail, Courier, or Hand-Delivery: Unified Carrier Registration Plan, Attention: Matt Mantione, 3200 Windy Hill Rd., Suite 600W, Atlanta, GA 30339, internet: *mmantione@plan.ucr.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

SUPPLEMENTARY INFORMATION:

Background: Section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59,119 Stat. 1144, August 10, 2005] enacted 49 U.S.C. 14504a entitled ''Unified carrier registration system plan and agreement.'' Under the UCR Agreement, motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies that are involved in interstate transportation register and pay certain fees. The UCR Plan's Board of Directors must issue rules and regulations to govern the UCR Agreement. Section 14504a(a)(9) defines the Unified Carrier Registration Plan as the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the UCRA. Section 14504a(d)(1)(B) directed the Secretary of Transportation to establish a Unified Carrier Registration Plan Board of Directors made up of 15 members from FMCSA, State Governments, and the motor carrier industry.

The Board also must recommend to the Secretary of Transportation annual fees to be assessed against carriers, leasing companies, brokers, and freight forwarders under the UCRA. Section 14504a(d)(1)(B) provides that the UCR Plan's Board of Directors must consist of directors from the following groups:

Federal Motor Carrier Safety Administration: One director must be selected from each of the FMCSA service areas (as defined by FMCSA on January 1, 2005) from among the chief administrative officers of the State agencies responsible for administering the UCRA.

State Agencies: The five directors selected to represent State agencies must be from among the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement.

Motor Carrier Industry: Five directors must be from the motor carrier industry.

At least one of the five motor carrier industry directors must be from ''a national trade association representing the general motor carrier of property industry'' and one of them must be from ''a motor carrier that falls within the smallest fleet fee bracket.''

U.S. Department of Transportation (the Department): One individual, either the FMCSA Deputy Administrator or such other Presidential appointee from the Department appointed by the Secretary, represents the Department.

The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). This document serves as a notice from the UCR Plan Board of Directors soliciting nominations of and expressions of interest by qualified individuals who are interested in being considered by the FMCSA for appointment to the Board as a representative of a State agency responsible for overseeing the Unified Carrier Registration Agreement (UCR Agreement) from a State in the FMCSA's Western service area. For purposes of Board appointments, the Western service area includes the States of Alaska, California, Colorado, Idaho, Montana, North Dakota, South Dakota, Utah, and Washington. The term of this appointment expires on May 31, 2023.

This document also serves as a notice from the UCR Plan Board of Directors soliciting nominations of and expressions of interest by qualified individuals who are interested in being considered by the FMCSA for appointment to the Unified Carrier Registration Plan Board of Directors as a representative of a motor carrier that falls within the smallest fleet fee bracket (1–2 self-propelled commercial motor vehicles). The term of this appointment expires on May 31, 2024.

All nominations of or expressions of interest by qualified individuals received for either currently vacant position described above and submitted on or before November 15, 2022, will be forwarded to FMCSA. The authority to appoint an individual to fill each of the two vacant positions lies with Secretary of Transportation, which has been delegated to FMCSA.

Nominations and expressions of interest should indicate that the individual nominated or interested meets the statutory requirements specified in 49 U.S.C. 14504a(d)(1)(B). All applications must include a current resume.

The UCR Plan Board may, but is not required to, recommend to FMCSA the appointment of individuals from among the nominations and expressions of interest received. If the Board does make such recommendation(s), it will do so after consideration during an open meeting in compliance with the Government in the Sunshine Act that includes such recommendation(s) as part of the subject matter of the open meeting.

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2022–23107 Filed 10–24–22; 8:45 am]

BILLING CODE 4910–EX–P

FEDERAL REGISTER

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No. 205 October 25, 2022

Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedure for Central Air Conditioners and Heat Pumps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2021–BT–TP–0030]

RIN 1904–AF29

Energy Conservation Program: Test Procedure for Central Air Conditioners and Heat Pumps

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') is amending the test procedures for central air conditioners and heat pumps that will be required for certification of compliance with applicable energy conservation standards starting January 1, 2023, to address a limited number of specific issues, and making minor corrections to the current test procedures that are required for certification of compliance with applicable energy conservation standards prior to January 1, 2023. This rulemaking does not satisfy the 7-year lookback requirement prescribed by the Energy Policy and Conservation Act (''EPCA'').

DATES: The effective date of this rule is November 25, 2022. The final rule changes will be mandatory for product testing starting April 24, 2023. The incorporation by reference of a certain publication listed in the rule was approved by the Director of the Federal Register on February 6, 2017.

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

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-TP-0030* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5904. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE maintains the following previously approved incorporation by reference in part 430:

ANSI/ASHRAE Standard 37–2009, Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009;

Copies of ANSI/ASHRAE 37–2009, can be purchased from *www.ashrae.org/resources--publications.*

For a further discussion of this standard, see section IV.M of this document.

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I. Authority and Background

Central air conditioners (''CACs'') and central air conditioning heat pumps (''HPs'') (collectively, ''CAC/HPs'') are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures (42 U.S.C. 6292(a)(3)) DOE's energy conservation standards and test procedures for CAC/HPs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), part 430, § 430.32(c), and 10 CFR part 430, subpart B, appendices M (''appendix M'') and M1 (''appendix M1''). The following sections discuss DOE's authority to establish test procedures for CAC/HPs and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

products include CAC/HPs,[3] the subject of this document. (42 U.S.C. 6292(a)(3))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA 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).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

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

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. (42 U.S.C. 6293(b)(2)) The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. *Id.* In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. *Id.*

DOE's regulations at 10 CFR 430.27 provide that any interested person may seek a waiver from the test procedure requirements if certain conditions are met. A waiver requires manufacturers to use an alternate test procedure in situations in which the DOE test procedure cannot be used to test the product or equipment, or use of the DOE test procedure would generate unrepresentative results. 10 CFR 430.27(a)(1). DOE's regulations at 10 CFR 430.27(l) require that as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking (''NOPR'') to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l).

DOE is publishing this final rule for the limited purpose of addressing its obligations under the waiver process regulations at 10 CFR 430.27 and to incorporate additional corrections and improvements.

B. Background

As discussed, DOE's existing test procedures for CAC/HPs appear at appendices M and M1 (both titled ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps'').

On January 5, 2017, DOE published a final rule regarding the Federal test procedure (''TP'') for CAC/HPs. 82 FR 1426 (''January 2017 CAC TP Final Rule''). The January 2017 CAC TP Final Rule amended appendix M and established appendix M1, use of which is required beginning January 1, 2023, for any representations, including compliance certifications, made with respect to the energy use or efficiency of CAC/HPs. *Id.* Appendix M provides for the measurement of the cooling and heating performance of CAC/HPs using the seasonal energy efficiency ratio (''SEER'') metric and heating seasonal performance factor (''HSPF'') metric, respectively. Appendix M1 specifies a revised SEER metric (*i.e.,* SEER2) and a revised HSPF metric (''HSPF2'').

Since the publication of the January 2017 CAC TP Final Rule, DOE has granted various petitions for waiver and interim waiver from certain provisions of appendix M and/or M1.[4] Additionally, DOE is aware of testing conducted per both appendices M (via Compliance, Certification and Enforcement (''CCE'') testing and other verification programs) and M1 (via investigative testing to support development of the 2023 energy efficiency standards). Through these efforts, DOE has been made aware of several items for which test procedure amendments are warranted in order to improve clarity or to reduce burden. In each of these cases, DOE has determined that the amendments would have no or negligible impact on ratings and thus do not require amendment of the energy conservation standards per 42 U.S.C. 6293(e). These amendments are described in section III.D of this final rule. Further, on May 8, 2019, AHRI submitted a comment responding to the notice of proposed rulemaking to revise and adopt procedures, interpretations, and policies for consideration of new or revised energy conservation standards (2020 Process Rule NOPR, 84 FR 3910, Feb. 13, 2019) The comment included as Exhibit 2 a ''List of Errors Found in both appendix M and appendix M1'' (''AHRI Exhibit 2,'' EERE–2017–BT–STD–0062–0117 at pp. 23–24). Many of the errors pointed out by AHRI regard typographical errors in appendices M and M1. These issues are addressed in various places of this final rule, including footnotes describing amendments to correct section references, nomenclature, etc. that did not warrant standalone discussion sections.

On March 24, 2022, DOE published a notice of proposed rulemaking regarding the Federal test procedure for CAC/HPs. 87 FR 16830 (''March 2022 CAC TP NOPR''). The March 2022 CAC TP NOPR proposed changes to improve the functionality of appendix M1 to address the issues identified in test procedure waivers, improve representativeness and correct typographical issues raised by commenters. *Id.* DOE held a public meeting related to the NOPR on April

[3] This rulemaking uses the term ''CAC/HP'' to refer specifically to central air conditioners (which include heat pumps) as defined by EPCA. (42 U.S.C. 6291(21))

[4] Waivers granted to GD Midea Heating and Ventilating Equipment Co., Ltd. (83 FR 56065), Johnson Controls, Inc. (83 FR 12735 and 84 FR 52489), and TCL Air Conditioner (Zhongshan) Co., Ltd. (84 FR 11941), interim waivers granted to National Comfort Products, Inc. (83 FR 24754), Aerosys Inc. (83 FR 24762), LG Electronics U.S.A., Inc. (85 FR 40272), and Goodman Manufacturing Company, L.P. (86 FR 40534).

18, 2022 (hereafter the ''2022 CAC TP NOPR Public Meeting'').

DOE received comments in response to the March 2022 CAC TP NOPR from the interested parties listed in Table I–1.

TABLE I–1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MARCH 2022 CAC TP NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
Air-Conditioning, Heating, & Refrigeration Institute	AHRI	25	Trade Association.
Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE).	Joint Advocates	18	Efficiency organizations.
Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Edison—collectively California Investor Owned Utilities.	CA IOUs	20	Efficiency organization.
Carrier Global Corporation	Carrier	15	Manufacturer.
Daikin Comfort Technologies Manufacturing Company, L.P	Daikin	24	Manufacturer.
Emerson Climate Technologies, Inc	Emerson	14	Manufacturer.
Leaders Building of America	LBA	3	Trade Association.
Lennox International Inc	Lennox	19	Manufacturer.
National Comfort Products, Inc	NCP	16	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	23	Alliance of Efficiency Organizations.
Nortek Global HVAC (NGH)	Nortek	13	Manufacturer.
New York State Energy Research and Development Authority	NYSERDA	17	Efficiency organization.
Rheem Sales Company	Rheem	21	Manufacturer.
Samsung HVAC	Samsung	22	Manufacturer.
Trane Technologies	Trane	10	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

The CA IOUs, Carrier, Daikin, Emerson, Joint Advocates, Lennox, NEEA, Nortek, NYSERDA, and Rheem commented that they largely supported DOE's efforts in amending the existing test procedure in appendix M1. (CA IOUs, No. 20 at p. 3, Carrier, No. 20 at p. 1, Daikin, No. 24 at p. 1, Emerson, No. 14 at p. 1, Joint Advocates, No. 18 at p. 1, Lennox, No. 19 at p. 1, NEEA, No. 23 at p. 1, Nortek, No. 13 at p. 1, NYSERDA, No. 17 at p. 1, Rheem, No. 21 at p. 1) Emerson requested that DOE publish the revised test procedure as soon as reasonably possible, so that manufacturers will have time to comply with the compliance date of January 1, 2023. (Emerson, No. 14 at p. 3) Nortek also requested that DOE publish the final rule soon, so that they can have certainty with the revised test procedure, in order to serve the CAC/HP market efficiently. (Nortek, No. 13 at p. 3)

II. Synopsis of the Final Rule

In this final rule, DOE is updating appendix M1 to subpart B of part 430, ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps.'' DOE has identified certain provisions of appendix M1 that may benefit from additional detail and/or instruction. The updates are as follows:

(1) Adjusting the default fan power for two-stage coil-only systems when testing at low stage with reduced air volume rate to be more representative of fan input power trends as air volume rate reduces;

(2) Defining ''variable-speed communicating coil-only central air conditioner or heat pump'' and ''variable-speed non-communicating coil-only central air conditioner or heat pump'' and establishing procedures specific for testing such systems;

(3) Allowing the adjustment of the air volume rate as a function of outdoor air temperature during testing for blower coil systems with either multiple-speed or variable-speed indoor fans and with a control system capable of adjusting air volume rate as function of outdoor air temperature;

(4) Adjusting the maximum wet bulb temperature from 3 °F to 4 °F for the H4 test condition;

(5) Specifying in section 2(B) of appendix M1, that the instructions presented in the labels attached to the unit take precedence over the installation manuals printed and shipped with a product;

(6) Specifying in sections 3.1.4.1.1, 3.1.4.1.2, and 3.1.4.4.3 of appendix M1 that the airflow measurement apparatus fan must be adjusted if necessary to maintain the same air volume rate for different test conditions for systems not including multiple-speed or variable-speed indoor fans with control system capability to adjust air volume rate as function of operating conditions such as outdoor air temperature; and

(7) Revising the equations representing full-capacity operation of variable-speed heat pumps at and above 45 °F ambient temperature to be consistent with the intent for nominal capacity operation.

Additionally, in this final rule, DOE is updating 10 CFR part 429, ''Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment.'' DOE has identified certain provisions of part 429 that may benefit from additional detail and/or instruction. The proposed updates are as follows:

(1) Clarifying the language for required represented values for single-stage and two-stage coil-only CACs; and

(2) Providing additional direction regarding the regional standard requirements in part 429.

The adopted amendments are summarized in Table II–1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change. Additional proposed incidental changes are summarized in Table III–4, Table III–5 and Table III–6 in section III.D.10 of this document.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for central air conditioners and heat pumps (Docket No. EERE–2021–BT–TP–0030, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II–1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
Calculate indoor fan power of two-stage coil-only CACs and HPs using constant default fan power values that do not vary with air volume rate (441W/1000 scfm for most two-stage coil-only CACs and HPs and 406 W/1000 scfm for mobile-home and space-constrained CACs and HPs).	Calculate indoor fan power of two-stage coil-only CACs and HPs for reduced air volume rate tests using new default fan power values air volume rate (335 W/1000 scfm for most two-stage coil-only CACs and HPs and 308 W/1000 scfm for mobile-home and space-constrained CACs and HPs). Use linear interpolation to determine fan performance at intermediate airflow rates between 75 percent and 100 percent of full-load air volume rate.	Improve representativeness.
No test procedure provisions for variable-speed, coil-only CACs and HPs.	Test procedures and requirements established for variable-speed coil-only systems, include new definitions for ''variable-speed communicating coil-only central air conditioner or heat pump'' and ''variable-speed non-communicating coil-only central air conditioner or heat pump,'' for which the newly established test procedures have more flexibility.	Incorporate test procedures contained in test procedure waivers.
Appendix M1 currently does not explicitly allow for variation of air volume rate as outdoor temperature changes when testing blower coil systems.	For blower coil systems with multiple-speed or variable-speed indoor fans and the control system capability to adjust air volume rate as a function of outdoor air temperature, allow such air volume rate variation during testing.	Improve representativeness for certain models.
Appendix M1 contains provisions for conducting an optional H4 heating test at a 5 °F outdoor ambient dry-bulb temperature and, at a maximum, a 3 °F outdoor wet-bulb temperature.	Amend the wet bulb test condition for the H4 test to be 4 °F maximum instead of the current condition of 3 °F maximum.	Reduce test burden by reducing the time needed to remove sufficient moisture to achieve the wet bulb requirement.
Clarification regarding which form of installation instructions to use, if multiple forms are provided, only for variable refrigerant flow (VRF) multisplit systems.	Add direction to prioritize the instructions presented in the label attached to the unit over the installation instructions shipped with the unit for all CAC/HP products.	Improve representativeness and repeatability.
Appendix M1 currently is not clear about how to achieve the same air volume rate for different test conditions.	Add specific instruction to adjust the airflow measurement apparatus fan but not the fan of the unit under test to achieve the same air volume rate for different tests.	Improve representativeness and repeatability.
The equations for full-capacity operation for variable-speed heat pumps at and above 45 °F ambient temperature are based on operating in this range with a compressor speed the same as its operation in 17 °F ambient temperature.	Revise the equations for full-capacity operation at and above 45 °F to be more consistent with compressor speed used in normal operation for this temperature range, represented by the nominal heating test condition, $H1_N$.	Improve representativeness.
10 CFR part 429 provides requirements regarding regional CAC/HP efficiency standards.	Reinforce the language explaining regional requirements.	Improve clarity.
10 CFR 429.16(a)(1) provides requirements for represented values of single-stage and two-stage coil-only CACs that can lead to different interpretation.	Modify the instructions in that section to improve clarity without changing meaning.	Improve repeatability.
10 CFR 430.2 defines central air conditioner, excluding two commercial package air-conditioning and heating categories—packaged terminal air conditioners and packaged terminal heat pumps.	Add exclusions for additional commercial package air-conditioning and heating categories that justifiably are not central air conditioners.	Improved representativeness.

As mentioned previously, DOE is also fixing typographical errors in appendices M and M1 that were raised by AHRI. (''AHRI Exhibit 2,'' EERE–2017–BT–STD–0062–0117 at pp. 23–24) DOE is addressing these issues in this rulemaking.

Under 42 U.S.C. 6293(e)(1), DOE is required to determine whether an amended test procedure will alter the measured energy use of any covered product. If an amended test procedure does alter measured energy use, DOE is required to make a corresponding adjustment to the applicable energy conservation standard to ensure that minimally compliant covered products remain compliant. (42 U.S.C. 6293(e)(2)) DOE has determined that the amendments described in section III of this final rule would not alter the measured efficiency of CAC/HPs that are rated using the test procedure that is currently required for testing, *i.e.,* appendix M. The revisions applicable for appendix M simply fix errors within the current test procedure. With respect to appendix M1, many of the amendments clarify test procedures rather than making changes that would affect the measurements. Variable-speed coil-only systems are not addressed currently in the test procedure, so this final rule establishes a method of test for those products. For two-stage coil-only systems, DOE is amending the default fan power coefficients and default fan heat coefficients to be more representative, as further described in section III.C.1 of this document, which DOE believes will slightly improve the measured efficiency of these combinations as compared to their current representative values. Given that two-stage combinations are not representative of minimally compliant combinations, DOE has determined that this amendment would not require an

adjustment to the energy conservation standard for central air conditioners and heat pumps to ensure that minimally compliant central air conditioners and heat pumps would remain compliant. Additionally, DOE has determined that the amendments would not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this final rule.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

A. Scope of Applicability

DOE is amending the test procedures at appendix M1 for CAC/HP and implementing a few minor clerical revisions to the test procedures at appendix M. A ''central air conditioner or central air conditioner heat pump'' is defined as a product, other than a packaged terminal air conditioner or packaged terminal heat pump, which is powered by single phase electric current, air cooled, rated below 65,000 British thermal units per hour (''Btu/h''), not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu/h, and is a heat pump or a cooling unit only. A central air conditioner or central air conditioning heat pump may consist of: A single-package unit; an outdoor unit and one or more indoor units; an indoor unit only; or an outdoor unit with no match. In the case of an indoor unit only or an outdoor unit with no match, the unit *must* be tested and rated as a system (combination of both an indoor and an outdoor unit). 10 CFR 430.2.

Appendices M and M1 apply to the following CACs/HPs:

- Split-system air conditioners, including single-split, multi-head mini-split, multi-split (including VRF), and multi-circuit systems;
- Split-system heat pumps, including single-split, multi-head mini-split, multi-split (including VRF), and multi-circuit systems;
- Single-package air conditioners;
- Single-package heat pumps;
- Small-duct, high-velocity systems (including VRF);
- Space-constrained products—air conditioners; and
- Space-constrained products—heat pumps.

See Section 1.1 of appendices M and M1.

DOE is not proposing to change the scope of CACs/HPs covered by appendices M and M1.

B. Requests for Future Test Procedure Revisions

DOE has considered whether the current test procedures for variable-speed systems generally give manufacturers too much flexibility in specifying fixed settings of the compressor and indoor fan for testing without requiring the selected settings to be demonstrated using native control testing. DOE is aware that there is ongoing work addressing questions about whether the current DOE test procedure for variable-speed systems is fully representative of native control operation.[6] However, DOE has initiated this rulemaking not as a comprehensive revision that will satisfy the 7-year lookback requirements (*see* 42 U.S.C. 6293(b)(1)(A)), but instead as an action that will address a focused group of known issues, including those that have been raised through the test procedure waiver process. Thus, DOE limited its amendments addressing potential concerns about variable-speed systems to coil-only systems, for which there are clear differences in system controls architecture that impact the performance of these systems in the field, particularly when using non-communicating controls. However, DOE may more comprehensively address these issues for all variable-speed systems in a future rulemaking.

The CA IOUs, Joint Advocates, NEEA, and NYSERDA all encouraged DOE to review ways to improve the representativeness of the test procedures for CAC/HP in a future rulemaking under DOE's 7-year lookback authority. Specifically, the CA IOUs, Joint Advocates, and NEEA all requested that DOE explore approaches that would capture the performance of variable-speed and multi-stage systems operating under native controls rather than under fixed compressor and fan speed controls. (CA IOUs, No.20 at pp.2–3; Joint Advocates, No.18 at p.1; NEEA, No.23 at p.1)

The CA IOUs contended that the current test procedure does not fully reflect energy use during the shoulder-season hours when outdoor temperatures are typically between 55 °F and 64 °F and the equipment is likely in fan-only mode (*i.e.,* the compressor is not running). (CA IOUs, No.20 at pp.2–3) DOE acknowledges the CA IOUs' comment that shoulder-season fan energy consumption is not captured by either the SEER/SEER2 or HSPF/HSPF2 metrics, which are constructed to represent the cooling season efficiency and heating season efficiency, respectively. However, as previously mentioned, DOE is only planning to address a focused group of known issues in this rulemaking and will evaluate and addresses a broader set of changes in a future rulemaking. The CA IOUs acknowledged this point in their comment, by suggesting that DOE consider fan-only energy use during the shoulder-season in a subsequent review of the CAC/HP test procedure. *Id.* Therefore, DOE will not adopt any amendments in this rulemaking related to shoulder-season energy consumption, as suggested by the CA IOUs.

The CA IOUs also suggested that DOE consider approaches in a future rulemaking to incorporate the power consumption of auxiliary components like fans and crankcase heaters operating when the compressor is off. (CA IOUs, No.20 at pp.2–3) DOE notes that there are already test procedures and energy conservation standards governing the allowable off-mode power consumption for CACs and HPs, which encapsulates the off-mode and standby power consumed by auxiliary components such as crankcase heaters as suggested by the CA IOUs. These test procedures are enumerated in section 4.3 of appendices M and M1, and standards are enumerated at 10 CFR 430.32(c)(4).

The CA IOUs further requested that DOE amend the definition of ''variable-speed compressor systems'' to incorporate CAC/HPs with at least three compressor capacity stages that do not meet the definitions of VRF or triple-capacity northern heat pumps. Specifically, the CA IOUs suggested the following definition (additions in *italics*):

Variable-speed compressor system means ''a central air conditioner or heat pump that has a compressor that uses a variable-speed drive to vary the compressor speed to achieve variable capacities *or a compressor with at least three compressor capacity stages not including triple-capacity northern heat pumps.*'' (CA IOUs, No.20 at p.2)

Section 1.2 of appendix M1 defines ''variable-speed compressor systems'' as those CAC/HPs that have ''a compressor

[6] *E.g.,* The German energy regulatory body, Bunderstalt für Materialforschung und-Prüfung (''BAM''), has developed a dynamic load compensation method, to be used as an alternative to EN 14825:2016 ''Air conditioners, liquid chilling packages and heat pumps, with electrically driven compressors, for space heating and cooling. Testing and rating at part load conditions and calculation of seasonal performance''. Additionally, the Canadian Standards Association (''CSA'') has published the first draft edition of CSA:EXP07:19 ''Load-based and climate-specific testing and rating procedures for heat pumps and air conditioners'' (''EXP07'').

that uses a variable-speed drive to vary the compressor speed to achieve variable capacities.'' The definition for ''variable refrigerant flow (VRF) systems'' includes the language ''multi-split system with at least three compressor capacity stages, distributing refrigerant through a piping network to multiple indoor blower coil units.'' The definition for ''triple-capacity, northern heat pump'' in appendix M1 includes ''a heat pump that provides two stages of cooling and three stages of heating.'' DOE agrees with the CA IOUs' assertion that as currently structured, the definitions in appendix M1 do not explicitly clarify coverage for the specific case of CAC/HP systems having three or more stages (but without a variable-speed drive), do not include multiple indoor units (which would meet the definition for VRF), and are not heat pumps that include two cooling stages and three heating stages (which would meet the definition for triple-capacity northern heat pump). However, DOE is not aware of, nor did the CA IOUs identify, the existence of such systems. Also, as previously mentioned, DOE is only planning to address a focused group of known issues in this rulemaking and will evaluate and addresses a broader set of changes in future rulemaking. Therefore, DOE will not adopt the revised definition of ''variable-speed compressor systems,'' as suggested by the CA IOUs in this rulemaking. DOE may consider changes to the definition of ''variable-speed compressor system'' in a future rulemaking, if provided additional evidence of systems existing that meet the criteria of the hypothetical system described by the CA IOUs.

NEEA and the Joint Advocates recommended that DOE adopt a test procedure that evaluates performance under loads that respond to the heat pump's internal firmware. (NEEA, No.23 at p.1; Joint Advocates, No.18 at pp. 3–4) NEEA provided data to support their claim that seasonal efficiency performance is highly dependent on the installed firmware of the system. *Id.* at pp.3–4. NEEA compiled this information in a report [7] that was also cited by the Joint Advocates in their comment. (Joint Advocates, No.18 at p.4)

NEEA also requested that DOE adopt a load-based test procedure with the tested system operating under native controls. (NEEA, No.23 at p.2) NEEA again provided data concerning the representativeness of the existing DOE test procedure as compared to field data. NEEA cited several ongoing projects related to evaluation of load-based testing of CAC/HP and recommended that DOE leverage this work as a part of the next CAC/HP test procedure rulemaking. *Id.* at pp.5–7. NEEA additionally requested that DOE consider increasing the amount of data reported for heat pumps operating at pert-load heating conditions, specifically advocating for required reporting of COP for low-compressor-stage tests at 67 °F and 47 °F. *Id.* at p.7.

NYSERDA encouraged DOE to start immediately on foundational work needed to improve the standard and test procedure to better account for equipment performance in cold climates. NYSERDA requested that DOE make the H4, $H4_2$, or $H4_3$ heating tests mandatory in order to produce more representative ratings that account for system performance at 5 °F. NYSERDA also requested that DOE explore how to test and report relative capacity maintenance at temperatures lower than the heating mode test temperatures that are used to determine nominal capacity and suggested that DOE prescribe performance requirements of low-temperature capacity maintenance for products advertised as cold-climate heat pumps.[8] Further, NYSERDA requested that DOE evaluate how a variety of sizing approaches could be incorporated into the test procedure. NYSERDA highlighted that DOE has previously established that the sizing assumptions inherent in the DOE test procedure are based on cooling capacity and provided an example of a sizing and selection guide that emphasizes heating function.[9] NYSERDA ultimately acknowledged that DOE is addressing a more limited set of issues in this rulemaking and suggested that if their comments could not be considered now, they should be considered applicable for the next test procedure update for CACs or other HVAC equipment, as appropriate. (NYSERDA, No.17 at pp.2–3)

In summary, DOE received a variety of comments that requested changes to the CAC test procedure beyond the limited scope of proposals in the March 2022 CAC TP NOPR. DOE received comments recommending consideration of load-based testing methods, controls validation (particularly for variable-speed systems), amended metrics, amended definitions, and expansion of test methods to capture low-temperature heating performance for heat pumps. As stated, DOE will consider these comments when conducting the next rulemaking that includes a full review of the CAC test procedure.

C. Topics Arising From Test Procedure Waivers

1. Fan Power at Reduced Airflows for Coil-Only Systems

a. Background

Coil-only air conditioners are matched split-systems consisting of a condensing unit and indoor coil that are distributed in commerce without an indoor blower or separate designated air mover. Such systems installed in the field rely on a separately installed furnace or a modular blower for indoor air movement. Because coil-only CAC/HPs do not include their own indoor fan to circulate air, the DOE test procedures prescribe equations that are used to calculate the assumed (*i.e.,* ''default'') power input and heat output of an average furnace fan with which the test procedure assumes the indoor coil is pared in a field installation. In each equation, the measured airflow rate (in cubic feet per minute of standard air (''scfm'')) is multiplied by a defined coefficient (expressed in Watts (''W'') per 1,000 scfm (''W/1000 scfm'') for fan power, and British Thermal Units (''Btu'') per hour (''Btu/h'') per 1000 scfm (''Btu/h/1000 scfm'') for fan heat), hereafter referred to as the ''default fan power coefficient'' and ''default fan heat coefficient.'' The resulting fan power input value is added to the electrical power consumption measured during testing. The resulting fan heat output value is subtracted from the measured cooling capacity of the CAC/HP for cooling mode tests and added to the measured heating capacity for heating mode tests.

In appendix M1, separate fan power and fan heat equations are provided for different types of coil-only systems (*i.e.,* the equations for mobile home or space-constrained are different than for ''conventional'' non-mobile home and non-space-constrained).[10] 10 CFR part

[7] NEEA report ''Heat Pump and Air Conditioner Efficiency Ratings: Why Metrics Matter'' available online at: *https://neea.org/resources/heat-pump-and-air-conditioner-efficiency-ratings-why-metrics-matter.*

[8] NYSERDA cited the EPA's Energy Star Version 6.1 CAC/HP specification, which prescribes a heating capacity maintenance of 70% at 5 °F relative to 47 °F for cold-climate heat pumps. The Energy Star specification can be found online at: *https://www.energystar.gov/sites/default/files/ENERGY%20STAR%20Central%20Air%20Conditioner%20and%20Heat%20Pump%20Version%206.1%20Final%20Specification.pdf.*

[9] NYSERDA identified NEEP's ASHP sizing and selection guide, available online at: *https://neep.org/sites/default/files/resources/ASHP%20Sizing%20%26%20Selecting%20-%208x11_edits.pdf.*

[10] The different default fan power and default fan heat coefficients for mobile-home and space-constrained systems as compared to conventional systems reflect the lower duct pressure drop

Continued

430, subpart B, appendix M1, *see, e.g.,* section 3.3. For coil-only units installed in mobile-homes and for space-constrained systems, appendix M1 defines a default fan power coefficient of 406 W/1000scfm and a default fan heat coefficient of 1,385 Btu/h/1000 scfm. *See, e.g.,* appendix M1, section 3.3.d. For coil-only units installed in conventional (*i.e.,* non-mobile-home and non-space-constrained) systems, appendix M1 defines a default fan power coefficient of 441 W/1000 scfm and a default fan heat coefficient of 1,505 Btu/h/1000 scfm. *See, e.g.,* appendix M1, section 3.3.e. In appendix M1, for both the default fan power coefficient and default fan heat coefficient, the same coefficient is used for both the full-load and part-load tests.

In the March 2022 CAC TP NOPR, DOE discussed a petition for waiver and interim waiver filed by Nortek on September 7, 2021, that requested an alternate test procedure that would define lower default fan power and fan heat coefficients for the part-load tests, instead of applying the same coefficients to both the full-load and part-load tests, as is done in appendix M1. 87 FR 16830, 16834–16835; *see* Nortek, EERE–2021–BT–WAV–0025, No. 1 at pp. 4–9. In response, DOE published a notice that announced its receipt of the petition for waiver and denial of Nortek's petition for an interim waiver. *Id. See* 86 FR 63357 (''Notification of Petition for Waiver''). In the Notification of Petition for Waiver, DOE noted that applying the modified default fan power coefficients and default fan heat coefficients in appendix M1 to products such as those that are the subject of Nortek's petition was determined to be representative of the systems' performance and reflected the adoption of the recommendations of a working group formed to negotiate a notice of proposed rulemaking for energy conservation standards for CAC/HPs; and that the modified coefficients were subject to public comment during the 2016 test procedure rulemaking for CAC/HPs (''2016 CAC TP Rulemaking''). *Id. See* 82 FR 1426, 1452. DOE also noted that Nortek commented in support of the modified coefficients during the 2016 CAC TP Rulemaking. *Id.*

In response to the issue raised by Nortek, DOE re-examined the furnace fan electrical power consumption data collected for the furnace fans rulemaking (*see* 79 FR 506, Jan. 3, 2014) that was used to develop the default fan power coefficients and default fan heat coefficients for coil-only products in appendix M1. DOE extended the prior analysis to examine both full-load and part-load air volume rates.[11] DOE correlated the predicted power consumption with the predicted air volume rate for each furnace fan to determine adjusted values of the default fan power coefficients that may result in a more representative estimate of fan power and fan heat at reduced airflow conditions, compared to the coefficients currently defined in appendix M1. DOE's analysis indicated that at a reduced air volume rate of 75 percent, the average indoor fan power coefficient would be 360 W/1000 scfm for coil-only CAC/HPs in a conventional (*i.e.,* non-mobile-home and non-space-constrained) installation. For mobile-home and space-constrained systems, the average indoor fan power coefficient would be 331 W/1000 scfm.[12] DOE also calculated the fan heat coefficients associated with these power input levels. The average indoor fan heat coefficients would be 1,228 Btu/hr/1000 scfm and 1,130 Btu/h/1000 scfm for conventional (*i.e.,* non-mobile-home and non-space-constrained) and mobile-home/space-constrained installations, respectively. 78 FR 16830, 16834–16835.

The analysis conducted by DOE for the March 2022 CAC TP NOPR resulted in higher default fan power coefficients and default fan heat coefficients at the reduced 75 percent air volume rate than the values presented in the Nortek waiver petition. DOE tentatively concluded that its analysis is a more appropriate representation of average furnace fan power consumption than the results presented by Nortek because (1) DOE's analysis relied on empirical test results while Nortek's analysis was theoretical, (2) DOE's analysis applied the same weighting factors [13] from the 2016 CAC TP Rulemaking to ensure consistency, and (3) DOE's analysis considered constant-torque brushless-permanent-magnet ''X13'' motors while Nortek's analysis did not. DOE proposed to amend the default fan power coefficients and default fan heat coefficients for coil-only fan power when operating at reduced air volume rates to reflect the results of its analysis. *Id.*

AHRI, Carrier, Emerson, the Joint Advocates, Lennox, Nortek, and Rheem all supported DOE's proposal to reduce the default fan power and fan heat coefficients for low-stage operation of coil-only conventional, mobile-home and space-constrained CACs. (AHRI, No.25 at p.3; Carrier, No.15 at p.2; Emerson, No.14 at p.1; Joint Advocates, No.18 at p.1; Lennox, No.19 at p.2; Nortek, No.13 at p.1; Rheem, No.21 at p.1) Carrier, the Joint Advocates, and Lennox all stated that DOE's proposal to include a lower default fan power coefficient at part-load airflows would improve the representativeness of testing for two-stage coil-only systems over the current approach in appendix M1. (Carrier, No.15 at p.1; Joint Advocates, No.18 at p.1; Lennox, No.19 at p.2) Even though there was general support for DOE's proposals, several comments were received on the specific proposed values and the assumptions made in order to calculate them. The following sections detail these specific comments.

b. BPM Market Penetration

Despite supporting DOE's proposal to establish a second default fan power coefficient representing low-stage operation, AHRI argued that DOE's proposed part-load default fan power and heat coefficients were still higher than they should be. (AHRI, No.25 at pp. 2–3) Carrier, Daikin, Emerson, Lennox, Nortek, and Rheem all agreed with the AHRI comment that the part-load default fan power and heat coefficients should be lower than the proposed values. (Carrier, No.15 at p.2; Daikin, No.24 at p.1; Emerson, No.14 at p.1; Lennox, No.19 at p.2; Nortek, No.13 at pp.1–2; Rheem, No.21 at pp.1–2)

A key factor in AHRI's argument was that the actual market saturation rate of furnace fans installed with higher-efficiency brushless permanent magnet ''BPM'' [14] fan motors is higher than assumed in the analyses presented by DOE. (AHRI, No.25 at pp.2–3) DOE first

expected for such systems in field operation—the lower values are consistent with the lower external static pressure levels required in testing of blower-coil systems intended for mobile home and spaced-constrained applications (*see* Table 4 of appendix M1).

[11] To ensure consistency across analyses, DOE aggregated the data by applying market weightings to each type and brand of furnace model, using the same market shares that were used in the previous analysis for the 2016 CAC TP Rulemaking.

[12] For example, under DOE's proposed changes to appendix M1, for a two-stage coil-only system in a conventional application that has a cooling full-load air volume rate of 1640 scfm and a cooling minimum (*i.e.,* part-load) air volume rate of 1,230, the default fan power at full load would be calculated as (441 W/1000scfm × 1640 scfm = 723 W); and default fan power at part-load would be calculated as (360 W/1000scfm × 1230 scfm = 443 W).

[13] DOE's analysis included weighting based on market share by brand, installations per cooling capacity range, and projected shares in 2021 for different furnace fan motor types.

[14] In their comment, AHRI used the term ''electronically commutated motor'' (ECM) to describe higher-efficiency motors available in the furnace fans market. However, all instances in this final rule have been changed to ''brushless permanent magnet'' (BPM) which better describes the motor construction.

presented its assumptions regarding relative prevalence of BPM motors for furnace fans in a December 5, 2016, Technical Support Document (''TSD'') used for the concurrent energy conservation standards (''ECS'') rulemaking. EERE–2014–BT–STD–0048–0098 (''December 2016 CAC ECS TSD''). In that document, DOE described its findings that in 2021,[15] the estimated mix of blower types in existing furnaces would be 77 percent permanent split capacitor (''PSC''), 15 percent constant-speed BPM, and 9% constant-torque BPM. (EERE–2014–BT–STD–0048–0098, page 7–16) DOE assumed the same proportion of furnace fan motor types in its analysis for the March 2022 CAC TP NOPR.

In order to support its claim that the market saturation rate of BPM furnace fan motors was higher than the rate estimated by DOE, AHRI cited the 2019 compliance date for efficiency standards for furnace fans and stated that nearly all new furnaces shipped since 2019 have exclusively used BPMs. (AHRI, No.25 at pp.2–3) AHRI also claimed that the pending refrigerant change in the U.S. will require replacement of R–410A systems in both indoor and outdoor units for CAC systems, starting in 2025. AHRI asserted that due to these regulations, consumers with older furnaces would be more likely to simultaneously replace their furnaces at the same time as a whole-system CAC replacement, leading to a wave of newly installed furnace fans using BPM fan motors. *Id.* AHRI then forecasted the number of installed furnaces and percent share of furnaces with BPM furnace fans using DOE's estimates for equipment retirement Weibull curves, AHRI historical shipments data,[16] and 2015 Residential Energy Consumption Survey (RECS) microdata.[17] Ultimately, AHRI forecasted the penetration of BPM furnace fan motors to reach 50 percent by 2025. *Id.* NCP and Nortek both supported AHRI's analysis regarding the relative prevalence of furnace fans having BPM motors, stating that the Fan Energy Rating (FER) standards effectively obsoleted PSC motors in new furnace fans in favors of BPM motors. (NCP, No.16 at pp.8–9; Nortek, No.13 at p.2) NCP reiterated AHRI's claim that future refrigerant regulations could increase the pace of furnace replacements and thus accelerate the adoption of furnace fans with BPM motors. (NCP, No.16 at p.8)

To evaluate AHRI's claims about furnace fan BPM penetration rates, DOE reconstructed AHRI's analysis using RECS microdata and engineering assumptions about typical furnace lifetime and historical prevalence of BPM fan motors in furnace fans. DOE estimated the annual inflows and outflows (*i.e.,* new sales and decommissioning at end-of-life) of BPM furnace fan motors, using the assumption that all new furnace fan motors would be BPM in years 2019 and onwards. Because AHRI did not explicitly describe how hypothetical refrigerant regulations would translate into accelerated uptake in furnace fans having BPM motors, DOE did not account for an increased rate of ''whole-system'' CAC replacements (and therefore furnace fan replacements) when evaluating furnace fan BPM penetration forecasts. Using these assumptions, DOE estimates that the percentage of installed BPM furnace fan motors in 2021 to be 29 percent (as compared to 24 percent[18] estimated in the December 2016 CAC ECS TSD). Further, DOE's estimates support AHRI's claim that the installed base of BPM furnace fans is likely to grow to 40 percent by 2023 and 50 percent by the year 2025. Therefore, DOE has used these values of BPM market penetration to re-evaluate the NOPR analysis to calculate default low-stage fan power coefficients and fan heat coefficients in the next section.

c. Determining Low-Stage Coefficients

In consideration of DOE's proposals regarding default fan power coefficients, AHRI also asserted that DOE's analysis included incorrect assumptions about the relationship between electrical power consumption and delivered airflow, which they claimed should be a cubic relationship based on fan affinity laws. AHRI provided aggregated data from a selection of 78 furnace fans to support their assertions. *Id.* at pp.3–4. Lennox and Rheem reiterated AHRI's comment, stating that the application of the same default coefficient at part-load airflows is not representative of the performance of the two-stage equipment operation, as the fan efficiency improves as airflow is reduced thus increasing overall system efficiency. (Lennox, No.19 at p.2, Rheem, No.21 at pp.1–2) Lennox and Rheem also elaborated that fan affinity laws show that fan speed and power have a cubic relationship, not the constant relationship[19] currently used in the test procedure. *Id.* AHRI further claimed that of the 78 collected furnace fans in their data set, there was not a statistically significant difference in full-load performance (measured in Watts per cfm) between models having furnace fans with PSC motors and models having furnace fans with PBM motors. As a result, AHRI did not argue that the full-load default fan power and heat coefficients should be changed but did suggest lower default fan power and fan heat coefficients low-stage operation. AHRI proposed default low-stage fan power coefficients of 322 W/1000 scfm for conventional systems and 296 W/1000 scfm for mobile-home/space-constrained systems.[20] (AHRI, No.25 at pp.3–4) As indicated, Carrier, Daikin, Emerson, Lennox, Nortek, and Rheem all referenced the AHRI analysis in their comments and supported the alternate default fan power coefficients proposed by AHRI. (Carrier, No.15 at p.2; Daikin, No.24 at p.1; Emerson, No.14 at p.1; Lennox, No.19 at p.2; Nortek, No.13 at pp.1–2; Rheem, No.21 at pp.1–2)

DOE understands the theoretical basis of fan laws which describe a cubic relationship between fan shaft power and delivered air volume rate for an idealized fan. However, real fan shaft power does not always consistently follow the fan laws[21] and motor efficiency generally decreases as shaft power decreases from rated load,[22] which would cause motor input power to deviate from the cubic relationship even if the shaft power followed it. The AHRI comment does not provide a more

[15] At the time the 2016 CAC ECS TSD was drafted, the proposed compliance date for amended standards was Jan. 1, 2021—therefore DOE forecasted the fan motor proportions in the anticipated year that standards would come into effect. In the January 2017 direct final rule regarding energy conservation standards (82 FR 1786, January 6, 2017) (''January 2017 CAC ECS Direct Final Rule''), however, the compliance date was delayed by two years to January 1, 2023. DOE did not provide estimates of assumed furnace fan motor composition in the year 2023.

[16] AHRI historical shipments estimates available online at: *https://ahrinet.org/resources/statistics/historical-data/furnaces-historical-data.*

[17] Residential Energy Consumption Survey data available online at: *https://www.eia.gov/consumption/residential/data/2015/.*

[18] BPM estimate from 2016 CAC ECS TSD reflects the sum of CT–BPM (9%) and CA–BPM (15%).

[19] The DOE test procedure does not prescribe a constant default fan power, but rather a constant default fan power *coefficient,* so that the calculated fan power varies linearly with air volume rate. See appendix M1, sections 3.3, 3.5.1, 3.7, and 3.9.1.

[20] AHRI also provided corresponding default fan heat coefficients of 1099 Btu/h/1000scfm and 1010 Btu/h/1000scfm for conventional and mobile-home/space-constrained coil-only CACs, respectively.

[21] This catalog of several indoor air handling units demonstrates on the 6th page examples of fan performance curves, where the fan efficiency does not always follow a simple quadratic curve: *https://content.greenheck.com/public/DAMProd/Original/10002/IAH_catalog.pdf.*

[22] As per ANSI/AMCA Standard 241–21 (Test Procedure for Calculating Fan Energy Index (FEI) for Commercial and Industrial Fans and Blowers), the motor efficiency for variable-speed motors is not always directly proportional to the load, as demonstrated in Figure F.3. Source: *https://www.amca.org/assets/resources/public/pdf/Publications/AMCA-214-21.pdf.*

detailed breakdown of analytical results allowing confirmation of general consistency of the two analytical approaches. As noted, DOE has re-evaluated the NOPR analysis to calculate default low-stage fan power coefficients and fan heat coefficients, using the assumption that BPM furnace fan penetration is 40 percent in the year 2023 (the compliance date of CAC energy conservation standards in terms of appendix M1 metrics). 10 CFR 430.32(c)(5). DOE re-analyzed the same dataset used in the furnace fans rulemaking and applied a proportion of 40 percent BPM and 60 percent PSC motors, while keeping all other elements of the analysis unchanged (*see* 79 FR 506, Jan. 3, 2014). For the reasons described in section III.C.1.e of this document, DOE did not consider separate default fan power coefficients for space-constrained coil-only CACs and is instead continuing to treat mobile-home and space-constrained systems jointly. This evaluation results in default low-stage fan power and heat coefficients that are lower than the values proposed in the March 2022 CAC TP NOPR, and DOE is adopting these lower values in this final rule. The fan motor re-weighting had negligible impact on the full-load airflow values for default fan power and default fan heat coefficients, therefore, DOE is not amending the full-load values in this final rule, consistent with comments received from AHRI. (AHRI, No.25 at p.3) The results of DOE's analysis are summarized in Table III–1.

TABLE III–1—DEFAULT FAN POWER AND FAN HEAT COEFFICIENTS FOR COIL-ONLY CACS AND HPS

System type	Air volume rate (%)	Default fan power coefficient (W/1000scfm)	Default fan heat coefficient (Btu/h/1000scfm)
Conventional Coil-Only	100	441	1505
	75	335	1143
Mobile-Home and Space-Constrained Coil-Only	100	406	1385
	75	308	1051

d. Interpolated Coefficients Between 75 and 100 Percent Air Volume Rate

In the March 2022 CAC TP NOPR, DOE also stated that the reduced air volume rate used for low-stage operation of two-stage coil-only systems may be higher than 75 percent of the full-load air volume rate, if the manufacturer's instructions specify a higher part-load air volume rate. DOE proposed that in such cases, (*i.e.,* in any case where the reduced air volume rate is greater than 75 percent of the full-load air volume rate) the default fan power values associated with full-load air volume rate be used. However, DOE hypothesized that in these scenarios, the appropriate default fan power coefficient and default fan heat coefficient may be values between the reduced values discussed above and the values used for full-load air volume rate. DOE set out two alternative options to its proposed approach: (1) allowing the reduced value up to a threshold value, *e.g.,* 80 percent of full-load air volume rate, above which the full-load value would be required, and (2) requiring a linear interpolation of the default fan power coefficient between the reduced value at 75 percent of full-load air volume rate to the full-load value at 100 percent.[23] 78 FR 16830, 16835.

AHRI, Carrier, Daikin, Emerson, Lennox, and Nortek all supported the second alternative option set forth by DOE, *i.e.,* requiring a linear interpolation of the default fan power coefficient based on percentage full-load air volume rate. (AHRI, No.25 at p.6; Carrier, No.15 at p.2; Daikin, No.24 at p.1; Emerson, No.14 at pp.1–2; Lennox, No.19 at p.2; Nortek, No.13 at p.1) AHRI provided a table of power consumption rate as a function of airflow percentage and stated that a third-order equation would be most accurate, however intermediate values for default fan power coefficient would be most easily calculated using linear interpolation. (AHRI, No.25 at pp.4–6)

Based on the comments, DOE is finalizing the approach of requiring linear interpolation of default fan power and default fan heat coefficients for all tests where the specified airflow is between 75 percent and 100 percent of the full load air volume rate.

e. Considerations for Space-Constrained Systems

As previously mentioned in section III.C.1.b, NCP supported AHRI's claims that due to the FER furnace fan standards coming into effect in 2019, and due to anticipated refrigerant regulations, the relative penetration rate of furnace fans with BPM motors is higher than the proportion estimated by DOE in the January 2017 CAC TP Final Rule. (NCP, No.16 at pp.8–9) NCP also remarked that DOE's proposal for default fan power coefficients implies that space-constrained coil-only units are similar to those of mobile homes, and implies that both should use a default fan power and capacity adjustment that is representative of operation at a minimum external static pressure (ESP) of 0.30 inches w.c.[24] NCP asserted that data based on mobile homes is not an appropriate basis for space-constrained condensing units used in multi-family housing applications. NCP claimed that although the size of the indoor units is similarly restricted in mobile-home and space-constrained applications, mobile-home applications do not limit the size of the outdoor unit in the same way as space-constrained installations, which require a smaller footprint for the condensing unit. NCP elaborated that this discrepancy allows for mobile-home systems to have a relatively larger condenser coil surface area (providing improved performance) and that their models of space-constrained outdoor units do not have sufficient space to increase the condenser coil size. NCP thus asserted that the default fan power coefficients proposed by DOE in the March 2022 CAC TP NOPR remains unrealistic for NCP's space-constrained CAC systems and would prohibit NCP from meeting the minimum energy efficiency standard. NCP requested that if the Department does not continue to waive requirements for coil-only testing of space-constrained condensing units, DOE should amend the default fan

[23] For example, for non-mobile-home and non-space-constrained systems, if a linear interpolation of the default fan power coefficient is required, it would be equal to 360 + (441 − 360)*(%FLAVR − 75%)/(100% − 75%), where %FLAVR is the reduced air volume rate used for the test expressed as a percentage of the full load air volume rate.

[24] Appendix M1 requires that both ducted space-constrained and ducted mobile-home CACs be tested at a minimum ESP of 0.30 inches w.c. 87 FR 16834 (Mar. 24, 2022) (citing 82 FR 1426, 1453 (Jan. 5, 2017)).

power and fan heat coefficients to reflect real world conditions. (NCP, No.16 at pp. 7–8) NCP provided confidential information regarding the performance of their ''Through-the-Wall'' (TTW) space-constrained condensing units when paired with various indoor unit air handlers, including different NCP-branded air handlers and with other brands of furnaces (indicative of a coil-only installation). NCP then incorporated its findings along with the data provided by AHRI and proposed a default fan power coefficient of 321 Watts per 1000 scfm for space-constrained coil-only CAC systems operating at low-stage airflow. *Id.* at p.9.

In response to NCP's assertion that separate test procedure considerations should be given for default fan power coefficients for space-constrained CAC systems vs those for mobile-home CAC systems, DOE notes that this topic was previously discussed in the January 2017 CAC TP Final Rule. In that rule DOE determined, with stakeholder support, appropriate default fan power and default fan heat coefficients for mobile home coil-only systems required to be tested at a minimum external static pressure of 0.30 in. w.c. 82 FR 1426, 1451–1452. DOE also noted in that final rule that recommendation #2 of the January 2016 Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) CAC/HP Working Group Term Sheet (2016 CAC Term Sheet) recommended 0.30 inches w.c. as the minimum external static pressure requirement for testing space-constrained CACs *Id.* DOE is maintaining the determination from the January 2017 CAC TP Final Rule and the current test procedure approach, which uses the same default fan power coefficient and default fan heat coefficient for space-constrained and mobile home CAC.

2. Variable-Speed Coil-Only Test Procedure

a. Background

As discussed, appendices M and M1 contain provisions for testing split-system CAC/HPs equipped with ''coil only'' indoor units that, in a field installation, are paired with an existing furnace or other air handler that includes the fan required to circulate conditioned air through ductwork. These provisions apply to single-stage and two-stage systems and address only two levels of air volume rate, for full-load and minimum operation.[25] Appendices M and M1 do not include provisions for testing variable-speed systems equipped with coil-only indoor units (''VSCO'' CACs). In the March 2022 CAC TP NOPR, DOE discussed waiver requests that it had received from multiple manufacturers regarding the test provisions for VSCO CACs. 82 FR 16830, 16836–16837. The various waiver requests are summarized in this final rule in Table III–2.

With the exception of the Goodman Manufacturing Company, L.P. (''Goodman'') petition for waiver (86 FR 40534 (July 28, 2021)), all petitioners submitted petitions for waiver for products that use ''non-communicative'' conventional controls, *i.e.,* controls that use low-voltage on-off signals from the thermostat to indicate the need for conditioning in the conditioned space. As required under the specified alternate test procedures for these ''non-communicative variable-speed coil-only systems,'' they must be tested according to the appendix M provisions applicable to variable-speed systems (*e.g.,* three different compressor speeds in the cooling mode), except that the subject systems must be tested using the full-load cooling air volume rate at all test conditions. (GD Midea, EERE–2017–BT–WAV–0060, No. 1, pp. 1–3; TCL, EERE–2018–BT–WAV–0013, No. 1, pp. 2–4; LG, EERE–2019–BT–WAV–0023, No. 1, pp 3–4) DOE noted that the waivers for non-communicative systems indicated only that ''compressor speed varies based only on controls located on the outdoor unit.'' (GD Midea, EERE–2017–BT–WAV–0060, No. 1, p. 6; TCL, EERE–2018–BT–WAV–0013, No. 1, p. 4; LG, EERE–2019–BT–WAV–0023, No. 1, pp 2) An interim test procedure waiver was also granted to Goodman for their ''communicative'' variable-speed, coil-only CAC/HPs. Goodman's petition claimed that for their systems, both the outdoor unit and indoor coil communicate with each other to control the variable-speed compressor, along with the multi-speed indoor fan. 86 FR 40534, 40539. The Goodman interim waiver test procedure specifies use of the cooling full-load air volume rate for the full-load cooling and full-load heating tests; and the cooling minimum air volume rate for the cooling minimum, heating minimum, cooling intermediate, and heating intermediate tests. *Id.*

TABLE III–2—STATUS AND DETAILS OF VARIABLE-SPEED, COIL ONLY (VSCO) WAIVER REQUESTS

Manufacturer	Petition description	Docket	Status
GD Midea Heating & Ventilating Equipment Co., Ltd. (GD Midea).	Non-communicating VSCO. Full load air volume rate used for intermediate and minimum.	EERE–2017–BT–WAV–0060.	Interim and Waiver Granted.
TCL air conditioner (zhongshan) Co. Ltd. (“TCL AC”).	Non-communicating VSCO. Full load air volume rate used for intermediate and minimum.	EERE–2018–BT–WAV–0013.	Interim and Waiver Granted.
LG Electronics U.S.A., Inc. (LGE)	Non-communicating VSCO. Full load air volume rate used for intermediate and minimum.	EERE–2019–BT–WAV–0023.	Interim Granted.
Goodman	Communicating VSCO. Minimum air volume rate used for intermediate and minimum.	EERE–2021–BT–WAV–0001.	Interim Granted.

In the March 2022 CAC TP NOPR, DOE explained that it was reconsidering its approach to the waivers for the non-communicative VSCO systems. First, DOE explained that the waiver petitions had not provided information regarding, nor had DOE evaluated, the compressor speed selections used for different test conditions specified in appendix M or M1. 87 FR 16830, 16836. DOE elaborated that it had also not compared these speed selections with those used by blower-coil variable speed systems for the same test conditions. *Id.* DOE determined that based on the

[25] Section 3.1.4.1.1.c (cooling full-load air volume rate), section 3.1.4.2.c (cooling minimum air volume rate), section 3.1.4.4.2.c (heating full-load air volume rate), and section 3.1.4.5.2.d (heating minimum air volume rate) of appendix M1.

information received and evaluated, it could not conclude that the alternate test procedures specified in the waivers are representative of average use cycles of CAC/HPs. *Id.* DOE proposed provisions as generally prescribed in the relevant waivers, except that, for all variable-speed coil-only systems, regardless of communicative capability, use of a reduced-air volume rate would be allowed for part-load operation, *i.e.,* using the cooling minimum air volume rate for the cooling minimum, heating minimum, cooling intermediate, and heating intermediate tests. 87 FR 16830, 16837–16838. The proposed test procedure also incorporated the reduced default fan power and default fan heat coefficients at reduced air volume rates discussed in section III.C.1 of this document.

Regarding indoor airflow rate for VSCO systems, DOE pointed out that the test procedure for two-stage coil-only systems is premised on the system using a two-stage thermostat and associated wiring that responds to indoor temperature measurements and sends voltage signals that enable two-stage control of both the compressor speed and the indoor fan speed. 87 FR 16830, 16836–16837. DOE similarly assumed the presence of necessary wiring for the installation of variable-speed systems. *Id.* DOE elaborated that if the system does not include the capability to control an existing furnace fan at two air volume rates, the manufacturer would have the option of specifying minimum/intermediate air volume rates equal to the full-load air volume rate. *Id.*

Regarding compressor speed control for VSCO systems, DOE proposed to define ''communicating control'' in the context of variable-speed, coil-only CAC/HPs in order to differentiate between the test procedure provisions that would be applicable to communicating systems from those applicable to non-communicating systems. 87 FR 16830, 16837–16838. See section III.C.2.b. DOE further proposed provisions for setting compressor speed reflecting the attributes of the controls. Specifically, DOE proposed to require that non-communicative variable-speed coil-only systems be tested using an on-off control signal consistent with the control characteristics and also eliminating the E_V test for cooling and $H2_V$ for heating as well as including $H2_2$, $H2_1$, and $H3_1$ for heating. In contrast, DOE proposed that systems that meet the newly proposed criteria for ''communicating'' control would use compressor speeds and tests consistent with the existing variable-speed test procedure for blower-coil systems. *Id.*

With respect to DOE's proposal to add testing provisions for VSCO CACs in appendix M1, Carrier, Joint Advocates, Lennox, Nortek, and Rheem commented that they supported DOE's proposals to add testing provisions for variable-speed coil-only CAC/HPs. (Carrier, No.15 at p.1, Joint Advocates, No.18 at p.2, Lennox, No.19 at p.3, Nortek, No.13 at p.2, Rheem, No.21 at p.2) Carrier stated that they agreed that a communicating and non-communicating procedure should be created, and supported DOE's proposed test procedure for each type of system. (Carrier, No.15 at p.1) The Joint advocates added that they supported incorporating provisions for testing variable-speed coil-only units to ensure that the test procedure reflects differences in system controls architecture between communicating and non-communicating systems. (Joint Advocates, No.18 at p.2) They further commented that DOE's hybrid approach for aligning minimum air volume requirements between two-capacity and variable-speed coil-only units (for both communicating and non-communicating systems) was logical, as non-communicating systems have characteristics of both variable-speed and two-stage systems due to limitations of the less sophisticated control systems. *Id.* Lennox stated that DOE's proposal provides a consistent test method according to defined system capabilities while allowing for expanded opportunity for variable speed equipment to be installed in replacement applications with existing furnace or modular blowers. (Lennox, No.19 at p.3) Nortek explicitly stated that they were in favor of adopting the test procedures that were contained in the waivers, giving the Goodman waiver (86 FR 40534 (July 28, 2021)), as an example. AHRI commented that they agreed that systems meeting the criteria for variable-speed communicating coil-only CAC or HP definition should follow the existing variable-speed test procedure, although AHRI proposed an alternate definition for communicating control as described in section III.C.2.b of this document. (AHRI, No.25 at p.6)

b. Test Differences Based on Communicating Capability

As previously stated, the test procedure for two-stage coil-only systems is premised on the system using a two-stage thermostat and associated wiring that responds to indoor temperature measurements and sends voltage signals that enable two-stage control of both the compressor speed and the indoor fan speed. A more sophisticated control approach is required to enable a variable speed system to modulate compressor speed control (*e.g.,* proprietary thermostat, serial communication wiring, and/or electronic sensors at the indoor coil). In the March 2022 CAC TP NOPR, DOE proposed to define ''variable-speed communicating oil-only central air conditioner or heat pump'' in section 1.2 of appendix M1, to distinguish variable-speed coil-only systems with such controls, as a variable-speed compressor system having a coil-only indoor unit that is installed with a control system that (1) communicates the difference in space temperature and space setpoint temperature (not a setpoint value inferred from on/off thermostat signals) to the control that sets compressor speed; (2) provides a signal to the indoor fan to set fan speed appropriate for compressor staging and air volume rate; and (3) has installation instructions indicating that the required control system meeting both (1) and (2) must be installed. 87 FR 16830, 16837.

DOE also proposed to define variable-speed systems that do not have this communicating feature as a variable-speed compressor system having a coil-only indoor unit that does not meet the definition of variable-speed communicating coil-only central air conditioner or heat pump. *Id.*

DOE elaborated that variable-speed coil-only systems that meet the ''communicating'' definition would be tested like any other variable-speed system, except that the heating full-load air volume rate would be equal to the cooling full-load air volume rate, and the intermediate and minimum cooling and heating air volume rates would all be the higher of (1) the rate specified by the installation instructions included with the unit by the manufacturer and (2) 75 percent of the full-load cooling air volume rate. *Id.*

DOE further proposed that those variable-speed coil-only systems that are not ''communicating'' as defined above would be tested with additional limitations as if they have some variable-speed system characteristics and some two-stage coil-only system characteristics. Specifically, (a) the outdoor unit and/or the indoor unit would be provided with a control signal indicating operation at high or low stage, rather than testing with compressor speed fixed at specified speeds, and (b) air volume rates would be determined consistent with the requirement for two-stage coil-only systems. *Id.* A key implication of (a) is that there would be no intermediate compressor speed operation. Under DOE's proposed test procedure, many of

the requirements associated with variable-speed operation would, however, be retained. For example, such systems would be allowed to have ''minimum speed-limiting'' control for heat pump mode (*see* the alternative calculations representing minimum-speed operation in appendix M1, section 4.2.4.b). The test method for non-communicating variable-speed coil-only systems would include requiring tests for minimum-speed operation for both the 35 °F and 17 °F heating test conditions so that the HSPF2 calculations utilize test results for appropriate compressor speeds. Also, the full compressor speed during heating mode operation would be allowed to vary with outdoor temperature, there would be an $H1_N$ test to represent the nominal capacity, and the same provisions for calculation of full-speed capacity and power applied to conventional variable-speed systems would be used (*see, e.g.,* the calculations in appendix M1, sections 3.6.4, 4.2.4.c and 4.2.4.d). If a manufacturer chooses to run the optional $H1_2$ test (*i.e.,* if compressor speed for the $H1_N$ test is different than compressor speed for the $H3_2$ test, and the manufacturer chooses to run the $H1_2$ test rather than use the standardized slope factors described in appendix M1, section 3.6.4.b), then the test would be run with over-ride of compressor speed using the same speed as used for the $H3_2$ test. This is the only test for which such over-ride would be allowed.

To ensure consistency of testing, it may be necessary for manufacturers to certify whether a variable-speed coil-only rating is based on non-communicating or communicating control. However, this change was not proposed in the March 2022 CAC TP NOPR and may be considered in a separate rulemaking.

In the March 2022 CAC TP NOPR, DOE acknowledged that there may be variable-speed control technology that cannot be tested according to the proposed test approach described previously for non-communicating variable-speed coil-only systems. 87 FR 16830, 16838. Specifically, the test approach may not result in tests that meet the stability requirements for testing (*i.e.,* the measurements might not meet the tolerance requirements in Table 2 of ANSI/ASHRAE 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (''ASHRAE 37–2009''), which is incorporated by reference by the DOE test procedure). Or the proposed test procedure might evaluate such a basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. *Id.* DOE stated that in this case, the manufacturer would be able to petition DOE for a waiver and include a suggested alternate test procedure as provided in 10 CFR 430.27. DOE elaborated that as part of its review of such a waiver and alternate test procedure, DOE would consider the correlation between results of a suggested alternate test procedure and results of testing when using the two-stage two-wire controls expected to be available in a general coil-only system installation, recognizing that the latter testing may involve dynamics that exceed the measurement tolerances discussed above. DOE would also consider the control hardware involved in achieving appropriate control for indoor and outdoor conditions and some understanding of how the control works. *Id.*

With respect to DOE's proposal to define variable speed communicating coil-only CACs and HPs, Emerson supported the differentiation of communicating and non-communicating variable speed CACs that maintains the ability to set compressor speed and optimize airflow relative to the compressor speed. (Emerson, No.14 at p.3) The Joint Advocates supported DOE's proposed definition but encouraged DOE to revise the definition to clarify that the installation instructions refer to those of the indoor unit (not of the control system). (Joint Advocates, No.18 at pp.2–3) AHRI commented that they supported the concept of the definition but recommended modifications to be more inclusive of other approaches. AHRI proposed an alternate definition as follows:

Variable-Speed Communicating Coil-Only Central Air Conditioner or Heat Pump means a variable-speed compressor system having a coil-only indoor unit that is installed with communicative controls to change the compressor speed by 3 or more speeds and indoor air flow by 2 or more speeds and controls the system by monitoring the change in system control parameter/s and automatically sets the compressor speed, indoor air flow and other system components as required to maintain the indoor room temperature. (AHRI, No.25 at p.6)

Carrier, Daikin, Nortek, and Samsung incorporated AHRI's proposed definition in their comments. (Carrier, No.25 at pp.2–3; Daikin, No.24 at p.2; Nortek, No.13 at p.2; Samsung, No.22 at p.2) AHRI, Carrier, Daikin, Nortek, and Samsung all agreed that DOE's proposed definition is too restrictive and should be modified to allow for potential alternate control strategies that could be used to properly control compressor speed and coordinate with indoor fan speed. *Id.* AHRI, Daikin, and Samsung stated that communication of set point and indoor temperature is not the only parameter that can be used to set fan and compressor speeds, suggesting that it is not necessary to achieve proper compressor control, and provided hypothetical examples of other control parameters that could be used to set compressor speeds, such as outside air conditions, indoor humidity levels, or refrigerant pressures and temperatures. (AHRI, No. 25 at p.6; Daikin, No.24 at p.2; Samsung, No.22 at pp.1–2) Daikin elaborated that the DOE definition should be modified to allow for technology advancements in control technology and recommended a definition similar to the definition for ''demand defrost control systems'', which requires that the control scheme ''monitor one or more parameters that always vary.'' (Daikin, No.24 at p.2) Samsung elaborated that DOE's proposal would require a communicating thermostat, which they claimed to be unnecessary for achieving appropriate compressor and fan control and stated would add unnecessary cost to the consumer. (Samsung, No.22 at pp.1–2)

While DOE acknowledges that there may be other control approaches to set compressor speed other than approaches that communicate the difference in space temperature and space setpoint temperature, DOE notes that minimizing this difference between a controlled parameter and its setpoint is the key function of the control system, and use of this parameter to set conditioning system operation is a fundamental feature of most modern control systems. In its proposal, DOE distinguished between communicating and non-communicating based on whether the system includes this fundamental aspect of control systems. DOE premised its proposals on the understanding that non-communicating systems would likely encounter greater issues regarding the representativeness of field-versus-tested performance, as compared to communicating systems.

As mentioned, DOE acknowledges that other control approaches may provide control represented adequately by the fixed-speed testing that is currently prescribed in its test procedures for CAC/HP system but given the fundamental difference in the control approach, *i.e.,* not using information about the space temperature deviation from setpoint, DOE does not believe there has been sufficient

information provided confirming this adequacy. As DOE considers more comprehensive test procedure changes in a future rulemaking, it will further evaluate this issue and is open to revising the definition accordingly. Also, the proposed definition does not restrict other control parameters in addition to the space temperature offset from setpoint being used by the control system to set system operation. Hence, DOE is adopting the definition for communicating and non-communicating variable-speed coil-only system as proposed.

As previously introduced, DOE also considered that it may be necessary for manufacturers to certify whether a variable speed coil-only rating is based on non-communicating or communicating control but did not propose any certification requirements in the March 2022 CAC TP NOPR and instead stated that these changes may be considered in a separate rulemaking. 87 FR 16830, 16838.

In response, the Joint Advocates supported the concept that DOE require certification of VSCO units as communicating or non-communicating and encouraged DOE to finalize all pertinent certification provisions as soon as possible. (Joint Advocates, No. 18 at p. 2) As indicated, DOE may consider certification requirements in a separate rulemaking.

c. Applicability to Variable Speed Blower Coil Systems

In the March 2022 CAC TP NOPR, DOE further discussed that installations using non-communicating controls may not be limited only to variable-speed coil-only systems but could also occur with variable-speed blower-coil systems. 87 FR 16830, 16838. DOE noted that the proposed test procedure distinguishes between the testing approach used for coil-only configurations and the testing approach used for blower-coil configurations. *Id.* DOE argued that as coil-only installations are much more likely than blower-coil installations to involve use of both the existing furnace fan and existing controls, the non-communicating test procedure should be reflective of coil-only installations because they are more representative than blower coil installations. *Id.*

With respect to the applicability of the proposed VSCO testing provisions to variable speed blower-coil CACs and HPs, Emerson commented that the ability to set compressor speed and optimize airflow rate relative to compressor speed may be even more important in blower-coil systems than in coil-only systems and requested that DOE address this point. (Emerson, No. 14 at p. 3) Trane similarly asserted that it is important that DOE addresses non-communicating, blower-coil variable speed systems in addition to the proposed provisions for coil-only systems. (Trane, No. 10 at p. 2) Trane stated that such blower-coil systems have the same issue of misrepresenting the applied performance (*i.e.,* the performance measured in a field installation) by allowing them to use the communicating, variable speed procedures. *Id.* Trane elaborated that the wiring and control of such systems is obvious from the installation instructions, and they operate in a similar fashion to the furnace-coil (*i.e.,* coil-only) combinations with one or two-stage fan operation. *Id.* Trane provided an example [26] of such a product where a variable-speed CAC outdoor unit is certified with an indoor blower-coil unit only capable of one stage of airflow operation, and the connections are non-communicating 24V signals between equipment and thermostat. *Id.*

DOE acknowledges the concerns expressed by Trane and Emerson that questions remain regarding use of non-communicating controls for blower-coil systems and whether the compressor and/or fan speeds used for testing such systems are representative of field operation. However, DOE initiated this rulemaking to address a focused group of known issues, including those that have been raised through the test procedure waiver process. As noted in the March 2022 CAC TP NOPR, DOE limited its proposals addressing potential concerns about variable-speed systems to coil-only systems and may more comprehensively address these issues for all variable-speed systems in a future rulemaking that will satisfy the 7-year lookback requirements (*see* 42 U.S.C. 6293(b)(1)(A)). 87 FR 16830, 16838.

d. Represented Values and Testing Requirements

Coil-only testing approaches for variable-speed systems address the installation of variable-speed technology in which the newly installed system uses existing components, for example an existing furnace fan. For single-capacity and two-capacity split-system air-conditioners, certification requirements anticipate this likely installation scenario by requiring that such models include performance representations with a coil-only combination representative of the least-efficient combination in which the outdoor unit is sold (*see* 10 CFR 429.16(a)(1)). For variable speed split-system air conditioners, represented values are required for every individual combination distributed in commerce, including all coil-only and blower-coil combinations (*see* 10 CFR 429.16(a)(1)). However, there is no requirement that each model of outdoor unit include at least one representation based on the least-efficient coil-only combination distributed in commerce. In the March 2022 CAC TP NOPR, DOE considered whether such a requirement may be appropriate for variable-speed systems. 87 FR 16830, 16838–16839.

Through a review of product datasheets and installation instructions, DOE found that there is a wide range of instruction regarding whether variable-speed CAC systems must be paired with specific models of indoor units and/or air movers (*e.g.,* furnaces) in order to achieve the represented performance. *Id.* DOE identified that some literature is very clear that achieving the rated performance for a given outdoor unit is contingent on installation with specific components (*e.g.,* communicating controls and indoor fans capable of variable-speed operation), while other literature does not mention the need for such components. *Id.* DOE identified that this latter group is not limited to brands that have been granted test procedure waivers or interim waivers for testing variable-speed coil-only systems, indicating that the issue is more broadly applicable to variable-speed CAC installations and it is possible that variable-speed systems are being installed in coil-only applications for which representations of performance are not representative of actual performance (because the represented values are based on blower-coil pairing while the installation scenario is coil-only). *Id.* However, because less than 5 percent of variable speed system installations are coil-only [27] and the number of certified combinations of VSCO systems is a small percentage [28] of overall variable

[26] Trane provided an example of a Bosch system with AHRI reference number 206395973 and provided a link to the installation instructions: *https://www.bosch-thermotechnology.us/us/media/country_pool/documents/bosch_ids_bva15_iom_10.2020.pdf.*

[27] Based on information DOE has from the previous energy conservation standards rulemaking pertaining to central air conditioners and heat pumps. *See* 82 FR 1786.

[28] For example, there are roughly 27,000 combinations listed in the AHRI Database for which a non-zero intermediate indoor air volume rate is listed, indicating that the combination is a variable-speed model. DOE reviewed the current certifications in the certification compliance management system and found that there are approximately 400 variable-speed coil-only combinations, representing roughly 1.5 percent of

speed system certifications, DOE concluded that VSCO installations are not likely representative of variable speed system operation as a whole. *Id.*

In the March 2022 CAC TP NOPR, in order to improve representativeness of the representations of VSCO installations DOE proposed tested-combination requirements pertaining to variable speed systems, summarized here in Table III–3. 87 FR 16830, 16839.

TABLE III–3—PROPOSED TESTED COMBINATION REQUIREMENTS FOR VARIABLE SPEED SPLIT-SYSTEM CACS

Scenario	Required tested combination
Outdoor unit is distributed in commerce with any non-communicating coil-only combination(s)	Variable Speed Non-Communicating Coil-Only.
Outdoor unit is distributed in commerce with any communicating coil-only combination(s), but no non-communicating coil-only combination.	Variable Speed Communicating Coil-Only.
Outdoor unit is only distributed in commerce with blower-coil combinations	Variable Speed Blower-Coil.

In the March 2022 CAC TP NOPR, DOE noted that the variable-speed coil-only waiver petitions addressed both air-conditioners and heat pumps. 87 FR 16380, 16389. Thus, DOE considered whether the coil-only tested combination requirement should apply to variable speed heat pumps and/or to single-stage and/or two-stage heat pumps. *Id.* DOE noted that coil-only heat pumps allow the heating system to provide heat either using the furnace or the heat pump. *Id.* There has been greater interest in such systems in recent years, since they provide heating with a furnace in extreme cold conditions for which a heat pump may have limited capacity and/or reduced efficiency.[29] DOE proposed to require coil-only tested combinations for variable-speed heat pumps, but not for single- and two-stage heat pumps, because DOE expects that the representativeness of blower-coil tests would deviate more from coil-only tests for variable-speed systems, due to the use of a variable-speed indoor fan and use of an intermediate air volume rate used for intermediate-speed testing for variable-speed systems. *Id.* DOE argued that the test procedures for single-stage and two-stage heat pumps are more restrictive with regard to allowed air volume rates and thus performance differences between blower-coil and coil-only operation would be less. *Id.*

Regarding variable-speed coil-only systems using indoor units manufactured by independent coil manufacturers (''ICMs''), in the March 2022 CAC TP NOPR, DOE noted that the regulations require certification of the performance of every individual combination distributed in commerce, including both blower-coil and coil-only (*see* 10 CFR 429.16(a)(1)). *Id.* However, a tested combination for an ICM indoor unit must include the least-efficient outdoor unit with which the indoor unit is distributed in commerce (*see* 10 CFR 429.6(b)(2)(i)). *Id.* DOE stated in the NOPR that it does not believe any changes are needed with respect to ICM certifications as the current regulations already encompass representing all combinations distributed in commerce, including noncommunicating and communicating variable-speed coil only systems. *Id.* Further, DOE noted that the least-efficient outdoor unit with which the indoor unit is distributed in commerce is not likely to be a variable-speed system, and thus the question of communicating or non-communicating coil-only status does not apply. *Id.*

DOE received comments from multiple stakeholders regarding its proposals for represented values and testing requirements for VSCO CACs and HPs.

Lennox agreed with DOE's proposal not to require that all variable-speed CACs and HPs have a coil-only representation, as is required for single- and two-stage split air-conditioning systems. (Lennox, No. 19 at p. 3)

Rheem disagreed with DOE's proposal to implement differing test methods for communicating and non-communicating VSCO systems. (Rheem, No. 21 at p. 2) Rheem elaborated that even though they support the DOE proposal to expand the federal test procedure to account for coil-only variable speed systems, the exclusive distinction between communicating and non-communicating classifications for coil-only variable speed systems creates additional complexity and has the potential to add more test burden while reducing market flexibility. *Id.* Rheem stated that ideally there would only be one test procedure for coil-only variable speed systems, and preferably the one test would be the non-communicating method, as this would likely represent the least efficient system that may be installed the field. *Id.* Rheem recommended that DOE reconsider the merits of implementing differing test methods and suggested further study by DOE to quantify the difference in efficiency representation between the test methods for communicating versus non-communicating prior to incorporating this into the final rule. *Id.*

DOE is working to better understand the differences in performance between communicating and non-communicating systems but believes that the fundamental differences in the control architecture of the two approaches will lead to performance differences. For example, DOE expects that non-communicating VSCO systems, when subjected to an applied load, will likely demonstrate ''hunting'' for compressor speed, fan speeds, and valve positions, which would reduce the measured efficiency and potentially invalidate test results. For communicating VSCO systems, however, DOE expects that these systems will be more likely to include the requisite hardware and controls architecture to accurately and repeatably set position of modulating components during testing.

Trane commented that although DOE's recommendations for variable-speed coil-only test procedures were a good start at addressing 24V coil-only ratings with variable speed outdoor units, it needs to be expanded. (Trane, No. 10 at pp. 1–2) Trane specified that in situations where two-stage thermostats are paired with a two-stage airflow capable furnace, the proposed procedure is a reasonable rating approach, but that in the converse case with a single-stage thermostat or a single-stage airflow furnace, the proposed procedure will inflate the unit efficiency. *Id.* Trane recommended that two-different 'coil-only ratings' should be listed for such systems. *Id.* Trane elaborated that an accessory note would indicate the applicable installation (1-stage or 2-stage). *Id.* The rating

the total variable speed combinations certified to the Department.

[29] *https://www.trane.com/residential/en/resources/glossary/dual-fuel-heat-pump/* (last accessed 2/4/2022).

procedure for the 1-stage case would essentially follow the single capacity system rating procedures, whereas the 2-stage case would follow the procedure proposed by DOE in the March 2022 CAC TP NOPR. *Id.* Trane also provided two connection diagrams [30] as examples. *Id.* Both diagrams showed connection with either a 1-stage thermostat and indoor unit or a 2-stage thermostat and indoor unit. *Id.*

DOE notes that representations of performance for both single-stage and two-stage installations are not required for two-stage coil-only systems. The two-stage coil only test provisions in the current DOE test procedure are premised on the installation location having two-stage thermostat wiring (Final Rule Technical Supporting Document, EERE–2014–BT–STD–0048, No. 98, p. 8–25). DOE similarly assumes the presence of the necessary wiring for the installation of variable-speed coil-only systems in two-stage configuration.

Daikin commented that due to the nature of variable-speed CAC and HP, having a coil-only representation requirement for ICMs may be appropriate. (Daikin, No. 24 at p. 2) DOE notes that the current requirements in 10 CFR 429.16 already require a representation for every combination distributed in commerce, and hence any coil-only product distributed in commerce by an ICM would already be required to have a coil-only representation for variable-speed combinations with which it is distributed in commerce. The further clarification of non-communicating VSCO combinations in this rule extends that requirement such that there must at least be a representation based on the non-communicating VSCO test procedure if non-communicating combinations are distributed in commerce.

Daikin and Rheem disagreed with the proposal to require the tested combination to be coil-only for variable-speed systems that are distributed in commerce in some cases with coil-only combinations. (Daikin, No. 24 at p. 2; Rheem, No. 21 at p. 2) Daikin claimed that a mandatory coil-only tested combination requirement for variable speed systems would burden manufacturers of such systems with additional testing requirements and would force lower represented values not indicative of variable speed performance in typical installations. (Daikin, No. 24 at p. 2) Daikin stated that manufacturers would still test a blower-coil combination if the regulations require them to test a coil-only combination, because of the vast majority of full-system installations for VS systems. *Id.* Although Daikin did not explain why a manufacturer couldn't test a coil-only combination and use an alternative efficiency determination method (''AEDM'') to determine the representative value for blower-coil systems with which the same outdoor unit is paired, DOE acknowledges that the wider range of air volume rates allowed with blower-coil testing as compared with coil-only testing [31] could make the use of testing (as opposed to an AEDM) more important in determination of an accurate representation for blower-coil systems than for coil-only systems. In addition, the Emerson comments described in the following paragraph suggest that many variable-speed outdoor models with blower-coil representations may be distributed in commerce for a small percentage of installations in coil-only combinations (*see* Emerson, No. 14 at p. 2). Although not explicitly mentioned in comments addressing this topic, DOE realizes that manufacturers may have already completed testing for many models in advance of the January 1, 2023, date on which appendix M1 will be required—requiring a coil-only representation at this late stage may require additional testing. Thus, DOE is partially retracting the proposed requirement for a coil-only tested combination for VS systems distributed in commerce in coil-only combinations. Specifically, DOE is maintaining this requirement only for non-communicating coil-only combinations. As already discussed, the control approach for non-communicating systems is fundamentally different than the control approach for communicating systems. Hence, DOE is not convinced that a test using the provisions for communicating VS systems (either blower-coil or coil-only) would provide sufficient indication of non-communicating performance to allow accurate prediction of non-communicating performance using an AEDM based on the communicating system test. Thus, DOE will not require at this time that the tested combination be coil-only in cases where only communicating VSCO combinations (and no non-communicating VSCO combinations) are distributed in commerce with a given outdoor unit. However, DOE may reconsider these decisions in a later rulemaking.

Emerson commented that it agreed with DOE's assessment that less than 5 percent of variable speed systems are installed as coil-only configurations today. (Emerson, No. 14 at pp. 1–2) However, Emerson commented that it believes that two-stage CACs currently have a similarly small portion of installations in a coil-only configuration, and elaborated that they believe that energy specifications and test procedures should be technology-neutral and advocated that all modulating technology (*i.e.,* two or more stages) should be treated in the same manner regarding coil-only representation requirements. *Id.* Emerson asserted that because of the ability to install VSCO CACs with a non-communicating thermostat, and because coil-only installation percentages are similar between variable speed and two-stage CACs, the coil-only representation requirement should either apply for both technologies or for neither technology. *Id.* Emerson provided examples of variable speed CAC product literature indicating that even for outdoor units with communicating capability, there are instructions for installation in a non-communicating setup using a conventional 24V non-communicating thermostat control.[32] *Id.* Emerson also highlighted that in some cases, the product literature provides instructions for a non-communicating coil-only installation but shows represented values that are unclear whether they are derived from a blower-coil pairing or from the non-communicating coil-only installation.[33] *Id.* Emerson elaborated that this creates the possibility that variable speed systems are currently being installed in coil-only applications

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[30] Trane provided examples of two Bosch systems with AHRI reference numbers 206395973 and 206395967 and provided a link to the installation instructions: https://www.bosch-thermotechnology.us/us/media/country_pool/documents/bosch_ids_bovb18_iom_10.2020.pdf.

[31] As described in section III.C.2.c, VSCO systems will use at most two air volume rates, while blower-coil VS systems may have multiple air volume rates. First, there is an intermediate air volume rate explicitly anticipated for such systems (*see* appendix M1, section 3.1.4.3). Also, as discussed in section III.D.1, DOE is clarifying that air volume rate may change with outdoor air temperature.

[32] Emerson identified the Bosch BOVB 18 split system heat pump with ratings as low as 15 SEER (link: https://issuu.com/boschthermotechnology/docs/bosch_ids_family?fr=sYmYyNDIwODA0Mzg) and the Daikin FTQ series heating and cooling systems, with SEER ratings from 14.8–16 SEER (link: https://backend.daikincomfort.com/docs/default-source/product-documents/light-commercial/brochures/cb-ftqducted.pdf?sfvrsn=608a2626_20&_ga=2.261207556.887080242.1653602507-1260064005.1653602507&_gl=1*1cbcmhc*_ga*MTI2MDA2NDAwNS4xNjUzNjAyNTA3*_ga_MXJ05EZJZT*MTY1MzYwMjUwNi4xLjEuMTY1MzYwMjU5OS4w).

[33] Emerson identified the Lennox Elite Series EL18XCV Units (link: https://tech.lennoxintl.com/C03e7o14l/VIu12Ch2uV/507955-01a.pdf) and the Carrier 24VNA0 Infinity Variable Speed Air Conditioners with Greenspeed Intelligence (link: https://esmithair.com/wp-content/uploads/2020/02/Air-Conditioners_24VNA0.pdf).

for which the system representations may not be representative of actual performance. *Id.*

In response to Emerson's comments about installation instructions allowing for installation of non-communicating coil-only installations for VS systems that presumably are tested on the basis of blower-coil configurations, DOE notes that 10 CFR 429.16 already requires that representations be provided for all combinations distributed in commerce. Hence, representations are required for coil-only combinations for any VS outdoor unit that is distributed in commerce in such combinations. The changes in this final rule stipulate that any such coil-only representation be based on whether the control system with which it is installed is communicating or non-communicating.

In response to Emerson's comments that coil-only installations are rare also for two-stage systems, DOE notes that the comments received on the topic of the default fan power values for low-stage operation when testing two-stage coil-only systems (*see* section III.C.1) suggests otherwise. None of the comments addressed the possibility that a coil-only configuration may not be representative of two-stage system installations. Further, the discussion emphasized the trends in motor technology of furnaces that have shipped in recent years (*see, e.g.,* AHRI, No. 25 at p. 3), suggesting that the representative air movers for two-stage systems will in many cases be existing furnaces rather than the fans of blower-coils systems. Hence, in this final rule DOE has not removed the coil-only representation requirement for two-stage systems or added such a requirement for variable-speed systems.

In summary, manufacturers will be required to represent variable-speed ACs based on how they distribute them in commerce, which includes whether they are coil-only communicating, coil-only noncommunicating, or blower coil, as applicable to a given model of outdoor unit.

3. Space-Constrained Coil-Only CAC Ratings

a. Background

In the March 2022 CAC TP NOPR, DOE discussed the current requirements for determining represented values of energy efficiency and capacity for CACs and HPs at § 429.16(a). 87 FR 16830, 16839–16841. This section specifies that for each model of outdoor unit of a split-system CAC with single-stage or two-stage compressors, manufacturers are required to provide represented values based on at least one coil-only combination that is representative of the least efficient combination distributed in commerce with that model of outdoor unit. The requirement to provide coil-only ratings for each basic model also applies to single split CACs designed for space-constrained applications (''SC–CAC''). Additional blower-coil ratings are allowed (*i.e.,* optional) for any applicable individual combinations, if distributed in commerce. 10 CFR 429.16(a).

DOE also discussed the related waiver requests received from manufacturers of space-constrained split-system CACs following the January 2017 CAC TP Final Rule. 87 FR 16830, 16839–16841. DOE received petitions for test procedure waivers from National Comfort Products (''NCP''), AeroSys, and First Company related to the represented value requirements for space-constrained split-system CACs. *Id.* Each petitioner claimed that specified basic models of SC–CAC outdoor units listed in their respective petitions are designed and intended to be sold only with proprietary blower-coil indoor units equipped with high-efficiency electronically commutated (''ECM'') fan motors, and not as a coil-only combination, and therefore requested exemption from the requirements at 10 CFR 429.16(a)(1) to provide represented values as a coil-only combination. (NCP, EERE–2017–BT–WAV–0030, No. 1 at p. 1; AeroSys, EERE–2017–BT–WAV–0042; No. 1 at p. 1; First Co., EERE–2018–BT–WAV–0012, No. 2 at p. 1) As described in the March 2022 CAC TP NOPR, DOE denied First Co.'s petition, Aerosys filed for bankruptcy following DOE's granting them an interim waiver, and DOE granted an interim waiver applicable for appendix M to NCP on May 15, 2018. 87 FR 16830, 16841.

In the March 2022 CAC TP NOPR, DOE proposed several revisions related to representation requirements for space-constrained split-system CACs. 87 FR 16830, 16840–16841. Specifically, DOE proposed to amend the language in the table found in 10 CFR 429.16(a)(1) to clarify the rating requirements pertaining to single-split CACs with single-stage or two-stage compressors.[34] *Id.* DOE also tentatively concluded that measuring the performance of space-constrained systems exclusively with high-efficiency blower-coil combinations, as requested in waiver petitions from NCP, AeroSys, and First Co., is not generally representative of field operation. *Id.* DOE also noted that because NCP's waiver petition and the prescribed alternate test procedure are specific to appendix M, the interim waiver will terminate on the date on which testing is required under appendix M1 (*i.e.,* January 1, 2023). *Id.* DOE therefore did not propose amendments to appendix M1 to incorporate the interim test procedure waiver granted to NCP, and requested comment on these proposals. *Id.*

The Joint Advocates and Lennox supported DOE's proposal to require coil-only representations for all single- and two-stage single-split system CACs, including space-constrained systems. (Joint Advocates, No. 18 at p. 3; Lennox, No. 19 at p. 3) Lennox elaborated on their support by stating that consistency in requirements across similar product types provides consumers with more information to properly compare product choices and promotes market fairness.

In contrast with the Joint Advocates and Lennox, AHRI and NCP did not support DOE's proposal. (AHRI, No. 25 at pp. 2–3; NCP, No. 16 at pp. 2–10) AHRI and NCP criticized several aspects of DOE's proposal to require coil-only ratings for space-constrained CACs. *Id.* In general, AHRI and NCP critiqued the factual basis underlying DOE's assumptions that a coil-only rating would be most representative of real-world performance for space-constrained systems, and asserted that DOE must amend the test procedure in appendix M1 to incorporate the interim waiver granted to NCP. (AHRI, No. 25 at p. 3; NCP, No. 16 at p. 2) NCP also claimed that they would face undue burden from DOE's proposal, related to sunk design and testing costs and potential redesign costs they claim would be required to generate a compliant coil-only rating. (NCP, No. 16 at p. 2) AHRI elaborated by claiming that DOE did not provide persuasive data to justify not amending appendix M1 to specify testing of space-constrained split-system CACs in a manner consistent with NCP's waiver and that the test procedure outlined in the waiver produces results that more accurately reflect the performance of space-constrained CAC systems, as opposed to a coil-only rating. (AHRI, No. 25 at p. 3)

b. Applicability of Coil-Only Requirement

In the March 2022 CAC TP NOPR, DOE briefly discussed some of the reasoning from past documents used to

[34] DOE's proposed clarifications would require every single-stage and two-stage outdoor unit of single-split CAC to have a compliant rating with a coil-only combination that is distributed in commerce and representative of the least efficient combination distributed in commerce for that particular model of outdoor unit.

support the coil-only representation requirement for spilt-system air conditioners generally. 87 FR 16830, 16847. DOE also discussed the applicability of the coil-only requirement for space-constrained CACs, specifically. 87 FR 16830, 16841. This section provides a more extensive discussion of the historical context to further support DOE's position on this matter, in light of comments on this rulemaking as well as historical assertions from manufacturers of space-constrained products that the coil-only provisions should not apply to these products (*e.g.,* see First Co. comments at EERE–2016–BT–TP–0029, No. 21 at p. 2).

The historical application of the coil-only representation requirement to SC–CACs involves several changes in regulatory provisions for this type of product, including the provisions for ''Through-the-Wall'' (TTW) product classes of CACs and HPs. In their waiver petition, and in comments in response to the March 2022 CAC TP NOPR, NCP refers to their models of space-constrained CACs as ''TTW'' products. However, while the models that were the subjects of the NCP waiver are physically installed through the exterior wall, the specific term ''through-the-wall'' no longer has regulatory meaning as a defined class of products. As explained in the following paragraphs, the TTW product class expired from DOE definitions in 2010 and is no longer applicable.

In a May 2002 final rule for energy conservation standards for CACs and HPs, (''May 2002 CAC ECS Final Rule''), DOE established separate product classes of SC and TTW product classes. 67 FR 36368, 36406 (May 23, 2002). DOE defined TTW CACs and HPs based on physical characteristics of the unit (*i.e.,* limitations on cooling capacity and heat exchanger area), and the installation scenario (*i.e.,* designed to be installed within a fixed-size opening in an external wall). 10 CFR 430.2. The definition for TTW CACs was also limited to products manufactured prior to January 23, 2010. *Id.* In an August 2004 rulemaking for energy conservation standards for CACs and HPs (''August 2004 CAC ECS Final Rule''), DOE elaborated that after January 23, 2010, the standards for space-constrained products would apply to TTW CACs and HPs. 69 FR 50997, 50998 (August 17, 2004). In a June 2011 direct final rule (DFR) regarding energy conservation standards for residential furnaces and CACs/HPs (''June 2011 Furnaces & CAC ECS DFR'') DOE discussed the recent expiration of the through-the-wall product class for CACs. 76 FR 37408, 37446 (June 27, 2011). DOE noted that the TTW product class expired on January 23, 2010, and reclassified all TTW products into corresponding classes of space-constrained CACs. *Id.* To further illuminate this point, DOE added a footnote to the energy conservation standards tables at § 430.32(c)(2) to clarify the treatment of TTW product classes. 76 FR 37408, 37546.

The existence of the TTW product class (and subsequent expiration in 2010) interacts with the coil-only representation requirements described by DOE in other documents. In an October 2007 test procedure final rule for CACs (''October 2007 CAC TP Final Rule''), DOE discussed the required indoor unit combinations for determination of represented values for CACs and HPs. 72 FR 59906, 59913–59914 (October 10, 2007). DOE clarified in this rule that for most classes of single-stage, single-split CACs the highest sales volume indoor unit would be a coil-only indoor unit, and thus DOE's regulations required that represented values for these systems be determined based on a coil-only pairing. *Id.* DOE included exemptions to the coil-only representation requirement for certain kinds of single-stage, single-split CACs that would likely be distributed in commerce only with blower-coil indoor units. *Id.* These exempted product classes included mini-splits, multi-splits, and TTW units. *Id.* For each of these classes, DOE clarified in the October 2007 CAC TP Final Rule that representations could be based on blower-coil combinations. *Id.*

In subsequent documents, DOE re-iterated the coil-only representation requirement and clarified the applicability to space-constrained CACs. In a draft guidance document published August 19, 2014 (''2014 CAC Guidance''), DOE stated that split-system CACs with more than one compressor stage may be tested and rated as a blower-coil combination only if the condensing unit is sold exclusively with blower-coil indoor units. EERE–2014–BT–GUID–0033–0001, p. 1. The 2014 CAC Guidance stated that per existing regulations in the CFR, no provisions existed permitting use of a blower-coil for testing and rating a split-system central air conditioner where the condenser unit is also offered for sale with a coil-only indoor unit and that, furthermore, there was no provision in the CFR permitting the use of a blower-coil for testing and rating a condensing unit with a single-speed compressor. *Id.* Soon thereafter, DOE published a test procedure final rule pertaining to CACs and HPs (''June 2016 CAC TP Final Rule''). 81 FR 36992 (June 8, 2016). DOE adopted language that explicitly required a coil-only representation requirement for single-split single- and two-stage CACs into its provisions at 10 CFR 429.16(a)(1), which became effective 180 days following the publication of the final rule (*i.e.,* December 5, 2016). DOE also adopted these provisions for space-constrained split-system CACs given that they are subject to the same test procedures and sampling plans as non-space-constrained single-split air conditioners. 81 FR 36992, 37002. DOE also adopted provisions at § 429.16(b)(2) requiring that such systems be tested with ''the model of coil-only indoor unit that is likely to have the largest volume of retail sales with the particular model of indoor unit.'' 81 FR 36992, 37050.

In the January 2017 CAC TP Final Rule, DOE kept the same approach from the June 2016 CAC TP Final Rule requiring that represented values for one- and two-stage single-split CACs (including space-constrained) must be determined based on a coil-only value representative of the least-efficient combination distributed in commerce with that particular model of outdoor unit. DOE amended the tested combination requirements to prevent possible conflict between the representation requirements and the tested combination requirements. Instead of requiring the ''highest sales volume'' indoor unit in the tested combination, the January 2017 CAC TP Final Rule required, simply, ''A model of coil-only indoor unit''. 82 FR 1426, 1470. This clarification made clear that in all instances, one- and two-stage single-split CACs (including space-constrained) were required to test and determine represented values based on a coil-only indoor unit, regardless of prevalence of retail sales.

In the January 2017 CAC TP Final Rule, DOE also fielded comments from manufacturers of space-constrained CACs regarding the interplay of the TTW and space-constrained product classes with the coil-only representation and testing requirements. 82 FR 1426, 1461–1462. DOE reiterated that an exclusion for coil-only testing of space-constrained products was never established, and that manufacturers of space-constrained products had always been subject to the coil-only rating requirement, as clarified in the June 2016 CAC TP Final Rule. *Id.* DOE also alluded to the expiration of the TTW product class, describing that the coil-only exclusion for TTW CACs, previously present in 10 CFR 429.16(a)(2)(ii), would not encompass

the circumstances described by the commenters. *Id.* DOE reiterated that while the language being adopted in the January 2017 CAC TP Final Rule explicitly removed the exclusion from a coil-only testing requirement for TTW units sold and installed with blower-coil units—it would have no effect on the ratings procedures for space-constrained units (due the 2010 expiration of the TTW product class), which are subject to the same coil-only provisions as for other split system CACs. *Id.*

In summary, single-split single-stage CACs, including space-constrained CACs, have historically always been subject to a coil-only representation requirement, via application of the highest-sales-volume-combination (HSVC) concept. DOE has, at multiple points, made this requirement more explicit in the regulatory text but has consistently held that space-constrained CACs were never excluded from this requirement. For space-constrained CACs meeting the historical definition of through-the-wall (TTW) products, DOE has similarly explained in multiple documents that this product class expired in January 2010 at which point TTW products were subsumed by the space-constrained product class, which DOE explained explicitly in the January 2017 CAC TP Final Rule (82 FR 1426, 1462). Through these facts it is evident that through-the-wall space-constrained CACs, such as those identified in NCP's waiver petition, have been subject to the coil-only rating requirement at least since 2010, and the January 2017 CAC TP Final Rule did not represent the first instance of this practice.

c. Other Considerations

i. Prevalence of Coil-Only Installations for Space-Constrained CACs

In response to the March 2022 CAC TP NOPR, NCP commented that it does not manufacture a coil-only indoor unit that may be matched with the condensing units specified in their waiver, nor do they identify or offer any other coil-only matched system for distribution in commerce. (NCP, No. 16 at p.10) Additionally, AHRI and NCP questioned the representativeness of a coil-only rating for space-constrained products. Specifically, they both challenged DOE's assumption that the relative division of coil-only installations applies equally between typical CAC and space-constrained CAC. (AHRI, No. 25 at p. 2; NCP, No. 16 at pp. 3–5) AHRI asserted that space-constrained CAC systems are typically installed in multi-family buildings (as opposed to single-family homes) and claimed that coil-only installations for space-constrained systems are significantly less common than coil-only installations for conventional split CACs. (AHRI, No. 25 at p. 2) AHRI cited DOE's determination that, in 2021, 39% of split-system CAC installations would be blower-coil indoor units and the remaining 61 percent would be coil-only installations.[35] *Id.* AHRI contrasted this with 2015 RECS microdata showing that for multi-family buildings, only 45 percent of buildings use natural gas or other fuel source for heating while 55 percent of buildings use electric resistance heating. *Id.* DOE interprets AHRI‘s comment to imply that space-constrained CACs are most typically installed in multi-family housing, and multi-family buildings are predominated by electric heating (which would be indicative of a blower-coil CAC using electric resistance heating elements) rather than combustion heating (which would be indicative of a coil-only CAC paired with a furnace). Therefore, AHRI's comment implies that space-constrained CACs would be represented more accurately by a blower-coil combination instead of a coil-only combination. NCP reiterated the data presented by AHRI and commented that coil-only installations for space-constrained systems are uncommon. (NCP, No. 16 at pp. 3–5)

DOE notes that although AHRI provided summary data regarding the heating source for multi-family buildings, neither AHRI nor NCP provided concrete data showing the relative proportion of coil-only installations for space-constrained CACs vs coil-only installations for conventional CACs. DOE finds that AHRI's inference that a higher proportion of electric heating in multi-family homes does not constitute sufficient evidence to conclude that the proportion of coil-only installations for space-constrained systems is lower than the proportion for conventional systems. With respect to NCP's comment that they do not manufacture or specify coil-only indoor units to be paired with their TTW condensing units, DOE notes that the coil-only representation requirement is equally applicable for all single- and two-stage split-system CACs. This requirement accounts for the likelihood that CAC outdoor units may be installed as a coil-only configuration, even if not specified as such by the outdoor unit manufacturer. In this manner, the coil-only requirement provides a conservative estimate of performance that captures the range of likely installation scenarios for these products. Therefore, DOE concludes that an approach consistent with the January 2017 CAC TP Final Rule (*i.e.,* requiring coil-only representations for all single- and two-stage split system CACs, including space-constrained) provides more representative measurement of space-constrained system performance. DOE also acknowledges Lennox's comment stating that by continuing to require a coil-only representation for all types of split-system CACs, consumers would have better ability to compare products on the basis of cost-efficiency tradeoffs. (Lennox, No. 19 at p. 3)

ii. Systems Distributed in Commerce

In the March 2022 CAC TP NOPR, DOE highlighted instances for which outdoor units designed for space-constrained applications are being distributed in commerce without a corresponding blower-coil indoor unit, indicating the potential for pairing a replacement outdoor unit with an existing indoor unit using a legacy fan that would not likely be comparable to the ECM fan of the blower-coil indoor unit on which the system rating is based. 87 FR 16830, 16841. DOE noted that the cited example is for sale of an NCP outdoor unit, which indicates that it is impossible to ensure its installation with a blower-coil indoor unit, as suggested by NCP's waiver petition. *Id.*

AHRI and NCP challenged DOE's conclusion that NCP's space-constrained CAC models are distributed in commerce with a coil-only indoor unit pairing. (AHRI, No. 25 at p. 2; NCP, No. 16 at p. 10) NCP stated that they do not manufacture a coil-only indoor unit that may be matched with their space-constrained condensers, nor do they identify or offer any other coil-only matched system for distribution in commerce. (NCP, No. 16 at p. 10) NCP also noted that in the case identified by DOE of an online distributor selling NCP's space-constrained outdoor units in an unmatched pairing, this was in error and that NCP quickly took actions to rectify the situation. *Id.* NCP demonstrated steps they undertake to ensure that its space-constrained condenser units are properly sold and marketed as matching pairs with blower-coil indoor units and offered to provide enhanced documentation including a product label. *Id.* NCP concluded by stating that as a small company, it does not have the appropriate resources to police the

[35] As introduced in section III.D.1.b of this rulemaking, DOE first discussed its assumptions regarding market penetration rates for various types of furnace fan motors in the December 2016 CAC ECS TSD (EERE–2014–BT–STD–0048–0098, page 7–16). These same proportions were carried through in the analysis proposed in the March 2022 CAC TP NOPR.

actions of distributors or installers. (NCP, No. 16 at p. 7) AHRI offered similar commentary, claiming that DOE made a logical leap by attributing the actions of a single distributor to actions taken by NCP, and asserted that the distributor did not follow manufacturer sales guidelines. (AHRI, No. 25 at p. 2)

Regarding NCP's claim that the example provided by DOE was an aberration and not representative of their normal distribution practices, DOE has found additional evidence beyond what was presented in the NOPR demonstrating that NCP condensers may be distributed in commerce as unspecified pairings. DOE has found additional listings from two other distributors advertising NCP condensing units (in fact, the same units identified in NCP's interim waiver) being sold without a matched blower-coil indoor unit.[36] Further, while DOE acknowledges NCP's status as a small business entity, and the potential difficulties with policing the activity of distributors, DOE notes that the coil-only representation requirement for split-system one and two-stage CACs is designed to capture the range of installations scenarios in which these systems are likely to be installed. Correspondingly, the coil-only representation requirement offers a conservative method that ensures that consumers would be purchasing systems that are compliant with national standards, even if installed in a coil-only configuration.

iii. Interaction With Energy Conservation Standards

Notwithstanding their concerns about the representativeness of coil-only representations for space-constrained CACs, NCP stated that they have begun the process of designing and testing modifications to their space-constrained outdoor units that could allow certifications with coil-only representations (such as incorporating high-efficiency DC fan motors, microchannel heat exchangers and/or proprietary compressor developments), but that these design changes would come at a considerable cost increase.[37] (NCP, No. 16 at pp. 5–7) NCP claimed that they utilize the most efficient components available that are economically justifiable and asserted that the technical constraints preventing the certification of its space-constrained condenser units as a coil-only combination have not changed since they submitted their original waiver petition. *Id.* Particularly, NCP highlighted that they are limited in what they can do to improve the efficiency of the units due to the dimensional restrictions of the space-constrained configuration. *Id.* NCP also provided data showing that even if DOE were to introduce a lower default fan power coefficient for coil-only CACs at low-stage operation (as discussed in section III.C.1 of this final rule), it would still be difficult to meet DOE standards. *Id.*

AHRI and NCP also claimed that DOE's decision at this stage in the process to terminate and discontinue the test procedure waiver for appendix M by not incorporating it into the M1 procedure would place undue burden on NCP, a small manufacturer. (AHRI, No. 25 at p. 2; NCP, No. 16 at pp. 9–10) AHRI stated that manufacturers have substantially completed testing according to appendix M1 and that NCP was in the process of finalizing M1 product designs and preparing for 2023 implementation. (AHRI, No. 25 at p. 2) NCP stated that its space-constrained condensing units are designed and intended to be paired with specified air handlers. (NCP, No. 16 at pp. 9–10) NCP elaborated that due to the new M1 testing procedures they have designed, prototyped, tested, and begun manufacture of a new air handler, which they asserted was an arduous, costly undertaking for a small business. *Id.* NCP also highlighted the challenges of simultaneously addressing the pending refrigerant change in 2025, which they asserted would require replacement of R–410a refrigerants in its outdoor units. *Id.* NCP concluded by stating that if DOE continues with the proposed approach of requiring coil-only representations for space-constrained systems tested according to appendix M1, it will require redesign of their space-constrained products (as previously described) and would substantially increase the burden and cost of testing as well as resource allocation for NCP. *Id.*

With respect to NCP and AHRI's arguments regarding the potential difficulties meeting standards, DOE notes that the stringency of standards for such TTW products have not changed since Jan 23, 2010 (the date when the TTW product class was subsumed by the space-constrained product class) and they have been required to meet a 12 SEER standard ever since. The stringency will also not be increasing for these products in the upcoming 2023 standards, where DOE has established equivalent-stringency SEER2 standards. Lennox concurred with DOE's finding that extending the current test procedure waivers for space-constrained systems is unnecessary, because adequate standards relief was already provided when DOE maintained the existing standard levels with no increase in stringency during the previous energy conservation standards rulemaking. (Lennox, No. 19 at pp. 3–4) Because DOE did not increase the stringency of standards for space-constrained systems in the previous ECS rulemaking, manufacturers of space-constrained systems who were already producing space-constrained products compliant with standards in terms of SEER and following the existing representation requirements (*i.e.,* based on a coil-only rating)[38] would not incur any costs in order to comply with SEER2 standards based on coil-only ratings. DOE also notes that in their comment, NCP identified several combinations of coil-only indoor units that were technologically capable of meeting SEER2 standard levels. Additionally, the topic of cost/efficiency tradeoffs for space-constrained systems was discussed in the previous ECS rulemaking, and are not subject to reevaluation in the context of this rulemaking, which is limited to the test procedure.

d. Conclusions

As described in preceding sections, DOE has made the following determinations regarding representation requirements for space-constrained CACs:

1. Single-split, single-stage CACs, including space-constrained CACs, have historically always been subject to a

[36] DOE identified the NCPE–418–5010 condensing unit sold as a standalone unit at both SkipTheWarehouse and on Johnstone Supply, available online at: *https://skipthewarehouse.com/ncpe4185010-15-ton-thru-the-wall-split-system-condensing-unit* and *https://www.johnstone supply.com/product-view?pID=B61-354,* respectively.

[37] On August 11, 2022, NCP submitted an enclosure to their earlier comment that contained new test data and design information. NCP claimed that they had not yet identified a combination of components that would allow its TTW condensing units tested with coil-only indoor units to reach the applicable energy conservation standards and capacity requirements. NCP reiterated their opinion that the unacceptable test results were caused by the physical constraints placed on space-constrained TTW condensing units. (NCP, No. 26 at p.2) Available online at: *https://www.regulations.gov/document/EERE-2021-BT-TP-0030-0026.*

[38] See October 2016 CAC ECS notification of data availability NODA, where DOE described its provisional translations between SEER and SEER2 for space-constrained products. DOE conducted a crosswalk for SC–CACs to account for the increased minimum external static pressure requirement in appendix M1 which would increase the indoor fan power consumption. DOE's crosswalk analysis assumed a coil-only rating as the starting point (*i.e.,* for appendix M measurements), and a coil-only rating as the end point (*i.e.,* for appendix M1 measurements). 81 FR 74727, 74729–74730.

coil-only representation requirement. DOE has clarified this requirement at multiple points in the regulatory text, but has consistently held that space-constrained CACs were never excluded from this requirement.

2. For space-constrained CACs meeting the historical definition of through-the-wall (TTW) products, DOE has similarly explained in multiple documents that this product class expired in January 2010 at which point TTW products were subsumed by the space-constrained product class and became subject to the coil-only representation requirement.

3. Based on the best available data, the coil-only representation requirement for split-system space-constrained CACs is representative of real-world installations. This determination is supported by the finding that, despite manufacturer efforts, space-constrained outdoor units are still being distributed in commerce in a manner consistent with coil-only installations.

4. Space-constrained systems have been subject to a coil-only requirement since January 2010, and standards have remained at equivalent stringency since that time. Manufacturers of space-constrained systems that have been producing compliant products would not incur any costs in order to comply with SEER2 standards.

Further, DOE notes that the interim waiver granted to NCP was only applicable for appendix M, and NCP did not submit any waiver request applicable to appendix M1. As previously discussed, DOE proposed in the NOPR not to incorporate into appendix M1 the waiver method granted to NCP for appendix M. In summary, consistent with its proposals in the March 2022 CAC TP NOPR DOE is maintaining the requirement that space-constrained CACs follow the existing representation requirements at 10 CFR 429.16, including the requirement for all one- and two-stage split-system CACs to develop represented values based on testing with a coil-only indoor unit representative of the least efficient coil-only indoor unit distributed in commerce for that basic model.

D. Other Test Procedure Revisions

1. Air Volume Rate Changing With Outdoor Conditions

In the NOPR, DOE explained that requirements for setting air volume rate in section 3.1.4 of appendix M1 may be in conflict with instructions to use air volume rates that represent a ''normal installation'' in section 3.2, particularly for modern blower-coil systems with multiple-speed or variable-speed indoor fans and control systems, which may change air volume rate in response to operating conditions such as outdoor air temperature. 87 FR 16830, 16841. To address this issue, DOE proposed in the March 2022 CAC TP NOPR to explicitly state in Step 7 of sections 3.1.4.1.1.a, 3.1.4.2.a, and 3.1.4.3.a that, for blower-coil systems in which the indoor blower capacity modulation correlates with outdoor dry bulb temperature or sensible-to-total cooling capacity ratio, use an air volume rate that represents a normal operation. 87 FR 16830, 16841–16842. Also, DOE indicated that to ensure consistency of testing, it may be necessary for manufacturers to certify whether the system varies blower speeds with outdoor air conditions. However, certification is not being addressed in this rulemaking and may be addressed in a separate rulemaking. *Id.*

In response, Lennox, Rheem and Trane commented that they support DOE's proposal to add clarifying language to allow fan speed and air volume adjustments for varying outdoor conditions that are representative of normal field operation, for blower-coil systems with multiple-speed or variable-speed indoor fans. (Lennox, No. 19 at p. 4, Rheem, No. 21 at p. 2, Trane, No. 10 at p. 3) Rheem further commented that they also support the control system capability to adjust air volume rate as a function of outdoor air temperature, allowing such air volume rate variation during testing. (Rheem, No. 21 at pp. 2–3) In order to make the procedure more representative of field conditions, Rheem suggested that external static pressure should change in relation to full stage air flow by using the fan affinity laws, similar to external static adjustments for multi-stage equipment. *Id.* Additionally, Rheem suggested that DOE's proposal to add clarifying language for blower speed variation should apply to section 3.1.4.4.3.a, instead of section 3.1.4.3.a. *Id.* Trane pointed out that they have products that vary the fan speed based on various conditions such as outdoor ambient and stated that the proposed change is needed to clear up the discrepancy in procedures. (Trane, No. 10 at p. 3) They stated that there are several reasons why airflow may be varied from a nominal setting at different conditions; for example, to optimize sensible heat ratio and comfort, to maintain consistent heating supply air temperatures, and to maximize system efficiency. *Id.*

In response to Rheem's comment about external static adjustments, DOE believes that the proposed regulatory language already addresses this factor, in particular the language: ''and calculate the target minimum external static pressure as described in section 3.1.4.2 of this appendix,'' which is included in Step 7 where the proposed revisions were made. The adjustment of external static pressure described in section 3.1.4.2 specifies that pressure varies as the square of the air flow, consistent with the fan affinity laws mentioned by Rheem. Hence, DOE is finalizing the revision without additional changes in regard to instructions regarding external static pressure. Also, in response to Rheem, DOE acknowledges that the NOPR preamble incorrectly cited section 3.1.4.3.a instead of 3.1.4.4.3.a.—the change was proposed and is finalized in section 3.1.4.4.3.a.

NEEA pointed out that DOE's proposal does not require certification of the fan speeds that represent ''normal'' operation for the different test points, and expressed concern that this approach will allow products to be tested more favorably without confirmation that the testing represents how products operate in the field. (NEEA, No. 23 at p. 2) NEEA recommended that DOE verify blower speed variation with a load-based test procedure using native controls of the system. *Id.*

As previously stated, certification corresponding to the test procedure changes are not being addressed in this final rule but may be considered in a separate rulemaking. Regarding NEEA's recommendation for a test procedure requiring native controls, DOE notes that this test procedure rulemaking was initiated as a quick fix of a limited set of known issues, and that more comprehensive revisions to address native controls may be considered in a future rulemaking that would satisfy the 7-year lookback requirements. See further discussion in section III.B of this document.

Based on the comments received, DOE is finalizing the provisions regarding variation of indoor air volume rate by adopting the clarifying language to Step 7 of sections 3.1.4.1.1.a, 3.1.4.2.a, and 3.1.4.4.3.a, as proposed.

2. Wet Bulb Temperature for H4 5 °F Heating Tests

Appendix M1 specifies required and optional heating mode test conditions for heat pumps, designated as ''H'' conditions. See Tables 11 through 15 of appendix M1. Appendix M1 provides for conducting optional ''H4'' heating tests at a 5 °F outdoor ambient dry-bulb temperature and, at a maximum, a 3 °F

outdoor wet-bulb temperature.[39] The 3 °F wet bulb condition represents an extremely dry air condition, which may be difficult to attain and maintain due to issues with infiltration and ground moisture passing through the floor in some laboratory setups. Consequently, in the March 2022 CAC TP NOPR, DOE proposed to amend the wet bulb test condition for all H4 tests to be 4 °F maximum instead of the current condition of 3 °F maximum. 87 FR 16830, 16842.

In response, Carrier, Daikin, Lennox, Nortek, NYSERDA, and Rheem commented that they all support DOE's proposal to increase the wet bulb test condition to 4 °F maximum from the 3 °F maximum for H4 tests. (Carrier, No. 15 at p. 1, Daikin, No. 24 at p. 2, Lennox, No. 19 at p. 4, Nortek, No. 13 at p. 3, NYSERDA, No. 17 at p. 2, Rheem, No. 21 at p. 3) Carrier stated that increasing the wet bulb test condition in the H4 test will reduce the test burden, and Lennox further asserted that conducting the H4 tests previously in various manufacturer laboratories has proven to be overly burdensome for the variety of reasons DOE cites in the CAC TP NOPR at 87 FR 16842. (Carrier, No. 15 at p. 1, Lennox, No. 19 at p. 4) Carrier and Lennox commented that increasing the maximum wet bulb temperature for the H4 test will significantly reduce manufacturer test burden. *Id.* Lennox commented that this will also help avoid additional capital investments in lab facilities for specialized equipment to attain the wet bulb requirement of 3 °F and this relief will allow more test facilities to be capable of validating performance at low ambient conditions while maintaining sufficiently low humidity conditions to provide reasonable test results. (Lennox, No. 19 at p. 4) Nortek also commented that increasing the wet bulb temperature on the H4 test from 3 °F to 4 °F will reduce their test burden by reducing the time required to remove moisture in achieving the wet bulb temperature test point. (Nortek, No. 13 at p. 3) NYSERDA commented that the proposed amendment of the wet bulb temperature conditions for the H4, $H4_2$, or $H4_3$ heating tests to a 4 °F maximum temperature will make the current optional cold temperature test easier to reliably replicate and should improve understanding of system performance at cold temperatures for more basic models being distributed in commerce. (NYSERDA, No. 17 at p. 2)

Based on the discussion presented in the March 2022 CAC TP NOPR and given the general support of the proposals by commenters, DOE is finalizing its amendment and increasing the wet bulb test condition to a maximum of 4 °F for H4 tests.

3. Hierarchy of Manufacturer Installation Instructions

Instructions for installation of CAC/HP products can take multiple forms, including documents shipped with the product, labels affixed to the outdoor unit and/or indoor unit, and online documents.

Section 2(A) of appendix M1 provides requirements regarding the installation instructions to be used and their order of precedence (*i.e.,* installation instruction hierarchy) for variable refrigerant flow (''VRF'') multi-split systems. Section 2(A) specifies that installation instructions that appear in the labels applied to the unit take precedence over installation instructions that are shipped with the unit. Further, Section 2(A) specifies that the term ''manufacturer's installation instructions'' does not include online manuals. Appendix M1 does not specify installation instruction hierarchy for any other types of CAC/HP products.

Throughout appendix M1, references to manufacturer's installation instructions are made regarding refrigerant charging requirements (section 2.2.5), installation of an air supply plenum adapter accessory for testing small-duct, high-velocity systems (section 2.4.1.c), and control circuit connections between the furnace and the outdoor unit for coil-only systems (section 3.13.1.a).

DOE notes that it initially proposed in a supplemental NOPR published November 9, 2015 (''November 2015 SNOPR'') that the hierarchy of installation instructions be located in proposed section 2.2.5.1 of appendix M1, which pertains to refrigerant charging requirements. *See* 80 FR 69278, 69350.[40] However, as finalized in the June 2016 CAC TP Final Rule, the installation instruction hierarchy provision was located within section 2(A) of appendix M1, and therefore applies only to testing of VRF multi-split systems. 81 FR 36992, 37060. The June 2016 CAC TP Final Rule did not provide a discussion of this change.

The requirements regarding installation instruction would be equally applicable to classes of CAC/HP other than VRF multi-split systems. As noted, manufacturer's installation instructions are referenced in a number of provisions in appendix M1. Therefore, in the March 2022 CAC TP NOPR, DOE proposed to add in section 2(B) of appendix M1, ''Testing Overview and Conditions for Systems Other than VRF,'' the same requirements associated with installation instructions that are in section 2(A), *i.e.,* what instructions can be used and what instructions take precedence. 87 FR 16830, 16842. Doe noted that this proposal would align the approach for all classes of CAC/HP with the current approach for VRF CAC. *Id.*

Lennox and Rheem commented that they support DOE's proposal for aligning the approach regarding installation instruction precedence for all classes of CAC/HP with the current approach of VRF AC. (Lennox, No. 19 at p. 4, Rheem, No. 21 at p. 3) Rheem further suggested that for clarity in the final rule, DOE should clearly specify whether a sticker on the unit takes precedence over installation instructions, particularly where use of the installation instructions is referenced in the appendix M1 test procedure (Rheem, No. 21 at p. 3). Additionally, Rheem stated that DOE also specifies a Section 2(B) will be added to appendix M1 to 10 CFR part 430. Rheem points out that Section 2(B) already exists in the test procedure, and therefore DOE should add a section 2(C) to capture these changes.[41] *Id.*

In response to Rheem's comment regarding addition of section 2(B) of appendix M1, DOE notes that it indicated that the additional requirements regarding installation instructions would be inserted ''in section 2(B),'' not that a new section 2(B) would be added. In response to the comment about clarifying whether a sticker on the unit takes precedence over installation instructions, DOE believes that the language proposed for section 2(B), ''Installation instructions that appear in the labels applied to the unit shall take precedence over installation instructions that come packaged with the unit,'' sufficiently clarifies this point. Specifically, ''installation instructions'' does extend to installation instructions that appear on the labels applied to the unit, and that such installation instructions take precedence over installation instructions that are not applied to the unit.

[39] The tests at this condition are optional for heat pumps, except for Triple-Capacity Northern heat pumps.

[40] DOE also notes that as initially proposed, installation instructions that are shipped with the unit were to take precedence over installation instructions that appear in the labels applied to the unit, but this hierarchy was reversed in the final rule. 81 FR 36992, 37060.

[41] In the May 2022 CAC TP NOPR, DOE had stated that they will add instructions to the already existing Section 2(B), and not that a new section is needed. Hence, DOE will not add a Section 2(C), as suggested by Rheem.

Trane commented that even though they agreed with hierarchy proposed by DOE, they raised a concern that that some combinations of indoor units require unique charging instructions, as opposed to the typical instructions, *i.e.,* subcooling target, listed on outdoor unit labels. (Trane, No. 10 at p. 3) They cited the variations of indoor internal coil volume with various matched pairs as the reason for this. Hence, Trane suggested that outdoor nameplates should have a footnote referring the installer to the indoor product instructions for any exception, unless otherwise noted. *Id.*

In response to Trane's comment, DOE agrees that there may be circumstances in which the very different design details of multiple indoor units paired with the same outdoor unit could affect the optimum installation approach. In such cases, the manufacturer has the discretion to indicate in the outdoor unit installation instructions that specific instructions provided with indoor units be followed. Such an approach would not be contrary to the established precedence of the outdoor unit's installation instructions and would not be contrary to the proposed appendix M1 requirements, as long as the instructions used are not online instructions. DOE does not believe that appendix M1 should be modified to specifically explain this possibility.

Hence, DOE is adding the installation instruction hierarchy to appendix M1 section 2(B) as proposed.

4. Adjusting Airflow Measurement Apparatus To Achieve Desired SCFM at Part-Load Conditions

Sections 3.1.4.1.1, 3.1.4.2, and 3.1.4.4.3 of appendix M1 each specify seven steps for achieving the correct air volume rate to be used for testing (cooling full-load air volume rate, cooling minimum air volume rate, and heating full-load air volume rate, respectively). Each of these sections indicates that the measured air volume rate when adjustments are complete should be used for all tests that call for the same nominal air volume rate, *i.e.,* cooling full-load, cooling minimum, or heating full-load air volume rate, using the final fan speed or control settings. However, when operating at different test conditions, differences in air density and/or loading of condensate on the indoor coil may lead to different measured air volume rates.[42] None of the section 3.1.4.1.1, 3.1.4.2, or 3.1.4.4.3 of appendix M1 indicate what adjustments are allowed or required to obtain the same air volume rate for different operating conditions. In order to clarify how to achieve the same air volume rates for different operating conditions, DOE proposed to explicitly require that the airflow measurement apparatus fan be adjusted if needed to maintain a constant air volume rate for all tests using the same nominal air volume rate. Similarly, the section would explicitly state that the speed and settings of the fan of the unit under test are not to be adjusted. 87 FR 16830, 16843 (March 24, 2022).

In response, Lennox commented that they support DOE's proposals to add more specific direction to step 7 of sections 3.1.4.1.1, 3.1.4.2, and 3.1.4.4.3, as proposed. (Lennox, No.19 at p.4) Rheem commented that although they agree that the proposed changes may assist in the repeatability of certification tests, they disagree that DOE's proposals would be more representative than the current test procedure. (Rheem, No. 21 at p. 3) Rheem stated that once a ducted CAC/HP is installed in a consumer's home, the airflow and external static pressure will change with conditions, as reflected in the current test procedure. *Id.* Rheem noted that in the discussion under III.C.1 of the NOPR, DOE proposed to allow the air volume rate to change if the native controls of the system modulate indoor blower capacity. Rheem recommended that DOE add language to clarify that this allowance to adjust the airflow measurement apparatus only applies to systems that do not modulate indoor blower capacity. *Id.*

DOE does not agree with Rheem's comment suggesting that the current test procedure does not allow adjustment of the airflow measurement apparatus fan. Specifically, the words, ''use the final speed or control settings'' is not clear regarding whether this applies to the unit under test, the code tester, or both. DOE notes that by not specifically precluding adjustment of the code tester fan, the current Federal test procedure does not fully specify the allowable fan adjustments, leaving open the possibility for clarification.

In response to Rheem's comment regarding clarifying language, DOE notes that the proposed additions indicate that the final indoor fan speed or control settings of the unit under test must be used for all tests that use the same nominal air volume rate (*e.g.,* cooling full-load air volume rate), and that the fan of the airflow measurement apparatus should be adjusted if needed to obtain the same air volume rate (in scfm), unless the system modulates the indoor blower speed for different outdoor conditions or to adjust the sensible to total heat ratio. DOE considers this text is sufficiently clear that the instructions apply to systems that do not modulate indoor blower capacity. Further, DOE points out that adjustment of the airflow measurement apparatus would very likely be required for systems that do modulate the indoor blower capacity, to maintain the relationship between air volume rate and external static pressure, as required by section 3.1.4.2 of appendix M1.

Hence, DOE is finalizing the changes to step 7 of the requirements for setting air volume rate as proposed.

5. Revision of Equations Representing Full-Speed Variable-Speed Heat Pump Operation at and Above 45 °F Ambient Temperature

In a variable speed system, the compressor's actual speed at its full-load condition may change as the outdoor temperature changes. While the compressor speed at full speed may differ at different outdoor temperatures, accuracy of predictions using the test results from two temperature conditions to calculate the performance for a third temperature condition is maximized when the same compressor speed is used for the tests at the two different ambient temperature conditions (*see, e.g.,* 81 FR 58164, 58178 (August 24, 2016)).

For calculation of full-speed compressor heating mode performance in the temperature ranges less than 17 °F and greater than or equal to 45 °F, the test procedure determines performance based on the $H3_2$ and $H1_2$ tests, which are conducted at 17 °F and 47 °F, respectively (*see* appendix M1, sections 4.2.4.c, which refers to equations 4.2.2–3 and 4.2.2–4 in Section 4.2.2). As indicated in appendix M1 in the Table 14 footnotes, the $H1_2$ test is run with the compressor speed that represents normal operation at 17 °F conditions. However, for many variable-speed heat pumps, this is a higher compressor speed than would be normal for operation at 47 °F conditions.

The $H1_N$ test represents normal 47 °F operation, as indicated in the Table 14 footnotes. For heat pumps with different normal speeds for 17 °F and 47 °F conditions, the full-speed compressor performance equation is not appropriately representative for temperatures greater than or equal to 45 °F. For example, at 47 °F, the equation would indicate that the capacity is equal to the $H1_2$ capacity, even though the $H1_N$ test is specifically intended to represent capacity at 47 °F. To rectify

[42] When operating in cooling mode, water vapor in the return air may condense and collect and flow down the coil into the indoor unit's drain pan. This removal of water vapor is called dehumidification—it occurs only in cooling mode and its magnitude depends on the test conditions.

this issue, DOE proposed in the March 2022 CAC TP NOPR to amend the portion of the equations representing performance in conditions warmer than 45 °F. 87 FR 16830, 16843. Specifically, DOE proposed that the capacity equation for this temperature range would be multiplied by the ratio of the capacities of the $H1_N$ and $H1_2$ tests. *Id.* Similarly, DOE proposed that the power input equation for this range would be multiplied by the ratio of the power inputs measured in the $H1_N$ and $H1_2$ tests. *Id.* DOE noted that this would change the calculated capacity and power input for the range of temperature above 45 °F to be consistent with the compressor speed of the $H1_N$ test (which is intended to represent performance in this range), rather than with the compressor speed of the $H3_2$ test, which is conducted in a 17 °F ambient temperature. *Id.*

In response, Lennox supported DOE's proposed change to the full-capacity performance equations for variable speed heat pumps in the ambient temperature range above 45 °F. (Lennox, No. 19 at p. 5) Rheem recommended that DOE does not make the proposed changes. (Rheem, No. 21 at p. 4) Rheem contended that the proposal to modify the capacity and power equations above 45 °F would not have significant effect on heat pump HSPF2 calculations, since variable speed applications would likely operate in low stage during low building load conditions. Rheem questioned the value of adding complexity to variable speed HSPF2 calculations if the change will not have meaningful effect on the results and recommends that DOE not change the current calculation method for HSPF2 of variable speed heat pumps. (Rheem, No. 21 at pp. 3–4) DOE considers that the proposed calculation changes (*i.e.,* applying a simple ratio coefficient) does not represent any significant increase in complexity compared to the overall scale of test procedure calculations and that it is important to provide for a more accurate calculation of HSPF2, even if the impact on the calculated HSPF2 value is minimal. Therefore, DOE is finalizing its proposed approach in this final rule.

6. Calculations for Triple-Capacity Northern Heat Pumps

Section 4.2.6 of appendix M1 includes additional steps for calculating HSPF2 of a heat pump having a triple-capacity compressor. Heat pumps with triple-capacity compressors respond to building heating load by operating at low (k=1), high (k=2), or booster (k=3) capacity or by cycling on and off at one or more of those stages. Section 4.2.6.5 covers the scenario where the heat pump alternates between high (k=2) and booster (k=3) compressor capacity to satisfy the building load. In this scenario, the total electrical power consumption is determined by calculating the fraction of time the system spends operating in the high and booster stage, respectively, and then weighting the steady-state power consumption at each operating state accordingly. Section 4.2.6.5 gives equations for calculating the fraction of load addressed by the high compressor stage, denoted as ''$X^{k=2}(T_j)$'', as well as the fraction of load addressed by the booster compressor stage ''$X^{k=3}(T_j)$''. These proportions should, by definition, be complementary because the system is either operating in high compressor stage or boost compressor stage. However, the equation for the booster capacity load factor ''$X^{k=3}(T_j)$'' is erroneously set equal to the high-capacity load factor ''$X^{k=2}(T_j)$'' as opposed to the complementary value ''1 $X^{k=2}(T_j)$.'' Therefore, DOE proposed to correct the booster capacity load factor equation to be defined as $X^{k=3}(T_j) = 1 - X^{k=2}(T_j)$. DOE did not receive any comments in response to its proposal, and is therefore finalizing its proposed approach in this final rule.

7. Heating Nominal Air Volume Rate for Variable-Speed Heat Pumps

Appendix M1 includes procedures for calculating the heating capacity and power input for variable-speed heat pumps at various test conditions. The $H1_N$ test is used to calculate the nominal heating capacity of the system at 47 °F ambient temperature, whereas the $H1_2$ test is used to calculate maximum heating capacity at 47 °F and the $H1_1$ test is used to calculate minimum heating capacity at 47 °F. Section 3.1.4.7 of appendix M1 requires that manufacturers must specify a heating nominal air volume rate for each variable-speed heat pump system and must provide instructions for setting the fan speed or controls. The heating full-load air volume rate is defined in section 3.1.4.4 of appendix M1, which ties the heating full-load air volume rate to the cooling full-load air volume rate and denotes static pressure requirements. However, in Table 14 to appendix M1 (which specifies heating mode test conditions for units having a variable-speed compressor), the $H1_N$ test (used for calculating nominal heating capacity at 47 °F) is erroneously specified as using the ''Heating Full-load'' air volume rate instead of the heating nominal air volume rate. Because the $H1_N$ test is intended to represent nominal heating capacity, DOE is amending Table 14 to specify the ''heating nominal air volume rate'' as defined in section 3.1.4.7 of appendix M1 as opposed to the ''heating full-load air volume rate''. As discussed in section III.C.2 of this final rule, DOE is also amending the test provisions for variable-speed compressor systems with coil-only indoor units. The amendments mentioned in this section only apply to variable-speed systems equipped with blower-coil indoor units, while variable-speed coil-only systems would be required to test using the heating full-load air volume rate at the $H1_N$ test condition.

DOE did not receive any comments in response to this issue in the March 2022 CAC TP NOPR and is finalizing its proposal to specify heating nominal air volume rate as the air volume rate to be used for the $H1_N$ heating test for variable-speed heat pumps.

8. Clarifications for HSPF2 Calculation

Section 4.2 of appendix M1 contains methodologies for calculating HSPF2 for all heat pumps. DOE has identified an instance where additional instruction may be warranted to make clear the calculation procedures across different types of heat pump systems. In the March 2022 CAC TP NOPR, DOE proposed to clarify the appropriate slope adjustment factor to be used in the calculation for building heating load (Equation 4.2–2). 87 FR 16830, 16844.

As written, Equation 4.2–2 refers to the heating load line slope adjustment factor ''C'', which varies by climate region according to Table 20. However, Table 20 includes both the ''C'' factor as well as a factor denoted ''C_{VS}''—the variable-speed slope factor, which includes different coefficients that impact calculation of HSPF2. C_{VS} is not explicitly referenced in the definitions surrounding Equation 4.2–2, therefore DOE proposed to amend the language of that paragraph to indicate that the slope adjustment factor ''C'' should be used when calculating building heating load except for variable-speed compressor systems, where the variable-speed slope adjustment factor ''C_{VS}'' should be used instead. *Id.*

DOE did not receive any comments regarding this proposal and is thus adopting its proposal to clarify the calculation process for heating load line slope factor as it pertains to variable-speed heat pumps.

9. Distinguishing Central Air Conditioners and Heat Pumps From Commercial Equipment

EPCA defines ''industrial equipment'' as equipment of a type which, among other requirements, is not a covered product under section 6291(a)(2), *i.e.,*

not a covered consumer product. (42 U.S.C.6311(2)(A)) Small, large, and very large commercial package air conditioning and heating equipment are included as types of covered industrial equipment. (42 U.S.C.6311(1)(B,C,D))

EPCA defines ''central air conditioner'' as a product, other than a packaged terminal air conditioner, which is powered by single phase electric current, is air-cooled, is rated below 65,000 Btu per hour, is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour and is a heat pump or a cooling only unit. (42 U.S.C. 6291(21)) DOE understands that there are basic models on the market that meet the central air conditioner definition but are exclusively distributed in commerce for commercial and industrial applications. In DOE's view, there are certain types of equipment that meet the EPCA definition of CAC but that EPCA did not intend for DOE to regulate as consumer products. To clarify that any such model is not a central air conditioner, DOE proposed in the March 2022 CAC TP NOPR to revise the central air conditioner definition so that it explicitly excludes these equipment categories, similar to the way the original EPCA definition excludes packaged terminal air conditioners and packaged terminal heat pumps. The exclusion for single-package vertical air-conditioners and heat pumps would refer specifically to those models that could be confused with central air conditioners, *i.e.,* those that are single-phase with capacity less than 65,000 Btu/h, for which the test procedure notice of proposed rulemaking for single-package vertical air conditioners and heat pumps has proposed new definitions. 87 FR 2490, 2518 (January 14, 2022).

DOE emphasizes that the exclusion from the central air conditioner definition for a given model depends on whether it meets the definition for one of the excluded categories. For example, a model must meet the packaged terminal air conditioner definition in 10 CFR 431.92 to be considered to be a packaged terminal air conditioner. If such a model had both characteristics listed in the central air conditioner definition *and* similarities to packaged terminal air conditioners, but was not ''intended for mounting through the wall,'' it would be missing a key characteristic of the packaged terminal air conditioner definition. Unless it met the definition for one of the other categories proposed to be excluded, it would be considered a central air conditioner and covered under the applicable standards and test procedures in part 430 irrespective of whether it gets installed in a consumer or commercial building.

DOE did not receive any comments in response to its proposed clarification of the definition of central air conditioners and heat pumps at 10 CFR 430.2 to exclude other similar product categories for consideration of coverage. Therefore, DOE is finalizing its proposals from the NOPR without amendment in this final rule.

10. Additional Test Procedure Revisions

On May 8, 2019, AHRI submitted a comment responding to the notice of proposed rulemaking to revise and adopt procedures, interpretations, and policies for consideration of new or revised energy conservation standards (2020 Process Rule NOPR, 84 FR 3910, Feb. 13, 2019). The comment included as Exhibit 2 a ''List of Errors Found in appendix M and appendix M1'' (''AHRI Exhibit 2''). (EERE–2017–BT–STD–0062–0117 at pp. 23–24) Many of the errors pointed out by AHRI regard typographical errors in appendices M and M1. DOE published a correcting amendment to appendices M and M1 on December 2, 2021 (''December 2021 Correcting Amendment''). 86 FR 68389. The December 2021 Correcting Amendment addressed some of the ''Errors'' identified in AHRI Exhibit 2, but not all of them. In the March 2022 CAC TP NOPR, DOE proposed to address additional ''Errors'' identified in AHRI Exhibit 2, discussed in the following sections to improve accuracy and representativeness of the test procedures. 87 FR 16830, 16845.

a. Revisions Specific to Appendix M

AHRI's comment identified three areas of appendix M where they requested changes. (AHRI Exhibit 2, EERE–2017–BT–STD–0062–0117 at pp. 23–24) These are detailed in Table III–4. Additionally, DOE identified one transcription error in the December 2021 Correcting Amendment related to changes made in section 3.6.4 of appendix M. DOE is making corresponding revisions in this final rule to correct that transcription error.

TABLE III–4—AHRI-IDENTIFIED ERRORS TO APPENDIX M

Section	Original appendix M language	AHRI comment summary	Proposed change in the March 2022 CAC TP NOPR
1.2	Nominal cooling capacity is approximate to the air conditioner cooling capacity tested at A or A_2 condition. Nominal heating capacity is approximate to the heat pump heating capacity tested in H12 test (or the optional $H1_N$ test).	The $H1_N$ test is required in section 3.6.4, and section 3.6.4 designates the $H1_N$ test—not the $H1_2$ test.	Remove the "Optional $H1_N$ test" and replace the "$H1_2$" with "$H1_N$"
4.1.4.2	$A = EER^{k=1}(T_2) - B * T_2 - C * T_2^2$	The $EER^{k=1}(T_j)$ should be $EER^{k=2}(T_j)$ because the coefficient "A" only utilizes the maximum speed temperature, T_2.	Revise the formula to implement this change to $EER^{k=2}(T_j)$.
4.2.c	For a variable-speed heat pump, $\dot{Q}_h^k(47) = \dot{Q}_h^{k=N}(47)$, the space heating capacity determined from the $H1_N$ test.	2017 and later versions of appendix M use $H^{k=2}_{calc}$ for all conditions, as explained in 3.6.4. This should not be an exception for the rest of the calculations.	Accurately implement the change intended by the December 2021 Correcting Amendment.

The following sections discuss changes to the language of appendix M that DOE believes will improve clarity regarding how tests and calculations are to be conducted to determine capacity levels and efficiency metrics to address the topics identified in AHRI's comment.

i. Definition of Nominal Capacity

AHRI commented that the description of nominal heating capacity within the definition for ''nominal capacity'' in

section 1.2 of appendix M incorrectly references the $H1_N$ test as ''optional.'' AHRI claimed that, on the contrary, the $H1_N$ test is required for heat pumps. (AHRI Exhibit 2, EERE–2017–BT–STD–0062–0117 at pp. 23–24) DOE agrees with the AHRI comment, since section 3.6.4, ''Tests for a Heat Pump Having a Variable-Speed Compressor,'' requires the $H1_N$ test. Therefore, DOE proposed in the March 2022 CAC TP NOPR to revise the definition of ''nominal capacity'' to remove the references to the $H1_2$ test in its entirety to avoid confusion. 87 FR 16830, 16845.

In response to the NOPR proposal, the CA IOUs commented that by making this reference to the $H1_N$ test, DOE is making the definition inapplicable to systems with single-speed and two-capacity compressors. (CA IOUs, No. 20 at pp.1–2) The CA IOUs proposed the following definition, so that it may be applicable to single-stage and two-stage heat pumps (additions in *italics,* deletions in [brackets]):

Nominal capacity means ''the capacity that is claimed by the manufacturer on the product name plate. Nominal cooling capacity is approximate to the air conditioner cooling capacity tested at A or A_2 condition. Nominal heating capacity is approximate to the heat pump heating capacity tested in the *H1 or* $H1_2$ test *for units that have a single-speed compressor, the* $H1_2$ *test for units that have a two-capacity compressor or are a triple-capacity northern heat pump,*[43] *or* [(or the optional $H1_N$ test).] *the* $H1_N$ *test for units that have a variable-speed compressor.*'' *Id.*

DOE notes that the term nominal heating capacity is only used to specify the heating capacity for the $H1_N$ test for variable-speed systems. Additionally, the term nominal capacity is not required for certification of CAC/HPs. Hence, DOE is not revising the definition as suggested by the CA IOUs and DOE is instead finalizing the definition as proposed in the March 2022 CAC TP NOPR.

ii. Revising Energy Efficiency Ratio Equation at Intermediate Compressor Speed

In section 4.1.4.2 of appendix M, there are a series of equations used to calculate $EER^{k=i}(T_j)$, the steady-state energy efficiency ratio of the test unit when operating at an intermediate compressor speed (k=i) for outdoor temperature T_j. This value is calculated using a quadratic equation: $EER^{k=i}(T_j) = A + B*T_j + C*T_j^2$. These coefficients (A, B and C) are calculated by their own respective formulae.

AHRI commented that the formula for the ''A'' coefficient has an error. Specifically, $EER^{k=1}(T_2)$ in the equation should be $EER^{k=2}(T_2)$ because the coefficient ''A'' only utilizes maximum-speed temperature T_2. (AHRI Exhibit 2, EERE–2017–BT–STD–0062–0117 at pp. 23–24) In the March 2022 CAC TP NOPR, DOE proposed to revise this calculation such that it uses the intended ''k=2''. 87 FR 16830, 16845. The use of ''k=2'' is supported both by its appearance in ASHRAE 116–2010, ''Methods for Testing for Rating Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps'' (*see* page 25), and also in the DOE test procedure final rule that first established test methods for variable-speed systems. 49 FR 8304, 8316 (March 14, 1987).

DOE did not receive any comments in response to this proposed correction and is therefore finalizing its proposed approach in this final rule.

iii. Clarification of Compressor Speed Limits in Heating Tests for Heat Pumps Having a Variable-Speed Compressor

In the December 2021 Correcting Amendment, DOE discussed corrections to the compressor speed limitations for the $H1_N$ heating mode test for both appendices M and M1. 86 FR 68389, 68390. However, when setting out the correcting language in the amendatory instruction for appendix M, the instructions erroneously directed to revise the fifth sentence of paragraph a. to section 3.6.4, when the instructions were intended to revise the seventh sentence of the same paragraph. As currently printed, the text in paragraph a. of section 3.6.4 to appendix M includes two sentences starting with ''for a cooling/heating heat pump . . .'' that give conflicting instructions. Accordingly, DOE proposed in the March 2022 CAC TP NOPR to revise this paragraph to reflect the intent of the December 2021 Correcting Amendment and, by extension, the January 2017 CAC TP Final Rule. 87 FR 16830, 16845. DOE did not receive any comments and is therefore finalizing as proposed.

b. Revisions Specific to Appendix M1

AHRI's comment identified one area of appendix M1 where they requested a change. (''AHRI Exhibit 2,'' EERE–2017–BT–STD–0062–0117 at p. 23) This requested change is detailed in Table III–5.

TABLE III–5—AHRI-IDENTIFIED ERRORS TO APPENDIX M1

Section	Original appendix M1 language	AHRI comment summary	Proposed change in the March 2022 CAC TP NOPR
4.2	Q_h(47 °F): the heating capacity at 47 °F determined from the H2 $H1_2$or $H1_N$ test, Btu/h.	For variable speed heat pumps, the language should be clarified to $H^{k=2}{}_{calc}$.	Revise the language to be clearer about what capacity to use for different types of heating-only heat pumps.

The following sections discuss amendments to the language of appendix M1 that DOE believes will improve clarity regarding how tests and calculations are to be conducted to determine capacity levels and efficiency metrics to address the topic identified in AHRI's comment, additional topics in comments from interested parties, and other areas for improvement identified by DOE.

i. Detailed Descriptions of Capacity for Different Subcategories

AHRI commented that in Section 4.2 of appendix M1, which describes the calculation for HSPF2 for different subcategories of heat pumps, there is a lack of clarity in the term for heating capacity measured at 47 °F, ''Q_h(47 °F),'' in Equation 2–2, the building load, ''BL(T_j),'' equation. (''AHRI Exhibit 2,'' EERE–2017–BT–STD–0062–0117 at p. 23) Currently, the description of Q_h(47 °F) says that it is ''determined from the H, $H1_2$ or $H1_N$ test.'' Additionally, the first ''H'' is missing an additional character to specify the appropriate test point. DOE agrees with

[43] Appendix M1, section 1.2, defines ''triple-capacity, northern heat pump'' as a heat pump that provides two stages of cooling and three stages of heating. The two common stages for both the cooling and heating modes are the low-capacity stage and the high-capacity stage. The additional heating mode stage is the booster capacity stage, which offers the highest heating capacity output for a given set of ambient operating conditions.

AHRI's assessment of this description, and DOE proposed in the March 2022 CAC TP NOPR to revise this description to include specific instructions for which test point is appropriate for different heat pump subcategories. DOE proposed to specify that the H1 test is for a heat pump with a single-speed compressor, the $H1_2$ test is for a heat pump with a two-speed compressor, and the $H1_N$ test is for a heat pump with a variable-speed compressor. 87 FR 16830, 16846.

DOE did not receive any comments in response to its proposed clarifications and is thus finalizing as proposed in this rule. DOE notes that AHRI Exhibit 2 used a ''$H^{k=2}{}_{calc}$'' term that does not exist in the referenced section of appendix M1. While DOE is revising this section to add clarity in light of AHRI's general comment, DOE will not be proposing to make the exact edit proposed by AHRI.

ii. Heating Building Load Line for Regions Other Than IV

Trane commented that the denominator in equation 4.2–2, the building heating load, ''$BL(T_j)$,'' equation, the expression ''$T_{zl} - 5$ °F'' should be replaced with ''$T_{zl} - T_{OD}$''. (Trane, No. 10 at p. 2) Trane asserted that they made this recommendation based on previous DOE rulemakings, including the August 2016 SNOPR for the 2017 appendix M1 rule (81 FR 58164 and 82 FR 1426, respectively). They stated that when the building load is calculated for regions other than Region IV, then using 5 °F instead of the specific region's T_{OD} would result in incorrect calculation of HSPF2. *Id.*

In the January 2017 CAC TP Final Rule, DOE stated that the appearance of T_{OD} instead of 5 °F in the denominator of equation 4.2–2 was a mistake, that first appeared in the November 2015 SNOPR.[44] 82 FR 1426, 1454. Therefore, DOE will not be making the change to equation 4.2–2 as suggested by Trane, and the denominator shall remain as ''$T_{zl} - 5$ °F''.

iv. Low-Static Ducted Blower-Coil Test Procedures

In response to the March 2022 CAC TP NOPR, AHRI and Samsung commented that currently, appendix M1 does not allow testing of Low Static Single Zone units, and requested that the definition of a low-static blower-coil system be expanded to include some products that cannot accommodate the 0.5 inches w.c. necessary for testing. (AHRI, No. 25 at p. 7, Samsung, No. 22 at pp. 2–3) They suggested the following revised version of the current definition in section 1.2 of 10 CFR part 430, appendix M1 (commenters' additions in *italics*):

Low static blower-coil system means, (a) A ducted multi split or multi head mini split system for which the indoor unit produce greater than 0.01 inches w.c. and a maximum of 0.35 inches w.c. external static pressure when operated at the cooling full load air volume rate not exceeding 400 cfm per rated ton of cooling, *or (b) A ducted single zone mini split for which the indoor unit produces a maximum of 0.25 inches w.c. external static pressure not exceeding 350 cfm/ton when operated at the highest possible air flow rate and has a rated heating or cooling capacity less than 24,500 Btu/h. Id.*

Samsung specifically pointed out that many of their Low Static Ducted Variable-Speed Mini-Split Heat Pumps (''Low Static VSMSHP'') were previously covered by appendix M (Table 4 of Section 3.1.4.1), but cannot be tested according to appendix M1, because these products have a maximum operating ESP of 0.24 inches w.c. and cannot operate at the 0.5 inches w.c. set as the minimum ESP in appendix M1. (Samsung, No.22 at pp.2–3) They further asserted that their Low Static VSMSHPs[45] were designed to be installed in tight locations, that they can be installed with or without ducts, and that there are other manufacturers that Samsung is aware of that currently manufacture and sell similar products. (Samsung, No.22 at p.3)

DOE has received no petitions for waiver of the CAC test procedure from any manufacturers requesting relief from the ESP conditions set in appendix M1. Additionally, in the November 2015 SNOPR, DOE did propose to establish a ''short-ducted'' product class with lower ESP testing requirements (80 FR 74020, 69355) but stakeholders ultimately rejected this proposal, as reflected by the 2016 CAC Term Sheet recommending ESP levels for various types of CAC systems. Notably, ''short-duct'' configurations were not included in that list, so short-duct systems would be considered ''conventional'' single-split ducted systems. Also, recommendation #2 of the 2016 CAC Term Sheet states that the minimum required ESP for CAC/HP blower coil systems other than mobile home systems, ceiling-mount and wall-mount systems, low and mid-static multi-split systems, space-constrained systems, and small-duct, high-velocity systems should be 0.50 inches w.c. for all capacities. (*See* 2016 CAC Term Sheet: Docket No. EERE–2014–BT–STD–0048, No. 76) During the August 2016 SNOPR public meeting and in written comments, many stakeholders expressed support for the new minimum external static requirements that DOE proposed. JCI, Goodman, Unico, AHRI, NEEA, Carrier/UTC, Lennox, Ingersoll Rand, and Nortek expressed support for DOE's proposal to require conventional systems to be tested at a minimum external static pressure of 0.5 inches w.c. consistent with Recommendation #2 of the 2016 CAC Term Sheet. (JCI, No. 24 at p. 15; Goodman, No. 39 at p. 13; Unico, No. 30 at p. 6; AHRI, No. 27 at p. 16; NEEA, No. 35 at p. 3; Carrier/UTC, No. 36 at p. 9; Lennox, No. 25 at p. 10; Ingersoll Rand, No. 38 at p. 5; Nortek, No. 22 at p. 11)

Based on the evidence presented in the previous paragraph, DOE believes that revising the definition of low-static blower coil systems, as suggested by AHRI and Samsung, would conflict with the intent of stakeholders' comments when establishing appendix M1, and could potentially create an unfair competitive advantage for such systems by allowing more lenient testing conditions (and thus comparatively higher ratings) as compared to conventional centrally-ducted systems tested at minimum ESPs exceeding 0.50 inches w.c. Therefore, DOE is not revising the definition for low-static blower coil systems in this final rule, nor is it including any new test provisions to accommodate these system types. DOE notes that there is no restriction in the definition for non-ducted indoor units that would preclude these systems from being tested and certified as non-ducted systems, comparable to 1-to-1 mini-splits. See section 1.2 of appendix M1. DOE also notes that its regulations at 10 CFR 430.27 provide that any interested person may seek a waiver from the test procedure requirements if certain conditions are met. A waiver allows manufacturers to use an alternate test procedure upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures or cause the prescribed test

[44] Bruce Harley Energy Consulting (BHEC) provided some field monitoring data and analysis of heating loads conducted at the request of PG&E, for seven homes covering regions I/II, IV and V. The initial comparison of regional heating load lines with the load lines determined for the seven monitored locations led to the conclusion that equation 4.2.2 in the August 2016 SNOPR incorrectly included the term T_{OD}. (BHEC, No. 28 at pp. 3–6)

[45] Samsung provided information about their Low Static VSMSHP, which is available online at: *https://www.samsunghvac.com/light-commercial/slim-duct.*

procedures to evaluate the basic model in a manner so unrepresentative of its true energy and/or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1).

c. Revisions to Both Appendices M and M1

AHRI Exhibit 2 claimed that there are two sections in both appendices M and M1 that contain similar errors. 87 FR 16830, 16846–16847. These errors are detailed below in Table III–6. DOE is finalizing these revisions as proposed by AHRI and indicated in the table.

Table III-6: AHRI-Identified Errors in Both Appendices M and M1

Section	**Original Appendices M and M1 Language**	**AHRI Comment Summary**	**Proposed Change in the March 2022 CAC TP NOPR**
4.2.3.3	$PLF_j = 1 - C_D^{h(k=2)} * [1 - X^{k=1}(T_j)$	The trailing square bracket "]" is missing and "$X^{k=1}(T_j)$" should be "$X^{k=2}(T_j)$"	Add the square bracket and revise the equation in appendix M.[1]
4.2.3.4	$\frac{RH(T_j)}{N} = (BL(T_j) * \frac{[\dot{Q}_h^{k=2}(T_j) * \delta'(T_j)]}{3.413 \frac{Btu}{Wh}} * \frac{n_j}{N}$	The multiplication operator between $BL(T_j)$ and the square bracket should be subtraction	Revise the equation to have the subtraction

[1]The equation is correct in section 4.2.3.3 of appendix M1.

The following sections discuss changes to the language of both appendices M and M1 that DOE believes will improve clarity regarding how tests and calculations are to be conducted to determine capacity levels and efficiency metrics.

i. Revising Part Load Factor Equation for Heat Pumps in Section 4.2.3.3

AHRI's comment claims that the part load factor (PLF) equation in section 4.2.3.3 of both appendices M and M1 contain two errors. (''AHRI Exhibit 2,'' EERE–2017–BT–STD–0062–0117 at p. 23) The first error is that the equation is missing a closing square bracket, and the second is that the heating mode low-capacity load factor, ''$X^{k=1}(T_j)$,'' is incorrectly referenced instead of the high-capacity load factor, ''$X^{k=2}(T_j)$.'' *Id.* DOE notes that this equation is actually correct in appendix M1. The high-capacity load factor is appropriate in this equation because section 4.2.3.3 applies to heat pumps that only operate at high (k=2) compressor capacity. Therefore, the high-capacity load factor should be used in this case for the part load factor. In the March 2022 CAC TP NOPR, DOE proposed to revise this formula in appendix M to include the closing square bracket and to use the high-capacity load factor. 87 FR 16830, 16846. DOE did not receive any comments in response to its proposal and is therefore finalizing as proposed in this rule.

ii. Revising the Ratio of Electrical Energy Used for Resistive Space Heating Equation in Section 4.2.3.4

AHRI has identified an error in the equation for electrical energy consumed by the heat pump for electric resistance auxiliary heating for bin temperature, T_j divided by the total number of hours in the heating season, ''$RH(T_j)/N$,'' used in section 4.2.3.4 of both appendices M and M1. AHRI indicated that the equation used in section 4.2.3.4 includes a multiplication operator where it should have subtraction. 87 FR 16830, 16846–16847. The subtraction operator is consistent with all other instances of $RH(T_j)/N$ in both appendices M and M1. DOE agrees that the equation for $RH(T_j)/N$ in section 4.2.3.4 of both appendices M and M1 is incorrect, and therefore DOE is revising this equation to include the subtraction operator rather than a multiplication operator.

E. Other Revisions Regarding Representations

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For CAC/HPs, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.16. As discussed in the previous paragraphs, DOE is not making any amendments related to certification requirements in this rulemaking and any such changes may be addressed in a future rulemaking.

1. Required Represented Values for Models Certified Compliant With Regional Standards

DOE's standards for CAC at 10 CFR 430.32(c) include both amended national standards with which compliance is required for models manufactured on or after January 1, 2023, and amended regional standards with which compliance is required for units installed on or after January 1, 2023. See 10 CFR 430.32(c)(5) and (6). In addition, as discussed in section III.B.3, DOE's regulations at 10 CFR 429.16 describe certification requirements for central air conditioners

and central air conditioning heat pumps, and paragraph (a)(1) of the section requires single-split CACs with single-stage or two-stage compressors, at a minimum, to rate each outdoor model as part of a coil-only combination representative of the least efficient combination distributed in commerce with that particular outdoor unit.

On December 16, 2021, DOE issued final guidance regarding whether a model of outdoor unit for a single-split-system AC with single-stage or two-stage compressor whose coil-only rating under M1 does not meet regional standards, but where certain blower-coil combinations that include the outdoor model do meet regional standards, can be installed in the SE or SW region (referred to in this final rule as the ''CAC Regional Guidance'').[46] DOE's guidance states that ''In order to be installed in the SE or SW region, the outdoor unit must have at least one coil-only combination that is compliant with the regional standard applicable at the time of installation.''

As background, DOE finalized provisions related to this issue in the June 2016 CAC TP Final Rule (81 FR 36992, 37001) with subsequent minor revisions via the January 2017 CAC TP Final Rule (82 FR 1426); a July 2016 final rule regarding enforcement (81 FR 45387, July 14, 2016) (''July 2016 Enforcement Final Rule''); and the January 2017 CAC ECS Direct Final Rule (82 FR 1786, January 6, 2017). These provisions were based on consensus recommendations by two ASRAC Working Groups—a Regional Standards Enforcement Working Group (''Enforcement WG'') that concluded on October 24, 2014 (*see* final report: Docket No. EERE–2011–BT–CE–0077, No. 70), and a Central Air Conditioner and Heat Pump Energy Conservation Standards Working Group (''ECS WG'') that concluded on January 19, 2016 (*see* 2016 CAC Term Sheet: Docket No. EERE–2014–BT–STD–0048, No. 76).

The July 2016 Enforcement Final Rule adopted several provisions of relevance here, with a focus on enforcement of the existing energy conservation standards:

• *10 CFR 429.102(c)(4)* contains provisions regarding what a ''product installed in violation'' includes, specifying, among other things: (1) A complete central air conditioning system that is not certified as a complete system that meets the applicable standard; (2) combinations that were previously validly certified may be installed after the manufacturer has discontinued the combination, provided the combination meets the currently applicable standard; and (3) an outdoor unit that is part of a certified combination rated less than the standard applicable in the region in which it is installed. 81 FR 45387, 45393–45394.

• *10 CFR 429.158(a)* specifies that if DOE determines a model of outdoor unit fails to meet the applicable regional standard(s) when tested in a combination certified by the same manufacturer, then the outdoor unit basic model will be deemed noncompliant with the regional standard(s). 81 FR 45387, 45397.

• *10 CFR 430.32(c)(3) and (4)* provides that any outdoor unit model that has a certified combination with a rating below 14 SEER cannot be installed in either the southern or southwest region. 81 FR 45387, 45391.

The June 2016 CAC TP Final Rule adopted several certification provisions of relevance here, with a focus on the amended energy conservation standards recommended by the ECS WG. In particular, the June 2016 CAC TP Final Rule noted that the ECS WG recommended energy conservation standards for central air conditioners based on coil-only ratings. 81 FR 36992, 37002 (June 8, 2016). The recommended standard levels for split system air conditioners may very well have been higher if they had been based on blower-coil ratings. For example, the recommended standard levels for split system heat pumps, which are based on blower-coil ratings, are approximately one point higher than those for split system air conditioners.

In addition, the ECS WG recommended that DOE implement the requirement that every single-split air conditioner combination distributed in commerce must be rated, and that every single-stage and two-stage condensing (outdoor) unit distributed in commerce (other than a condensing unit for a 1-to-1 mini split) must have at least 1 coil-only rating that is representative of the least efficient coil distributed in commerce with a particular condensing unit. Every condensing unit distributed in commerce must have at least 1 tested combination, and for single-stage and two-stage condensing units (other than condensing units for a 1-to-1 mini split) this must be a coil-only combination. (Docket No. EERE–2014–BT–STD–0048, No. 76, Recommendation #7) In the June 2016 CAC TP Final Rule, DOE adopted these recommendations along with regional limitations for represented values of individual combinations:

• *10 CFR 429.16(a)(1)* contains provisions for required represented values, stating that for single-split system AC with single-stage or two-stage compressor, every individual combination distributed in commerce must be rated as a coil-only combination. For each model of outdoor unit, this must include at least one coil-only value that is representative of the least efficient combination distributed in commerce with that particular model of outdoor unit. Additional blower-coil representations are allowed for any applicable individual combinations, if distributed in commerce. 81 FR 36992, 37002.

• *10 CFR 429.16(b)(2)(i)* specifies that for each basic model of single-split system AC with single-stage or two-stage compressor, the model of outdoor unit must be tested with a model of coil-only indoor unit. 81 FR 36992, 37002.

• *10 CFR 429.16(a)(4)(i)* [as modified in the January 2017 CAC TP Final Rule] states that a basic model may only be certified as compliant with a regional standard if all individual combinations within that basic model meet the regional standard for which it is certified, and that a model of outdoor unit that is certified below a regional standard can only be rated and certified as compliant with a regional standard if the model of outdoor unit has a unique model number and has been certified as a different basic model for distribution in each region. 81 FR 36992, 37012 [as 10 CFR 429.16(a)(3)(i)]; 82 FR 1426.

DOE notes that the July 2016 Enforcement Final Rule stated that the adopted provisions in 10 CFR 430.32(c)(3) and (4) were meant to be complementary to the regional limitations adopted in the June 2016 CAC TP Final Rule at 10 CFR 429.16(a)(3)(i) [now 10 CFR 429.16(a)(4)(i)]. 81 FR 45387, 45391. In the January 2017 CAC ECS Direct Final Rule, DOE adopted additional language in 10 CFR 430.32 relevant to the amended standards:

• *10 CFR 430.32(c)(6)(ii)* provides that any outdoor unit model that has a certified combination with a rating below the applicable standard level(s) for a region cannot be installed in that region. The least-efficient combination of each basic model must comply with this standard. 82 FR 1786, 1857.

Finally, DOE notes that the general enforcement provisions in subpart C to part 429 also apply to CAC standards (both national and regional), including:

• *10 CFR 429.102(a)(1)*, specifying that the failure of a manufacturer to properly certify covered products in accordance with 10 CFR 429.12 and 429.14 through 429.62 is a prohibited act subject to enforcement action.

[46] The CAC Regional Guidance is available online at *https://www.energy.gov/sites/default/files/2021-12/cac-regional-guidance.pdf.*

Taken together, the regional standards, certification, and enforcement provisions require that, in order to comply with a regional standard, the least efficient combination of each basic model must comply. 10 CFR 430.32(c)(6)(ii). Further, each basic model of single-split system AC with single-stage or two-stage compressor must include a represented value for a coil-only combination representative of the least efficient combination distributed in commerce with the model of outdoor unit, and each model of outdoor unit must be tested with a model of coil-only indoor unit. (10 CFR 429.16(a)(1) and (b)(2)(i)) While manufacturers can create a regional-specific basic model under 10 CFR 429.16(a)(4)(i), such a basic model must still be certified properly according to the other provisions in that section. As such, in order to comply with a regional standard, a regional-specific basic model of single-split system AC with single-stage or two-stage compressor must include at least one coil-only combination that complies with the regional standard. Failure to certify a regional-specific basic model according to the provisions in 10 CFR 429.16(a)(1) and (b)(2)(i) is a prohibited act under 10 CFR 429.102(a)(1).

Similarly, 10 CFR 429.102(c)(4)(i) states that combinations that were previously validly certified may be installed after the manufacturer has discontinued the combination, provided the combination meets the currently applicable standard. The provision at 10 CFR 429.102(c)(4)(i) was designed to allow sell-through of inventory that manufacturers had discontinued for reasons other than non-compliance with a regional standard. 81 FR 45387, 45393. It was not intended, nor in the light of all other provisions can it be read, as allowing installation of models of outdoor unit that do not comply with the applicable regional standard at the time of installation (*i.e.,* have no combinations of coil-only units that comply with the amended regional standards, which, as stated previously, were developed based on coil-only ratings). Based on this background, the CAC regional guidance states in part:

In general, a basic model may be certified as compliant with a regional standard (and, as of January 1, 2023, meets the applicable amended regional standard) only if all individual combinations within that basic model meet the regional standard for which it is certified. All individual model combinations within a basic model must include, for single-split-system AC with single-stage or two-stage compressor (including space-constrained and small-duct, high velocity (SDHV) systems), a coil-only combination representative of the least-efficient combination in which the specific outdoor unit is distributed in commerce. *See* 10 CFR 429.16(a)(1) and (a)(4)(i); 430.32(c)(6).

A manufacturer may sell an outdoor unit of identical design in the SE and SW regions, if the manufacturer separates the basic model (*i.e.*, outdoor unit model) into different basic models with unique model numbers for distribution in each region, provided that the basic models for the SE and SW regions: (1) do not include any individual combinations that are not compliant with the regional standard applicable at the time of installation; and (2) include at least one coil-only combination that is representative of the least-efficient combination in which the specific outdoor unit is distributed in commerce. *Id.*

DOE notes that the install-through provisions in 10 CFR 429.102(c)(4)(i) allows existing stock of discontinued basic model combinations to be installed in the SE or SW regions as long as they were previously validly certified as compliant to the regional standards applicable at the time of installation. DOE further notes that the term ''previously validly certified'' means that all combinations within the basic model must show compliance with the regional standard applicable at the time of installation, including, for single-split-system AC with single-stage or two-stage compressor (including space-constrained and SDHV systems), a coil-only combination representative of the least-efficient combination in which the specific outdoor unit is distributed in commerce, in order for the install-through provisions to apply.

In the March 2022 CAC TP NOPR, DOE proposed to add direction to the regulatory text in 10 CFR 429.16(a)(1) and (a)(4)(i), 429.102(c)(4)(i) and (iii), and 430.32(c)(6)(ii) to more explicitly cross-reference the existing regulatory text to clarify the interplay of the existing requirements and reinforce the guidance. 87 FR 16830, 16848.

In addition, DOE notes that the table in 10 CFR 429.16(a)(1) states that the required coil-only value must be ''representative of the least efficient combination *distributed in commerce with that particular model of outdoor unit*'' (emphasis added). Sections 429.140 through 429.158 provide enforcement procedures specific to regional standards, 10 CFR 429.142 includes records retention of information regarding sales of outdoor units, indoor units, and single-package units, and 10 CFR 429.144 specifies requirements for records requests. When determining if a model of indoor unit is distributed in commerce with a particular model of outdoor unit, DOE may review catalogs, product literature, installation instructions, and advertisements, and may also request sales records.

Finally, 10 CFR 429.158 discusses products determined noncompliant with regional standards. Paragraphs (a) and (b) cross-reference 10 CFR 429.102(c), stating that the certifying manufacturer is liable for distribution of noncompliant units in commerce. DOE notes that 10 CFR 429.102(c) refers to distributors, contractors, and dealers, while 10 CFR 429.102(a)(10) states that it is prohibited ''for any manufacturer or private labeler to knowingly sell a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.'' Therefore, DOE proposed in the March 2022 CAC TP NOPR that 10 CFR 429.158(a) and (b) cross-reference 10 CFR 429.102(a)(10) rather than 10 CFR 429.102(c).[47] 87 FR 16830, 16848.

In response, the Joint Advocates and Lennox declared that they supported DOE's proposed regulatory text in 10 CFR part 429 that clarified the requirements regarding required represented values for models certified compliant with regional standards. (Joint Advocates, No. 18 at p. 3, Lennox, No. 19 at p. 5) DOE is therefore finalizing its proposals from the March 2022 CAC TP NOPR to amend §§ 429.16, 429.102, 429.158, and 430.32 to clarify the interaction of the existing requirements and reinforce the guidance.

Additionally, Rheem commented that DOE should provide additional clarity on the efficiency cross references between appendices M and M1 for products installed on or after January 1, 2023. (Rheem, No. 21 at p. 4) Because Rheem did not identify any specific issues regarding the clarity of DOE's proposed provisions, DOE cannot further clarify them at this time.

F. Test Procedure Costs and Impact

As discussed, DOE's existing test procedures for CAC/HPs appear at appendices M and M1 (both titled ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps''). In this final rule, DOE is amending the existing test procedure for CACs and HPs to

[47] In the March 2022 CAC TP NOPR, DOE had mistakenly modified 10 CFR 429.102(c) to 10 CFR 429.102(b) in the regulatory text. Daikin has pointed this out (Daikin, No. 24 at p. 2), and the corrections have been made in the regulatory text for the final rule.

provide additional detail and instruction to ensure the representativeness of the test procedure and to reduce potential burden. DOE is making amendments in appendix M that do not impact testing procedures and solely provide additional clarity. DOE is also making limited amendments to appendix M1, which is the required test procedure beginning January 1, 2023. For each amendment described in this final rule, DOE considered the potential for changes to test procedure costs.

Regarding the test procedure for variable speed coil-only central air conditioners and heat pumps (described in III.C.2), DOE's amendments provide new instructions for testing VSCO systems which are not currently prescribed in the DOE test procedure, despite the fact that these products are currently subject to energy conservation standards. Because the current test provisions are insufficient for testing VSCO, the relative cost of the amended provisions cannot be compared. Regarding the amendments to introduce a low-stage default coil-only fan power coefficient (described in III.C.1) and to revise the equations for full-capacity operation of variable-speed heat pumps at and above 45 °F (described in III.D.5), DOE finds that these amendments would only impact calculation methods and would have no impact on test costs.

There are several other test procedure amendments which DOE similarly does not believe will cause manufacturers to incur any additional test procedure costs. Specifically, the amendments described in section III.D.1 revise text regarding variation of fan speed with ambient temperature; the amendments described in section III.D.4 explicitly indicate that the airflow measurement apparatus fan should be adjusted to maintain constant airflow for certain models, and the amendments described in section III.D.3 clarify that the instructions on a label affixed to the unit take precedence over the instructions shipped with the unit. DOE finds that these revisions each provide additional instruction to improve consistency of testing but do not increase either the number of tests or the duration of tests. The amendment to the wet bulb temperature maximum for the 5 °F ambient temperature condition, discussed in section III.D.2, adjusts the required test condition from 3 °F to 4 °F. DOE proposed this change in part based on feedback from manufacturers that the proposed change to 4 °F wet bulb temperature maximum would be easier to achieve than 3 °F and would require less time spent trying to achieve conditions. As such, DOE does not anticipate that this provision would increase the burden of conducting testing under appendix M1.

Finally, the amendments in 10 CFR part 429 neither modify the test procedure nor increase the number of units that would be required to be tested. Thus, DOE does not anticipate these additional procedures will cause any increased test procedure costs.

DOE has, therefore, determined that the test procedures as amended by this final rule would improve the representativeness, accuracy, and reproducibility of the test results, and would not be unduly burdensome for manufacturers to conduct or result in increased testing cost as compared to the current test procedure.

G. Compliance Date and Waivers

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that, beginning 180 days after publication of the final rule in the **Federal Register**, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. *Id.* To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

Upon the compliance date of test procedure provisions in this final rule any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 430.27(h)(3). Recipients of any such waivers are required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments adopted in this document pertain to issues addressed by waivers granted to GD Midea Heating and Ventilating Equipment Co. (83 FR 56065, Case No. 2017–013) and TCL AC (84 FR 11941, Case No. 2018–009); and interim waivers granted to National Comfort Products (83 FR 24754, Case No. 2017–008), Aerosys (83 FR 24762, Case No. 2017–008), LG Electronics (85 FR 40272, Case No. 2019–008), and Goodman (86 FR 40534, Case No. 2021–001). To the extent such waivers and interim waivers permit the petitioner to test according to an alternate test procedure to appendix M, such waivers and interim waivers will terminate on the date testing is required according to appendix M1 (*i.e.,* January 1, 2023), independent of this rulemaking. To the extent such waivers and interim waivers permit the petitioner to test according to an alternate test procedure to appendix M1 at such time as testing is required according to appendix M1, such waivers and interim waivers will terminate on January 1, 2023. DOE notes that the waiver issued to Johnson Controls (83 FR 12735, Case No. CAC–051; 84 FR 52489, Case No. CAC–050) will terminate on January 1, 2023, the date beginning which testing according to appendix M1 is required, independent of this final rule.

H. Requests for Standards Relief

DOE understands that changes to testing requirements may create additional burdens for ensuring compliance with the amended energy conservations that take effect on January 1, 2023, and those effects may not be realized equally across different types and sizes of manufacturers. In response to the March 2022 CAC TP NOPR, DOE received a comment from at interested party (LBA, No. 3) requesting relief from standards, which is discussed.

As previously introduced, LBA also commented on the March 2022 CAC TP NOPR requesting relief from energy conservations standards. Specifically, LBA requested DOE to delay the installation deadline for products that will be compliant with the new Regional Standards, citing the issues in unprecedented delays of products due to the current state of the global supply chain. (LBA, No.3 at p.1) LBA requested DOE to delay the installation of new CAC/HPs compliant with appendix M1 in the Southeast and Southwest Regions to July 1, 2023. *Id.* LBA stated that for constructions of new homes, the air handler unit, furnace and fans (*i.e.,* the indoor components) are installed during the ''rough-in'' phase, while the outdoor condensing unit is installed several months later during ''closing''. *Id.* Hence, LBA believes that a delay in the deadlines of enforcement of Regional Standards would allow pairing of equipment compliant with the SEER1 rating (appendix M) with that complaint with SEER2 (appendix M1). *Id.*

In response to the LBA request for relief, while DOE recognizes that manufacturers across various industries are facing unique and unforeseeable circumstances in light of the global effects of the pandemic, and that the scope of those impacts will vary by company, by product, and possibly even by model, DOE is not at this time extending this type of relief from compliance with the 2023 energy conservation standards. In consideration of these requests, DOE takes into account the full range of these circumstances and their impacts, including any factors that may be unique to particular products or equipment, including the lead time in advance of the relevant compliance date. In this regard, DOE notes that the regional standards applicable to central air conditioners installed on or after January 1, 2023, were adopted in a direct final rule more than five years ago, in January 2017. Moreover, the rule was a product of negotiated rulemaking that included various manufacturers and trade representatives.

Although no manufacturers specifically requested relief from standards, DOE notes that standards compliance is a factor in specific issues raised by certain commenters, specifically the case of NCP's space-constrained products. In its waiver request, NCP requested that if DOE does not incorporate provisions from the previously granted interim test procedure waiver into the amended Federal test procedure in appendix M1, then DOE must allow for NCP to continue testing and certifying its space-constrained CACs in a manner consistent with the granted test procedure waivers until 2025, noting the time needed to modify its condensing units and certify them as compliant with the amended standards, and asserted that because their space-constrained condensing units represent less than 0.1 percent of the overall CAC market, the requested delay in test procedure effective date would not have a significant impact on overall energy efficiency.[48] (NCP, No 16 at pp. 9–10) While the specific request in NCP's comments pertain to the testing and certification requirements, an extension of these provisions would effectively provide NCP with a less burdensome near-term pathway to compliance with the 2023 standards relative to other manufacturers who are subject to the existing provisions. For reasons stated previously in this rule, DOE takes the view that, based on the considerations given in prior energy conservation standards and test procedure rulemakings, NCP and other space-constrained product manufacturers have had sufficient time to adjust their product designs to ensure compliance with the energy conservation standards.

However, in acknowledgement of the potential inequities in compliance burdens as described by NCP and LBA, DOE notes that additional compliance flexibilities for small business manufacturers may be available through other means. For example, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of the final rule establishing the standard. Additionally, section 504 of the Department of Energy Organization Act (42 U.S.C. 7194, as codified), provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

With respect to representations, DOE notes that under 42 U.S.C. 6293(c)(2), effective 180 days after an amended test procedure is prescribed or established, no manufacturer, distributor, retailer, or private labeler of a covered product may make any representation with respect to energy use or efficiency unless such product has been tested in accordance with such amended test procedures and such representation fairly discloses the results of such testing. Additionally, under 42 U.S.C. 6293(c)(3), on the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the aforementioned 180-day period may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary determines that the requirements of paragraph (c)(2) would impose undue hardship on such petitioner.

IV. 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'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies

[48] DOE is interpreting NCP's statement to mean ''overall energy use'', which would be the relevant metric impacted by changes in composition of the CAC market.

that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 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 DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

DOE is establishing a limited number of amendments to the test procedure for central air conditioners and heat pumps (''CAC/HPs'') to address specific issues that have been raised in test procedure waivers regarding appendix M1 to subpart B of 10 CFR part 430. In this final rule, DOE is adopting the following updates to the test procedure for CACs/HPs:

1. Update default fan power coefficients and default fan heat coefficients for coil-only CACs and HPs that can utilize part-load air volume rates.
2. Define ''variable-speed communicating coil-only central air conditioner or heat pump'' and prescribe an appropriate test procedure.
3. Add the control system capability to adjust air volume rate as a function of outdoor air temperature for blower-coil systems with multiple-speed or variable-speed indoor fans.
4. Amend the wet bulb test condition for the 5 °F dry bulb, outdoor ambient test to have a 4 °F maximum wet bulb temperature.
5. Add direction to prioritize the instructions presented in the label attached to the unit over the instructions included in the installation instructions shipped with the unit.
6. Add specific instruction to adjust the exhaust fan speed to achieve a constant cooling full-load air volume rate through the airflow measurement apparatus.
7. Revise the equations representing full-capacity performance of variable-speed heat pumps for the temperature range above 45 °F to be more consistent with field operation.
8. Provide additional direction regarding the regional standard requirements in 10 CFR part 429.

For manufacturers of CACs/HPs, the Small Business Administration (''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 equipment covered by this rule is classified under North American Industry Classification System (''NAICS'') code 333415,[49] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. DOE identified manufacturers using DOE's Compliance Certification Database (''CCD''),[50] the AHRI database,[51] the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[52] the ENERGY STAR Product Finder database,[53] and prior CAC/HP rulemakings. DOE used the publicly available information and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet) [54] to identify 33 original equipment manufacturers (''OEMs'') of the covered equipment. Of the 33 OEMs, DOE identified eight domestic manufacturers of CACs/HPs that meet the SBA definition of a ''small business.''

As discussed in more detail in section III.F of this document, DOE has determined that the amendments to the test procedure would not require retesting or re-rating. For variable-speed coil-only units, DOE notes that the test procedure adopted in this final rule provides new instructions for testing VSCO systems that are not currently prescribed in the DOE test procedure, despite the fact that these products are currently subject to energy conservation standards. Because the current test provisions are insufficient for testing VSCO, the relative cost of the amended provisions cannot be compared. While DOE believes the variable-speed coil-only units will be isolated to a very small fraction of models distributed in commerce (*i.e.,* less than 1 percent based on manufacturer representations in DOE's current Compliance Management Database), a manufacturer will need to ensure their representations are made in accordance with these amendments. DOE notes that none of the variable-speed coil-only basic models certified currently with DOE are manufactured by small manufacturers. Additionally, the test procedure amendments would not result in any change in burden associated with the DOE test procedure for CACs/HP. Therefore, DOE concludes that the test procedure amendments in this final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. 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 of 1995

Manufacturers of central air conditioners and heat pumps must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, 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 central air conditioners and heat pumps. (*See* generally 10 CFR part 429) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for central air conditioners and heat pumps in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting central air conditioners and heat pumps under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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[49] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (last accessed on June 20, 2022).

[50] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms* (last accessed June 20, 2022).

[51] The AHRI Database is available at: *www.ahridirectory.org/* (last accessed June 20, 2022).

[52] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed June 20, 2022).

[53] The ENERGY STAR Product Finder database is available at *energystar.gov/productfinder/* (last accessed June 20, 2022).

[54] *app.dnbhoovers.com.*

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

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for central air conditioners and heat pumps. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on 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 examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), 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. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting 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 small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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 final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under 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 agencies to review most disseminations of information to the public under 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 final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 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 OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for central air conditioners and heat pumps adopted in this final rule do not incorporate any new commercial standards or test procedures that are not already incorporated by reference [55] at 10 CFR 430.3 and therefore DOE has not re-assessed such standards as part of this final rule.

M. Description of Materials Incorporated by Reference.

The following standard was previously approved for incorporation by reference in appendix M1 where it appears, and no change is being made:

ANSI/ASHRAE Standard 37–2009, Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009;

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

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

10 CFR Part 430

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

Signing Authority

This document of the Department of Energy was signed on October 5, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 7, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

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

■ 2. Section 429.16 is amended by:

■ a. Revising table 1 to paragraph (a)(1);

■ b. Revising paragraph (a)(4)(i); and

■ c. Revising the table in paragraph (b)(2)(i).

The revisions read as follows:

§ 429.16 Central air conditioners and central air conditioning heat pumps.

(a) * * *

(1) * * *

[55] The June 2016 CAC TP Final Rule incorporated by reference into appendix M several commercial standards and test procedures. 81 FR 36992, 37056–37057. In the January 2017 CAC TP Final Rule, DOE incorporated by reference in appendix M1 the same set of standards and test procedures. 82 FR 1426, 1467.

TABLE 1 TO PARAGRAPH (a)(1)

Category	Equipment subcategory	Required represented values
Single-Package Unit	Single-Package Air Conditioner (AC) (including space-constrained). Single-Package Heat Pump (HP) (including space-constrained).	Every individual model distributed in commerce.
Outdoor Unit and Indoor Unit (Distributed in Commerce by Outdoor Unit Manufacturer (OUM)).	Single-Split-System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small-Duct, High Velocity Systems (SDHV)).	Every individual combination distributed in commerce. Each model of outdoor unit must include a represented value for at least one coil-only individual combination that is distributed in commerce and which is representative of the least efficient combination distributed in commerce with that particular model of outdoor unit. For that particular model of outdoor unit, additional represented values for coil-only and blower-coil individual combinations are allowed, if distributed in commerce.
	Single-Split System AC with Other Than Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	Every individual combination distributed in commerce, including all coil-only and blower-coil combinations.
	Single-Split-System HP (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV (including Space-Constrained).	For each model of outdoor unit, at a minimum, a non-ducted "tested combination." For any model of outdoor unit also sold with models of ducted indoor units, a ducted "tested combination." When determining represented values on or after January 1, 2023, the ducted "tested combination" must comprise the highest static variety of ducted indoor unit distributed in commerce (*i.e.*, conventional, mid-static, or low-static). Additional representations are allowed, as described in paragraphs (c)(3)(i) and (ii) of this section, respectively.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For each model of outdoor unit, an SDHV "tested combination." Additional representations are allowed, as described in paragraph (c)(3)(iii) of this section.
Indoor Unit Only Distributed in Commerce by Independent Coil Manufacturer (ICM).	Single-Split-System Air Conditioner (including Space-Constrained and SDHV). Single-Split-System Heat Pump (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For a model of indoor unit within each basic model, an SDHV "tested combination." Additional representations are allowed, as described in paragraph (c)(3)(iii) of this section.
Outdoor Unit with no Match		Every model of outdoor unit distributed in commerce (tested with a model of coil-only indoor unit as specified in paragraph (b)(2)(i) of this section).

* * * * *

(4) * * *

(i) *Regional.* A basic model (model of outdoor unit) may only be certified as compliant with a regional standard if all individual combinations within that basic model meet the regional standard for which it is certified, including the coil-only combination as specified in paragraph (a)(1) of this section, as applicable. A model of outdoor unit that is certified below a regional standard can only be rated and certified as compliant with a regional standard if the model of outdoor unit has a unique model number and has been certified as a different basic model for distribution in each region, where the basic model(s) certified as compliant with a regional standard meet the requirements of the first sentence. An ICM cannot certify an individual combination with a rating that is compliant with a regional standard if the individual combination includes a model of outdoor unit that the OUM has certified with a rating that is not compliant with a regional standard. Conversely, an ICM cannot certify an individual combination with a rating that is not compliant with a regional standard if the individual combination includes a model of outdoor unit that an OUM has certified with a rating that is compliant with a regional standard.

* * * * *

(b) * * *

(2) * * *

(i) * * *

TABLE 2 TO PARAGRAPH (b)(2)(i)

Category	Equipment subcategory	Must test:	With:
Single-Package Unit	Single-Package AC (including Space-Constrained). Single-Package HP (including Space-Constrained).	The individual model with the lowest seasonal energy efficiency ratio (SEER) (when testing in accordance with appendix M to subpart B of 10 CFR part 430) or SEER2 (when testing in accordance with appendix M1 to subpart B of 10 CFR part 430).	N/A.
Outdoor Unit and Indoor Unit (Distributed in Commerce by OUM).	Single-Split-System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small-Duct, High Velocity Systems (SDHV)).	The model of outdoor unit	A model of coil-only indoor unit.
	Single-Split-System HP with Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	The model of outdoor unit	A model of indoor unit.
	Single-Split System AC or HP with Other Than Single-Stage or Two-Stage Compressor having a non-communicating coil-only individual combination (including Space-Constrained and SDHV).	The model of outdoor unit	A model of non-communicating coil-only indoor unit.
	Single-Split System AC or HP with Other Than Single-Stage or Two-Stage Compressor without a non-communicating coil-only individual combination (including Space-Constrained and SDHV).	The model of outdoor unit	A model of indoor unit.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV (including Space-Constrained).	The model of outdoor unit	At a minimum, a "tested combination" composed entirely of non-ducted indoor units. For any models of outdoor units also sold with models of ducted indoor units, test a second "tested combination" composed entirely of ducted indoor units (in addition to the non-ducted combination). If testing under appendix M1 to subpart B of 10 CFR part 430, the ducted "tested combination" must comprise the highest static variety of ducted indoor unit distributed in commerce (*i.e.*, conventional, mid-static, or low-static).
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	The model of outdoor unit	A "tested combination" composed entirely of SDHV indoor units.
Indoor Unit Only (Distributed in Commerce by ICM).	Single-Split-System Air Conditioner (including Space-Constrained and SDHV).	A model of indoor unit	The least efficient model of outdoor unit with which it will be paired where the least efficient model of outdoor unit is the model of outdoor unit in the lowest SEER combination (when testing under appendix M to subpart B of 10 CFR part 430) or SEER2 combination (when testing under appendix M1 to subpart B of 10 CFR part 430) as certified by the OUM. If there are multiple models of outdoor unit with the same lowest SEER (when testing under appendix M to subpart B of 10 CFR part 430) or SEER2 (when testing under appendix M1 to subpart B of 10 CFR part 430) represented value, the ICM may select one for testing purposes.
	Single-Split-System Heat Pump (including Space-Constrained and SDHV).	Nothing, as long as an equivalent air conditioner basic model has been tested If an equivalent air conditioner basic model has not been tested, must test a model of indoor unit.	
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	A model of indoor unit	A "tested combination" composed entirely of SDHV indoor units, where the outdoor unit is the least efficient model of outdoor unit with which the SDHV indoor unit will be paired. The least efficient model of outdoor unit is the model of outdoor unit in the lowest SEER combination (when testing under appendix M to subpart B of 10 CFR part 430) or SEER2 combination (when testing under appendix M1 to subpart B of 10 CFR part 430) as certified by the OUM. If there are multiple models of outdoor unit with the same lowest SEER represented value (when testing under appendix M to subpart B of 10 CFR part 430) or SEER2 represented value (when testing under appendix M1 to subpart B of 10 CFR part 430), the ICM may select one for testing purposes.
Outdoor Unit with No Match		The model of outdoor unit	A model of coil-only indoor unit meeting the requirements of section 2.2e of appendix M or M1 to subpart B of 10 CFR part 430.

* * * * *

■ 3. Section 429.102 is amended by revising paragraphs (c)(4)(i) and (iii) to read as follows:

§ 429.102 Prohibited acts subjecting persons to enforcement action.

* * * * *

(c) * * *

(4) * * *

(i) A complete central air conditioning system that is not certified as a complete system that meets the applicable standard. Combinations that were previously validly certified may be installed after the manufacturer has discontinued the combination, provided all combinations within the basic model, including for single-split-system AC with single-stage or two-stage compressor at least one coil-only combination as specified in paragraph (a)(1) of this section, comply with the regional standard applicable at the time of installation.

* * * * *

(iii) An outdoor unit that is part of a certified combination rated less than the standard applicable in the region in which it is installed or, where applicable, an outdoor unit with no certified coil-only combination as specified in paragraph (a)(1) of this section that meets the standard applicable in the region in which it is installed.

§ 429.158 [Amended]

■ 4. Section 429.158 is amended by removing ''§ 429.102(c)'' in paragraphs (a) and (b) and adding in its place ''§ 429.102(a)(10)''.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 6. Section 430.2 is amended by revising the definition for ''Central air conditioner or central air conditioning heat pump'' to read as follows:

§ 430.2 Definitions.

* * * * *

Central air conditioner or central air conditioning heat pump means a product, other than a packaged terminal air conditioner, packaged terminal heat pump, single-phase single-package vertical air conditioner with cooling capacity less than 65,000 Btu/h, single-phase single-package vertical heat pump with cooling capacity less than 65,000 Btu/h, computer room air conditioner, or unitary dedicated outdoor air system as these equipment categories are defined at 10 CFR 431.92, which is powered by single phase electric current, air cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling unit only. A central air conditioner or central air conditioning heat pump may consist of: A single-package unit; an outdoor unit and one or more indoor units; an indoor unit only; or an outdoor unit with no match. In the case of an indoor unit only or an outdoor unit with no match, the unit must be tested and rated as a system (combination of both an indoor and an outdoor unit). For all central air conditioner and central air conditioning heat pump-related definitions, see appendix M or M1 of subpart B of this part.

* * * * *

■ 7. Section 430.32 is amended by revising paragraph (c)(6)(ii) to read as follows:

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

* * * * *

(c) * * *

(6) * * *

(ii) Any model of outdoor unit that has a certified combination with a rating below the applicable standard level(s) for a region cannot be installed in that region. The least-efficient combination of each basic model, which for single-split-system air conditioner (AC) with single-stage or two-stage compressor (including space-constrained and small-duct high velocity systems (SDHV)) must be a coil-only combination, must comply with the applicable standard. See 10 CFR 429.16(a)(1) and (a)(4)(i).

* * * * *

■ 8. Appendix M to subpart B of part 430 is amended by:

■ a. Revising the Note;

■ b. Revising the definition of ''nominal capacity'' in section 1.2;

■ c. Revising paragraph a. in section 3.6.4;

■ d. Revising section 4.1.4.2;

■ e. Revising the introductory text to section 4.2.3;

■ f. Revising the equations following the word ''Where:'' in section 4.2.3.3; and

■ g. Revising section 4.2.3.4.

The revisions read as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

Note: Prior to January 1, 2023, if using the appendix M test procedure for representations, including compliance certifications, with respect to the energy use, power, or efficiency of central air conditioners and central air conditioning heat pumps, any such representations must be based on the results of testing pursuant to either this appendix or the procedures in appendix M as it appeared at 10 CFR part 430, subpart B, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2022. Any representations made with respect to the energy use or efficiency of such central air conditioners and central air conditioning heat pumps must be in accordance with whichever version is selected. Any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of central air conditioners and central air conditioning heat pumps made on or after January 1, 2023, must be based on the results of testing pursuant the procedures in appendix M1 to this subpart.

* * * * *

1. * * *

1.2 Definitions

* * * * *

Nominal capacity means the capacity that is claimed by the manufacturer on the product name plate. *Nominal cooling capacity* is approximate to the air conditioner cooling capacity tested at A or A_2 condition. *Nominal heating capacity* is approximate to the heat pump heating capacity tested in $H1_N$ test.

* * * * *

3. * * *

3.6.4 Tests for a Heat Pump Having a Variable-Speed Compressor

a. Conduct one maximum temperature test ($H0_1$), two high temperature tests ($H1_N$ and $H1_1$), one frost accumulation test ($H2_V$), and one low temperature test ($H3_2$). Conducting one or both of the following tests is optional: An additional high temperature test ($H1_2$) and an additional frost accumulation test ($H2_2$). If desired, conduct the optional maximum temperature cyclic ($H0C_1$) test to determine the heating mode cyclic-degradation coefficient, $C_D{}^h$. If this optional test is conducted but yields a tested $C_D{}^h$ that exceeds the default $C_D{}^h$ or if the optional test is not conducted, assign $C_D{}^h$ the default value of 0.25. Test conditions for the eight tests are specified in Table 14 to this appendix. The compressor shall operate at the same heating full speed, measured by RPM or power input frequency (Hz), for the $H1_2$, $H2_2$ and $H3_2$ tests. For a cooling/heating heat pump, the compressor shall operate for the $H1_N$ test at a speed, measured by RPM or power input frequency (Hz), no lower than the speed used in the A_2 test if the tested $H1_N$ heating capacity is less than the tested A_2 cooling capacity. The compressor shall operate at the same heating minimum speed, measured by RPM or power input frequency (Hz), for the $H0_1$, $H1C_1$, and $H1_1$ tests. Determine the heating intermediate compressor speed cited in Table 14 using the heating mode full and minimum compressors speeds and:

$$Heating\ intermediate\ speed = Heating\ minimum\ speed + \frac{Heating\ full\ speed - Heating\ minimum\ speed}{3}$$

Where a tolerance on speed of plus 5 percent or the next higher inverter frequency step from the calculated value is allowed.

* * * * *

4. * * *

4.1.4.2 Unit Operates at an Intermediate Compressor Speed (k=i) In Order To Match the Building Cooling Load at Temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=i}(T_j) * \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \dot{E}_c^{k=i}(T_j) * \frac{n_j}{N}$$

Where:

$\dot{Q}_c^{k=i}(T_j) = BL(T_j)$, the space cooling capacity delivered by the unit in matching the building load at temperature T_j, Btu/h. The matching occurs with the unit operating at compressor speed k=i.

$\dot{E}_c^{k=i}(T_j) = \frac{\dot{Q}_c^{k=i}(T_j)}{EER^{k=i}(T_j)}$, the electrical power input required by the test unit when operating at a compressor speed of k=i and temperature T_j, W.

$EER^{k=i}(T_j)$ = the steady-state energy efficiency ratio of the test unit when operating at a compressor speed of k=i and temperature T_j, Btu/h per W.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 19 to this appendix. For each temperature bin where the unit operates at an intermediate compressor speed, determine the energy efficiency ratio $EER^{k=i}(T_j)$ using, $EER^{k=i}(T_j) = A + B\ T_j + C * T_j^2$.

For each unit, determine the coefficients A, B, and C by conducting the following calculations once:

$$A = EER^{k=2}(T_2) - (B * T_2) - (C * T_2^2)$$

$$B = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - D * [EER^{k=1}(T_1) - EER^{k=v}(T_v)]}{T_1 - T_2 - D * (T_1 - T_v)}$$

$$C = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - B * (T_1 - T_2)}{T_1^2 - T_2^2}$$

$$D = \frac{T_2^2 - T_1^2}{T_v^2 - T_1^2}$$

Where:

T_1 = the outdoor temperature at which the unit, when operating at minimum compressor speed, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=1}(T_1) = BL(T_1)$), °F. Determine T_1 by equating Equations 4.1.3–1 and 4.1–2 to this appendix and solving for outdoor temperature.

T_v = the outdoor temperature at which the unit, when operating at the intermediate compressor speed used during the section 3.2.4 E_v test of this appendix, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=v}(T_v) = BL(T_v)$), °F. Determine T_v by equating Equations 4.1.4–3 and 4.1–2 to this appendix and solving for outdoor temperature.

T_2 = the outdoor temperature at which the unit, when operating at full compressor speed, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=2}(T_2) = BL(T_2)$), °F. Determine T_2 by equating Equations 4.1.3–3 and 4.1–2 to this appendix and solving for outdoor temperature.

$$EER^{k=1}(T_1) = \frac{\dot{Q}_c^{k=1}(T_1)\ [Equation\ 4.1.4{-}1,\ substituting\ T_1\ for\ T_j]}{\dot{E}_c^{k=1}(T_1)\ [Equation\ 4.1.4{-}2,\ substituting\ T_1\ for\ T_j]}, \text{ Btu/h per W}$$

$$EER^{k=v}(T_v) = \frac{\dot{Q}_c^{k=v}(T_v)\ [Equation\ 4.1.4{-}3,\ substituting\ T_v\ for\ T_j]}{\dot{E}_c^{k=v}(T_v)\ [Equation\ 4.1.4{-}4,\ substituting\ T_v\ for\ T_j]}, \text{ Btu/h per W}$$

$$EER^{k=2}(T_2) = \frac{\dot{Q}_c^{k=2}(T_2)\ [Equation\ 4.1.3{-}3,\ substituting\ T_2\ for\ T_j]}{\dot{E}_c^{k=2}(T_2)\ [Equation\ 4.1.3{-}4,\ substituting\ T_2\ for\ T_j]}, \text{ Btu/h per W}$$

* * * * *

4.2.3 Additional Steps for Calculating the HSPF of a Heat Pump Having a Two-Capacity Compressor

The calculation of the Equation 4.2–1 to this appendix quantities differ depending upon whether the heat pump would operate at low capacity (section 4.2.3.1 of this appendix), cycle between low and high capacity (section 4.2.3.2 of this appendix), or operate at high capacity (sections 4.2.3.3 and 4.2.3.4 of this appendix) in responding to the building load. For heat pumps that lock out low capacity operation at low outdoor temperatures, the outdoor temperature at which the unit locks out must be that specified by the manufacturer in the certification report so that the appropriate equations can be selected.

* * * * *

4.2.3.3 Heat Pump Only Operates at High (k=2) Compressor Capacity at Temperature T_j and Its Capacity Is Greater Than the Building Heating Load, $BL(T_j) < Q_h^{k=2}(T_j)$

* * * * *

$X^{K=2}(T_J) = BL(T_j/\dot{Q}^{k=2}{}_h(T_j)$; and
$PLF_j = 1 - C^h{}_D\ (k = 2) * [1 - X^{k=2}(T_j)]$.

* * * * *

4.2.3.4 Heat Pump Must Operate Continuously at High (k=2) Compressor Capacity at Temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=2}(T_j) * \delta'(T_j) * \frac{n_j}{N}$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - [\dot{Q}_h^{k=2}(T_j) * \delta'(T_j)]}{3.413\frac{Btu}{Wh}} * \frac{n_j}{N}$$

Where:

$$\delta'(T_j) = \begin{cases} 0, & if\ T_j \leq T_{off}\ or\ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} < 1 \\ \dfrac{1}{2}, & if\ T_{off} < T_j \leq T_{on}\ and\ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \geq 1 \\ 1, & if\ T_j > T_{on}\ and\ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \geq 1 \end{cases}$$

* * * * *

■ 9. Appendix M1 to subpart B of part 430 is amended by:

■ a. Adding a Note;

■ b. Adding in alphabetical order definitions for ''Variable-speed communicating coil-only central air conditioner or heat pump'' and ''Variable-speed non-communicating coil-only central air conditioner or heat pump'' in section 1.2;

■ c. Revising paragraph (B) and the undesignated paragraph following it and adding a second undesignated paragraph in section 2;

■ d. Revising section 3.1.2;

■ e. Revising paragraphs a. and b. in section 3.1.4.1.1;

■ f. Revising paragraphs a. and b. and adding paragraph f. in section 3.1.4.2:

■ g. Revising paragraph b. and adding paragraph d. in section 3.1.4.3;

■ h. Revising paragraph a. in section 3.1.4.4.3;

■ i. Adding paragraph d. in section 3.1.4.6;

■ j. Revising section 3.1.4.7;

■ k. Revising paragraph a., adding paragraph d. immediately following paragraph c., and revising Table 8 in section 3.2.4;

■ l. Revising paragraph d., redesignating paragraph e. as paragraph f., and adding a new paragraph e. in section 3.3;

■ m. Revising the introductory text, redesignating paragraphs a. and b. as paragraphs c. and d., respectively, adding new paragraphs a. and b., and revising newly redesignated paragraph c. in section 3.5.1;

■ n. Revising Table 11 in section 3.6.1;

■ o. Revising Table 12 in section 3.6.2;

■ p. Revising Table 13 in section 3.6.3;

■ q. Revising section 3.6.4 and adding sections 3.6.4.1 and 3.6.4.2;

■ r. Revising Table 15 in section 3.6.6;

■ s. Revising paragraph c., redesignating paragraphs d. and e. as paragraphs e. and f., respectively, and adding new paragraph d. in section 3.7;

■ t. Revising paragraph b. in section 3.8;

■ u. Revising paragraph b. in section 3.9.1;

■ v. Revising section 4.1.4;

■ w. Adding sections 4.1.4.2.1 and 4.1.4.2.2;

■ x. Revising the undesignated text after Table 20 and before paragraph a., including Equation 4.2–2, in section 4.2;

■ y. Revising the introductory text for section 4.2.3;

■ z. Revising section 4.2.3.4;

■ aa. Revising paragraphs a., b., c., and e., in section 4.2.4;

■ bb. Revising sections 4.2.4.1 and 4.2.4.2; and

■ cc. Removing the language ''and $X^{k=3}(T_j) = X^{k=2}(T_j)$'' and adding in its place ''and $X^{k=3}(T_j) = 1 - X^{k=2}(T_j)$'' in section 4.2.6.5.

The revisions and additions read as follows:

Appendix M1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

Note: On or after January 1, 2023, and prior to April 24, 2023, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of central air conditioners and central air conditioning heat pumps must be based on the results of testing pursuant to either this appendix or the procedures in appendix M1 as it appeared at 10 CFR part 430, subpart B, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2022.

Any representations made with respect to the energy use or efficiency of such central air conditioners and central air conditioning heat pumps must be in accordance with whichever version is selected.

On or after April 24, 2023, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of central air conditioners and central air conditioning heat pumps must be based on the results of testing pursuant to this appendix.

* * * * *

1.2 Definitions

* * * * *

Variable-speed communicating coil-only central air conditioner or heat pump means a variable-speed compressor system having a coil-only indoor unit that is installed with a control system that:

(a) Communicates the difference in space temperature and space setpoint temperature (not a setpoint value inferred from on/off thermostat signals) to the control that sets compressor speed;

(b) Provides a signal to the indoor fan to set fan speed appropriate for compressor staging; and

(c) Has installation instructions indicating that the control system having these capabilities must be installed.

* * * * *

Variable-speed non-communicating coil-only central air conditioner or heat pump means a variable-speed compressor system having a coil-only indoor unit that is does not meet the definition of variable-speed communicating coil-only central air conditioner or heat pump.

* * * * *

2 Testing Overview and Conditions

* * * * *

(B) For systems other than VRF, only a subset of the sections listed in this test procedure apply when testing and determining represented values for a particular unit. Table 1 to this appendix shows the sections of the test procedure that apply to each system. Table 1 is meant to assist manufacturers in finding the appropriate sections of the test procedure. Manufacturers are responsible for determining which sections apply to each unit tested based on the model characteristics. The appendix sections provide the specific requirements for testing. To use Table 1, first refer to the sections listed under ''all units''. Then refer to additional requirements based on:

(1) System configuration(s),

(2) The compressor staging or modulation capability, and

(3) Any special features.

Testing requirements for space-constrained products do not differ from similar products that are not space-constrained, and thus space-constrained products are not listed separately in Table 1. Air conditioners and heat pumps are not listed separately in Table 1, but heating procedures and calculations apply only to heat pumps.

The ''manufacturer's published instructions,'' as stated in Section 8.2 of ANSI/ASHRAE Standard 37–2009 (incorporated by reference, see § 430.3) and ''manufacturer's installation instructions'' discussed in this appendix mean the manufacturer's installation instructions that come packaged with the unit or appear in the labels applied to the unit. Manufacturer's installation instructions do not include online manuals. Installation instructions that appear in the labels applied to the unit shall take precedence over installation instructions that come packaged with the unit.

* * * * *

3.1.2 Manufacturer-Provided Equipment Overrides

Where needed, the manufacturer must provide a means for overriding the controls of the test unit so that the compressor(s) operates at the specified speed or capacity and the indoor blower operates at the specified speed or delivers the specified air volume rate. For variable-speed non-communicating coil-only air conditioners and heat pumps, the control system shall be provided with a control signal indicating operation at high or low stage, rather than testing with the compressor speed fixed at specific speeds, with the exception that compressor speed override may be used for heating mode test $H1_2$.

* * * * *

3.1.4.1.1 Cooling Full-Load Air Volume Rate for Ducted Units

* * * * *

a. For all ducted blower-coil systems, except those having a constant-air-volume-rate indoor blower:

Step (1) Operate the unit under conditions specified for the A test (for single-stage units) or A_2 test (for non-single-stage units) using the certified fan speed or controls settings, and adjust the exhaust fan of the airflow measuring apparatus to achieve the certified cooling full-load air volume rate;

Step (2) Measure the external static pressure;

Step (3) If this external static pressure is equal to or greater than the applicable minimum external static pressure cited in Table 4 to this appendix, the pressure requirement is satisfied; proceed to step 7 of this section. If this external static pressure is not equal to or greater than the applicable minimum external static pressure cited in Table 4, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until the first to occur of:

(i) The applicable Table 4 to this appendix minimum is equaled or

(ii) The measured air volume rate equals 90 percent or less of the cooling full-load air volume rate;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.,* next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until the applicable Table 4 to this appendix minimum is equaled; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the cooling full-load air volume rate. Use the final indoor fan speed or control settings of the unit under test for all tests that use the cooling full-load air volume rate. Adjust the fan of the airflow measurement apparatus if needed to obtain the same full-load air volume rate (in scfm) for all such tests, unless the system modulates indoor blower speed with outdoor dry bulb temperature or to adjust the sensible to total cooling capacity ratio—in this case, use an air volume rate that represents a normal installation and calculate the target external static pressure as described in section 3.1.4.2 of this appendix.

b. For ducted blower-coil systems with a constant-air-volume-rate indoor blower. For all tests that specify the cooling full-load air volume rate, obtain an external static pressure as close to (but not less than) the applicable Table 4 to this appendix value that does not cause either automatic shutdown of the indoor blower or a value of air volume rate variation Q_{Var}, defined as follows, that is greater than 10 percent.

$$Q_{var} = \left[\frac{Q_{max} - Q_{min}}{\left(\frac{Q_{max} + Q_{min}}{2} \right)} \right] * 100$$

Where:

Q_{max} = maximum measured airflow value
Q_{min} = minimum measured airflow value
Q_{Var} = airflow variance, percent

Additional test steps as described in section 3.3.f of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

* * * * *

3.1.4.2 Cooling Minimum Air Volume Rate

* * * * *

a. For a ducted blower-coil system without a constant-air-volume indoor blower, adjust for external static pressure as follows:

Step (1) Operate the unit under conditions specified for the B_1 test using the certified fan speed or controls settings, and adjust the exhaust fan of the airflow measuring apparatus to achieve the certified cooling minimum air volume rate;

Step (2) Measure the external static pressure;

Step (3) If this pressure is equal to or greater than the minimum external static pressure computed in step 2 of this section, the pressure requirement is satisfied; proceed to step 7 of this section. If this pressure is not equal to or greater than the minimum external static pressure computed in step 2 of this section, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until either:

(i) The pressure is equal to the target minimum external static pressure, ΔP_{st_i}, computed in step 1 of this section; or

(ii) The measured air volume rate equals 90 percent or less of the cooling minimum air volume rate, whichever occurs first;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.,* next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until it equals the minimum external static pressure computed in step 2 of this section; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the cooling minimum air volume rate. Use the final indoor fan speed or control settings of the unit under test for all tests that use the cooling minimum air volume rate. Adjust the fan of the airflow measurement apparatus if needed to obtain the same cooling minimum air volume rate (in scfm) for all such tests, unless the system modulates the indoor blower speed with outdoor dry bulb temperature or to adjust the sensible to total cooling capacity ratio—in this case, use an air volume rate that represents a normal installation and calculate the target minimum external static pressure as described in this section.

b. For ducted units with constant-air-volume indoor blowers, conduct all tests that specify the cooling minimum air volume rate—(*i.e.,* the A_1, B_1, C_1, F_1, and G_1 Tests)—at an external static pressure that does not cause either an automatic shutdown of the indoor blower or a value of air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, that is greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.3.f of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

* * * * *

f. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling minimum air volume rate is the higher of:

(1) The rate specified by the installation instructions included with the unit by the manufacturer; or

(2) 75 percent of the cooling full-load air volume rate. During the laboratory tests on a coil-only (fanless) system, obtain this cooling minimum air volume rate regardless of the pressure drop across the indoor coil assembly.

3.1.4.3 Cooling Intermediate Air Volume Rate

* * * * *

b. For a ducted blower-coil system with a constant-air-volume indoor blower, conduct the E_V Test at an external static pressure that does not cause either an automatic shutdown of the indoor blower or a value of air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, that is greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.3.f of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

* * * * *

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the cooling minimum air volume rate as determined in section 3.1.4.2(f) of this appendix, without regard to the pressure drop across the indoor coil assembly.

* * * * *

3.1.4.4.3 Ducted Heating-Only Heat Pumps

* * * * *

a. For all ducted heating-only blower-coil system heat pumps, except those having a constant-air-volume-rate indoor blower: conduct the following steps only during the first test, the H1 or $H1_2$ test:

Step (1) Adjust the exhaust fan of the airflow measuring apparatus to achieve the certified heating full-load air volume rate.

Step (2) Measure the external static pressure.

Step (3) If this pressure is equal to or greater than the Table 4 to this appendix minimum external static pressure that applies given the heating-only heat pump's rated heating capacity, the pressure requirement is satisfied; proceed to step 7 of this section. If this pressure is not equal to or greater than the applicable Table 4 minimum external static pressure, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until either:

(i) The pressure is equal to the applicable Table 4 to this appendix minimum external static pressure; or

(ii) The measured air volume rate equals 90 percent or less of the heating full-load air volume rate, whichever occurs first;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.,* next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until it equals the applicable Table 4 to this appendix minimum external static pressure; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the heating full-load air volume rate. Use the final indoor fan speed or control settings of the unit under test for all tests that use the heating full-load air volume rate. Adjust the fan of the airflow measurement apparatus if needed to obtain the same heating full-load air volume rate (in scfm) for all such tests, unless the system modulates indoor blower speed with outdoor dry bulb temperature—in this case, use an air volume rate that represents a normal installation and calculate the target minimum external static pressure as described in section 3.1.4.2 of this appendix.

* * * * *

3.1.4.6 Heating Intermediate Air Volume Rate

* * * * *

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the heating minimum air volume rate, which (as specified in section 3.1.4.5.1.a.(3) of this appendix) is equal to the cooling minimum air volume rate, without regard to the pressure drop across the indoor coil assembly.

3.1.4.7 Heating Nominal Air Volume Rate

The manufacturer must specify the heating nominal air volume rate and the instructions for setting fan speed or controls. Calculate target minimum external static pressure as described in section 3.1.4.2 of this appendix. Make adjustments as described in section 3.1.4.6 of this appendix for heating intermediate air volume rate so that the target minimum external static pressure is met or exceeded. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the heating full-load air volume rate as the heating nominal air volume rate.

* * * * *

3.2.4 Tests for a Unit Having a Variable-Speed Compressor

a. Conduct five steady-state wet coil tests: the A_2, E_V, B_2, B_1, and F_1 Tests (the E_V test is not applicable for variable speed non-communicating coil-only air conditioners and heat pumps). Use the two optional dry-coil tests, the steady-state G_1 Test and the cyclic I_1 Test, to determine the cooling mode cyclic degradation coefficient, C_D^c. If the two optional tests are conducted and yield a tested C_D^c that exceeds the default C_D^c or if the two optional tests are not conducted, assign C_D^c the default value of 0.25. Table 8 specifies test conditions for these seven tests. The compressor shall operate at the same cooling full speed, measured by RPM or power input frequency (Hz), for both the A_2 and B_2 tests. The compressor shall operate at the same cooling minimum speed, measured by RPM or power input frequency (Hz), for the B_1, F_1, G_1, and I_1 tests. Determine the cooling intermediate compressor speed cited in Table 8 to this appendix, as required, using:

$$\text{Cooling intermediate speed} = \text{Cooling minimum speed} + \frac{\text{Cooling full speed} - \text{Cooling minimum speed}}{3}$$

Where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed.

* * * * *

d. For variable-speed non-communicating coil-only air conditioners and heat pumps, the manufacturer-provided equipment overrides for full and minimum compressor speed described in section 3.1.2 of this appendix shall be limited to two stages of digital on/off control.

TABLE 8—COOLING MODE TEST CONDITION FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
A_2 Test—required (steady, wet coil).	80	67	95	[1]75	Cooling Full	Cooling Full-Load.[2]
B_2 Test—required (steady, wet coil).	80	67	82	[1]65	Cooling Full	Cooling Full-Load.[2]
E_V Test—required[7] (steady, wet coil).	80	67	87	[1]69	Cooling Intermediate.	Cooling Intermediate.[3]
B_1 Test—required (steady, wet coil).	80	67	82	[1]65	Cooling Minimum	Cooling Minimum.[4]
F_1 Test—required (steady, wet coil).	80	67	67	[1]53.5	Cooling Minimum	Cooling Minimum.[4]
G_1 Test[5]—optional (steady, dry-coil).	80	([6])	67	....	Cooling Minimum	Cooling Minimum.[4]
I_1 Test[5]—optional (cyclic, dry-coil).	80	([6])	67	....	Cooling Minimum	([6])

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1 of this appendix.
[3] Defined in section 3.1.4.3 of this appendix.
[4] Defined in section 3.1.4.2 of this appendix.
[5] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. DOE recommends using an indoor air wet bulb temperature of 57 °F or less.
[6] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the G_1 Test.
[7] The E_V test is not applicable for variable-speed non-communicating coil-only air conditioners and heat pumps.

* * * * *

3.3 Test Procedures for Steady-State Wet Coil Cooling Mode Tests (the A, A_2, A_1, B, B_2, B_1, E_V, and F_1 Tests)

* * * * *

d. For mobile home and space-constrained ducted coil-only system tests,

(1) For two-stage or variable-speed systems, for all steady-state wet coil tests (*i.e.,* the A_1, A_2, B_1, B_2, E_V, and F_1 tests), decrease by the quantity calculated in Equation 3.3–1 to this appendix and increase by the quantity calculated in Equation 3.3–2 to this appendix.

$$\text{Equation 3.3-1} \quad \frac{(\text{DFPC}_{MHSC}*3.412)\ Btu/h}{1000\ scfm} * \dot{V}_S,$$

$$\text{Equation 3.3-2} \quad \frac{\text{DFPC}_{MHSC}\ W}{1000\ scfm} * \dot{V}_S;$$

Where:

$DFPC_{MHSC}$ is the default fan power coefficient (watts) for mobile-home and space-constrained systems,

$$\text{DFPC}_{MHSC} = 308 + \frac{(406 - 308) * (\%FLAVR - 75\%)}{100\% - 75\%}$$

And %FLAVR is the air volume rate used for the test, expressed as a percentage of the cooling full load air volume rate. For all tests specifying the full-load air volume rate (*e.g.,* the A_2 and B_2 tests), set %FLAVR to 100%. For tests that specify the cooling minimum air volume rate or cooling intermediate air volume rate (*i.e.,* the A_1, B_1, E_V, and F_1 tests) and for which the specified minimum or intermediate air volume rate is greater than or equal to 75 percent of the cooling full-load air volume rate and less than the cooling full-load air volume rate, set %FLAVR to the ratio of the specified air volume rate and the cooling full-load air volume rate, expressed as a percentage.

(2) For single-stage systems, for all steady-state wet coil tests (*i.e.,* the A and B tests), decrease $Q_c^k(T)$ by the quantity calculated in Equation 3.3–3 to this appendix and increase $\dot{E}_c^k(T)$ by the quantity calculated in Equation 3.3–4 to this appendix.

$$\text{Equation 3.3-3}\quad \frac{1385\ Btu/h}{1000\ scfm} * \dot{V}_S, \text{ and}$$

$$\text{Equation 3.3-4}\quad \frac{406\ W}{1000\ scfm} * \dot{V}_S$$

Where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

e. For non-mobile, non-space-constrained home ducted coil-only system tests,

(1) For two-stage or variable-speed systems, for all steady-state wet coil tests (*i.e.,* the A_1, A_2, B_1, B_2, E_V, and F_1 tests), decrease $Q_c^k(T)$ by the quantity calculated in Equation 3.3–5 to this appendix and increase $\dot{E}_c^k(T)$ by the quantity calculated in Equation 3.3–6 to this appendix.

$$\text{Equation 3.3-5}\quad \frac{(\mathrm{DFPC}_C * 3.412)\ Btu/h}{1000\ scfm} * \dot{V}_S, \text{ and}$$

$$\text{Equation 3.3-6}\quad \frac{\mathrm{DFPC}_C\ W}{1000\ scfm} * \dot{V}_S$$

Where:

$DFPC_C$ is the default fan power coefficient (watts) for non-mobile-home and non-space-constrained systems,

$$\mathrm{DFPC}_C = 335 + \frac{(441 - 335) * (\%FLAVR - 75\%)}{100\% - 75\%}$$

And %FLAVR is the air volume rate used for the test, expressed as a percentage of the cooling full load air volume rate. For all tests specifying the full-load air volume rate (*e.g.,* the A_2 and B_2 tests), set %FLAVR to 100%. For tests that specify the cooling minimum air volume rate or cooling intermediate air volume rate (*i.e.,* the A_1, B_1, E_V, and F_1 tests) and for which the specified minimum or intermediate air volume rate is greater than or equal to 75 percent of the cooling full-load air volume rate and less than the cooling full-load air volume rate, set %FLAVR to the ratio of the specified air volume rate and the cooling full-load air volume rate, expressed as a percentage.

(2) For single-stage systems, for all steady-state wet coil tests (*i.e.,* the A and B tests), decrease $Q_c^k(T)$ by the quantity calculated in Equation 3.3–7 to this appendix and increase $\dot{E}_c^k(T)$ by the quantity calculated in Equation 3.3–8 to this appendix.

$$\text{Equation 3.3-7.}\quad \frac{1505\ Btu/h}{1000\ scfm} * \dot{V}_S, \text{ and}$$

$$\text{Equation 3.3-8.}\quad \frac{441\ W}{1000\ scfm} * \dot{V}_S$$

Where is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

TABLE 9—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.3 STEADY-STATE WET COIL COOLING MODE TESTS AND SECTION 3.4 DRY COIL COOLING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor dry-bulb, °F		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F		
Entering temperature	1.0	[2] 0.3
Leaving temperature	[2] 1.0	
Outdoor dry-bulb, °F		
Entering temperature	2.0	0.5
Leaving temperature	[3] 2.0	
Outdoor wet-bulb, °F		
Entering temperature	1.0	[4] 0.3
Leaving temperature	[3] 1.0	
External resistance to airflow, inches of water	0.05	[5] 0.02
Electrical voltage, % of reading	2.0	1.5
Nozzle pressure drop, % of reading	2.0	

[1] See section 1.2 of this appendix, Definitions.
[2] Only applies during wet coil tests; does not apply during steady-state, dry coil cooling mode tests.
[3] Only applies when using the outdoor air enthalpy method.
[4] Only applies during wet coil cooling mode tests where the unit rejects condensate to the outdoor coil.
[5] Only applies when testing non-ducted units.

* * * * *

3.5.1 Procedures When Testing Ducted Systems

The automatic controls that are installed in the test unit must govern the OFF/ON cycling of the air moving equipment on the indoor side (*i.e.,* the exhaust fan of the airflow measuring apparatus and the indoor blower of the test unit). For ducted coil-only systems rated based on using a fan time-delay relay, control the indoor coil airflow according to the OFF delay listed by the manufacturer in the certification report. For ducted units having a variable-speed indoor blower that has been disabled (and possibly removed), start and stop the indoor airflow at the same instances as if the fan were enabled. For all other ducted coil-only systems, cycle the indoor coil airflow in unison with the cycling of the compressor. If air damper boxes are used, close them on the inlet and outlet side during the OFF period. Airflow through the indoor coil should stop within 3 seconds after the automatic controls of the test unit de-energize (or if the airflow system has been disabled (and possibly removed), within 3 seconds after the automatic controls of the test unit *would have* de-energized) the indoor blower.

a. For mobile home and space-constrained ducted coil-only systems,

(1) For two-stage or variable-speed systems, for all cyclic dry-coil tests (*i.e.,* the D_1, D_2, and I_1 tests) decrease $q_{cyc,dry}$ by the quantity calculated in Equation 3.5–2 to this appendix and increase $e_{cyc,dry}$ by the quantity calculated in Equation 3.5–3 to this appendix.

$$\text{Equation 3.5-2} \quad \frac{(\text{DFPC}_{MHSC}*3.412)Btu/h}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

$$\text{Equation 3.5-3} \quad \frac{\text{DFPC}_{MHSC}W}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

Where:

$\dot{V}_S$ is the average indoor air volume rate from the section 3.4 dry coil steady-state test and is expressed in units of cubic feet per minute of standard air (scfm),

DFPC_{MHSC} is the default fan power coefficient (watts) for mobile-home and space-constrained systems,

$$\text{DFPC}_{MHSC} = 308 + \frac{(406-308)*(\%FLAVR - 75\%)}{100\% - 75\%}$$

And %FLAVR is the air volume rate used for the test, expressed as a percentage of the cooling full load air volume rate. For all tests specifying the full-load air volume rate (*e.g.,* the D_2 test), set %FLAVR to 100%. For tests that specify the cooling minimum air volume rate or cooling intermediate air volume rate (*i.e.,* the D_1 and I_1 tests) and for which the specified minimum or intermediate air volume rate is greater than or equal to 75 percent of the cooling full-load air volume rate and less than the cooling full-load air volume rate, set %FLAVR to the ratio of the specified air volume rate and the cooling full-load air volume rate, expressed as a percentage.

(2) For single-stage systems, for all cyclic dry-coil tests (*i.e.,* the D test), decrease $q_{cyc,dry}$ by the quantity calculated in Equation 3.5–4 to this appendix and increase $e_{cyc,dry}$ by the quantity calculated in Equation 3.5–5 to this appendix.

$$\text{Equation 3.5-4} \quad \frac{1385\ Btu/h}{1000\ scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

$$\text{Equation 3.5-5} \quad \frac{406\ W}{1000\ scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

b. For ducted, non-mobile, non-space-constrained home coil-only units,

(1) For two-stage or variable-speed systems, for all cyclic dry-coil tests (*i.e.,* the D_1, D_2, and I_1 tests) decrease $q_{cyc,dry}$ by the quantity calculated in Equation 3.5–6 to this appendix and increase $e_{cyc,dry}$ by the quantity calculated in Equation 3.5–7 to this appendix.

$$\text{Equation 3.5-6.} \quad \frac{(\mathrm{DFPC}_C * 3.412)\ Btu/h}{1000\ scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

$$\text{Equation 3.5-7.} \quad \frac{\mathrm{DFPC}_C\ W}{1000\ scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

Where:

$\dot{V}_S$ is the average indoor air volume rate from the section 3.4 dry coil steady-state test and is expressed in units of cubic feet per minute of standard air (scfm),

$DFPC_C$ is the default fan power coefficient (watts) for non-mobile-home and non-space-constrained systems,

$$\mathrm{DFPC}_C = 335 + \frac{(441 - 335) * (\%FLAVR - 75\%)}{100\% - 75\%}$$

And %FLAVR is the air volume rate used for the test, expressed as a percentage of the cooling full load air volume rate. For all tests specifying the full-load air volume rate (*e.g.,* the D_2 test), set %FLAVR to 100%. For tests that specify the cooling minimum air volume rate or cooling intermediate air volume rate (*i.e.,* the D_1, and I_1 tests) and for which the specified minimum or intermediate air volume rate is greater than or equal to 75 percent of the cooling full-load air volume rate and less than the cooling full-load air volume rate, set %FLAVR to the ratio of the specified air volume rate and the cooling full-load air volume rate, expressed as a percentage.

(2) For single-stage systems, for all cyclic dry-coil tests (*i.e.,* the D test) decrease $q_{cyc,dry}$ by the quantity calculated in Equation 3.5–8 to this appendix and increase $e_{cyc,dry}$ by the quantity calculated in Equation 3.5–9 to this appendix.

$$\text{Equation 3.5-8.} \quad \frac{1505\ Btu/h}{1000\ scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

$$\text{Equation 3.5-9.} \quad \frac{441\ W}{1000\ scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

c. For units having a variable-speed indoor blower that is disabled during the cyclic test, decrease $q_{cyc,dry}$ and increase $e_{cyc,dry}$ based on: The product of $[\tau_2 - \tau_1]$ and the indoor blower power (in W) measured during or following the dry coil steady-state test; or,

* * * * *

3.6.1 Tests for a Heat Pump Having a Single-Speed Compressor and Fixed Heating Air Volume Rate

* * * * *

TABLE 11—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A FIXED-SPEED INDOOR BLOWER, A CONSTANT AIR VOLUME RATE INDOOR BLOWER, OR COIL-ONLY

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H1 test (required, steady)	70	60(max)	47	43	Heating Full-Load.[1]
H1C test (optional, cyclic)	70	60(max)	47	43	([2])
H2 test (required)	70	60(max)	35	33	Heating Full-Load.[1]
H3 test (required, steady)	70	60(max)	17	15	Heating Full-Load.[1]
H4 test (optional, steady)	70	60(max)	5	4(max)	Heating Full-Load.[1]

[1] Defined in section 3.1.4.4 of this appendix.

[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the H1 test.

* * * * *

3.6.2 Tests for a Heat Pump Having a Single-Speed Compressor and a Single Indoor Unit Having Either (1) a Variable-Speed, Variable-Air-Rate Indoor Blower Whose Capacity Modulation Correlates With Outdoor Dry Bulb Temperature or (2) Multiple Indoor Blowers

* * * * *

TABLE 12—HEATING MODE TEST CONDITIONS FOR UNITS WITH A SINGLE-SPEED COMPRESSOR THAT MEET THE SECTION 3.6.2 INDOOR UNIT REQUIREMENTS

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
$H1_2$ test (required, steady)	70	$60^{(max)}$	47	43	Heating Full-Load.[1]
$H1_1$ test (required, steady)	70	$60^{(max)}$	47	43	Heating Minimum.[2]
$H1C_1$ test (optional, cyclic)	70	$60^{(max)}$	47	43	([3])
$H2_2$ test (required)	70	$60^{(max)}$	35	33	Heating Full-Load.[1]
$H2_1$ test (optional)	70	$60^{(max)}$	35	33	Heating Minimum.[2]
$H3_2$ test (required, steady)	70	$60^{(max)}$	17	15	Heating Full-Load.[1]
$H3_1$ test (required, steady)	70	$60^{(max)}$	17	15	Heating Minimum.[2]
$H4_2$ test (optional, steady)	70	$60^{(max)}$	5	$4^{(max)}$	Heating Full-Load.[1]

[1] Defined in section 3.1.4.4 of this appendix.
[2] Defined in section 3.1.4.5 of this appendix.
[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_1$ test.

* * * * *

3.6.3 Tests for a Heat Pump Having a Two-Capacity Compressor (see Section 1.2 of This Appendix, Definitions), Including Two-Capacity, Northern Heat Pumps (see Section 1.2 of This Appendix, Definitions)

* * * * *

TABLE 13—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor capacity	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ test (required, steady)	70	$60^{(max)}$	62	56.5	Low	Heating Minimum.[1]
$H1_2$ test (required, steady)	70	$60^{(max)}$	47	43	High	Heating Full-Load.[2]
$H1C_2$ test (optional,[7] cyclic)	70	$60^{(max)}$	47	43	High	([3])
$H1_1$ test (required, steady)	70	$60^{(max)}$	47	43	Low	Heating Minimum.[1]
$H1C_1$ test (optional, cyclic)	70	$60^{(max)}$	47	43	Low	([4])
$H2_2$ test (required)	70	$60^{(max)}$	35	33	High	Heating Full-Load.[2]
$H2_1$ test[5 6] (required)	70	$60^{(max)}$	35	33	Low	Heating Minimum.[1]
$H3_2$ test (required, steady)	70	$60^{(max)}$	17	15	High	Heating Full-Load.[2]
$H3_1$ test[5] (required, steady)	70	$60^{(max)}$	17	15	Low	Heating Minimum.[1]
$H4_2$ test (optional, steady)	70	$60^{(max)}$	5	$4^{(max)}$	High	Heating Full-Load.[2]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Defined in section 3.1.4.4 of this appendix.
[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_2$ test.
[4] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_1$ test.
[5] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37°F is needed to complete HSPF2 calculations in section 4.2.3 of this appendix.
[6] If note #5 to this table applies, the equations for $Q_h^{k=1}(35)$ and $E_h^{k=1}(17)$ in section 3.6.3 of this appendix may be used in lieu of conducting the $H2_1$ test.
[7] Required only if the heat pump locks out low-capacity operation at lower outdoor temperatures.

* * * * *

3.6.4 Tests for a Heat Pump Having a Variable-Speed Compressor

3.6.4.1 Variable-Speed Compressor Other Than Non-Communicating Coil-Only Heat Pumps

a. Conduct one maximum temperature test ($H0_1$), two high temperature tests ($H1_N$ and $H1_1$), one frost accumulation test ($H2_V$), and one low temperature test ($H3_2$). Conducting one or more of the following tests is optional: an additional high temperature test ($H1_2$), an additional frost accumulation test ($H2_2$), and a very low temperature test ($H4_2$). Conduct the optional high temperature cyclic ($H1C_1$) test to determine the heating mode cyclic-degradation coefficient, C_D^h. If this optional test is conducted and yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25. Test conditions for the nine tests are specified in Table 14A to this appendix. The compressor shall operate for the $H1_2$, $H2_2$ and $H3_2$ Tests at the same heating full speed, measured by RPM or power input frequency (Hz), as the maximum speed at which the system controls would operate the compressor in normal operation in 17°F ambient temperature. The compressor shall operate for the $H1_N$ test at the maximum speed at which the system controls would operate the compressor in normal operation in 47°F ambient temperature. Additionally, for a cooling/heating heat pump, the compressor shall operate for the $H1_N$ test at a speed, measured by RPM or power input frequency (Hz), no lower than the speed used in the A_2 test if the tested $H1_N$ heating capacity is less than the tested A_2 cooling capacity. The compressor shall operate at the same heating minimum speed, measured by RPM or power input frequency (Hz), for the $H0_1$, $H1C_1$, and $H1_1$ Tests. Determine the heating intermediate compressor speed cited in Table 14A using the heating mode full and minimum compressors speeds and:

$$\text{Heating intermediate speed} = \text{Heating minimum speed} + \frac{\text{Heating full speed} - \text{Heating minimum speed}}{3}$$

Where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed.

b. If one of the high temperature tests ($H1_2$ or $H1_N$) is conducted using the same compressor speed (RPM or power input frequency) as the $H3_2$ test, set the 47°F capacity and power input values used for calculation of HSPF2 equal to the measured values for that test:

$\dot{Q}^{k=2}_{hcalc}(47) = \dot{Q}^{k=2}_{h}(47)$; $\dot{E}^{k=2}_{hcalc}(47) = \dot{E}^{k=2}_{h}(47)$

Where:

$\dot{Q}^{k=2}_{hcalc}(47)$ and $\dot{E}^{k=2}_{hcalc}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations,

$\dot{Q}^{k=2}_{h}(47)$ is the capacity measured in the high temperature test ($H1_2$ or $H1_N$) that used the same compressor speed as the $H3_2$ test, and

$\dot{E}^{k=2}_{h}(47)$ is the power input measured in the high temperature test ($H1_2$ or $H1_N$) which used the same compressor speed as the $H3_2$ test.

Evaluate the quantities $\dot{Q}^{hk=2}(47)$ and $\dot{E}_h^{k=2}(47)$ according to section 3.7 of this appendix.

Otherwise (if no high temperature test is conducted using the same speed (RPM or power input frequency) as the $H3_2$ test), calculate the 47 °F capacity and power input values used for calculation of HSPF2 as follows:

$\dot{Q}^{k=2}_{hcalc}(47) = \dot{Q}^{k=2}_{h}(17) * (1 + 30°F * CSF)$;

$\dot{E}^{k=2}_{hcalc}(47) = \dot{E}^{k=2}_{h}(17) * (1 + 30°F * PSF)$;

Where:

$\dot{Q}^{k=2}_{hcalc}(47)$ and $\dot{E}^{k=2}_{hcalc}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations,

$\dot{Q}^{k=2}_{h}(17)$ is the capacity measured in the $H3_2$ test,

$\dot{E}^{k=2}_{h}(17)$ is the power input measured in the $H3_2$ test,

CSF is the capacity slope factor, equal to 0.0204/°F for split systems and 0.0262/°F for single-package systems, and

PSF is the Power Slope Factor, equal to 0.00455/°F.

c. If the $H2_2$ test is not done, use the following equations to approximate the capacity and electrical power at the $H2_2$ test conditions:

$\dot{Q}^{k=2}_{h}(35) = 0.90*\{\dot{Q}^{k=2}_{h}(17) + 0.6*[\dot{Q}^{k=2}_{hcalc}(47) - \dot{Q}^{k=2}_{h}(17)]\}$

$\dot{E}^{k=2}_{h}(35) = 0.985*\{\dot{E}^{k=2}_{h}(17) + 0.6*[\dot{E}^{k=2}_{hcalc}(47) - \dot{E}^{k=2}_{h}(17)]\}$

Where:

$\dot{Q}^{k=2}_{hcalc}(47)$ and $\dot{E}^{k=2}_{hcalc}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations, calculated as described in paragraph b. of this section, and

$\dot{Q}^{k=2}_{h}(17)$ and $\dot{E}^{k=2}_{h}(17)$ are the capacity and power input measured in the $H3_2$ test.

d. Determine the quantities $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test, determine the quantities $\dot{Q}_h^{k=2}(5)$ and $\dot{E}_h^{k=2}(5)$ from the $H4_2$ test, and evaluate all four according to section 3.10 of this appendix.

e. For multiple-split heat pumps (only), the following procedures supersede the above requirements. For all Table 14A of this appendix tests specified for a minimum compressor speed, turn off at least one indoor unit. The manufacturer shall designate the particular indoor unit(s) to be turned off. The manufacturer must also specify the compressor speed used for the Table 14A $H2_V$ test, a heating mode intermediate compressor speed that falls within ¼ and ¾ of the difference between the full and minimum heating mode speeds. The manufacturer should prescribe an intermediate speed that is expected to yield the highest COP for the given $H2_V$ test conditions and bracketed compressor speed range. The manufacturer can designate that one or more specific indoor units are turned off for the $H2_V$ test.

TABLE 14A—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR OTHER THAN VARIABLE-SPEED NON-COMMUNICATING COIL-ONLY HEAT PUMPS

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ test (required, steady)	70	60(max)	62	56.5	Heating Minimum	Heating Minimum.[1]
$H1_2$ test (optional, steady)	70	60(max)	47	43	Heating Full [4]	Heating Full-Load.[3]
$H1_1$ test (required, steady)	70	60(max)	47	43	Heating Minimum	Heating Minimum.[1]
$H1_N$ test (required, steady)	70	60(max)	47	43	Heating Full [5]	Heating Nominal.[7]
$H1C_1$ test (optional, cyclic)	70	60(max)	47	43	Heating Minimum	([2])
$H2_2$ test (optional)	70	60(max)	35	33	Heating Full [4]	Heating Full-Load.[3]
$H2_V$ test (required)	70	60(max)	35	33	Heating Intermediate	Heating Intermediate.[6]

TABLE 14A—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR OTHER THAN VARIABLE-SPEED NON-COMMUNICATING COIL-ONLY HEAT PUMPS—Continued

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H3_2$ test (required, steady)	70	60(max)	17	15	Heating Full [4]	Heating Full-Load.[3]
$H4_2$ test (optional, steady)	70	60(max)	5	4(max)	Heating Full [8]	Heating Full-Load.[3]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_1$ test.
[3] Defined in section 3.1.4.4 of this appendix.
[4] Maximum speed that the system controls would operate the compressor in normal operation in 17°F ambient temperature. The $H1_2$ test is not needed if the $H1_N$ test uses this same compressor speed.
[5] Maximum speed that the system controls would operate the compressor in normal operation in 47°F ambient temperature.
[6] Defined in section 3.1.4.6 of this appendix.
[7] Defined in section 3.1.4.7 of this appendix.
[8] Maximum speed that the system controls would operate the compressor in normal operation at 5°F ambient temperature.

3.6.4.2 Variable-Speed Compressor With Non-Communicating Coil-Only Heat Pumps

a. Conduct one maximum temperature test ($H0_1$), two high temperature tests ($H1_N$ and $H1_1$), two frost accumulation test ($H2_2$ and $H2_1$), and two low temperature tests ($H3_2$ and $H3_1$). Conducting one or both of the following tests is optional: an additional high temperature test ($H1_2$) and a very low temperature test ($H4_2$). Conduct the optional high temperature cyclic ($H1C_1$) test to determine the heating mode cyclic-degradation coefficient, C_D^h. If this optional test is conducted and yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25. Test conditions for the ten tests are specified in Table 14B to this appendix. The compressor shall operate for the $H1_2$ and $H3_2$ tests at the same heating full speed, measured by RPM or power input frequency (Hz), as the maximum speed at which the system controls would operate the compressor in normal operation in 17 °F ambient temperature. The compressor shall operate for the $H1_N$ test at the maximum speed at which the system controls would operate the compressor in normal operation in 47 °F ambient temperature. Additionally, for a cooling/heating heat pump, the compressor shall operate for the $H1_N$ test at a speed, measured by RPM or power input frequency (Hz), no lower than the speed used in the A_2 test if the tested $H1_N$ heating capacity is less than the tested A_2 cooling capacity. The compressor shall operate at the same heating minimum speed, measured by RPM or power input frequency (Hz), for the $H0_1$, $H1C_1$, and $H1_1$ tests.

b. If one of the high temperature tests ($H1_2$ or $H1_N$) is conducted using the same compressor speed (RPM or power input frequency) as the $H3_2$ test, set the 47 °F capacity and power input values used for calculation of HSPF2 equal to the measured values for that test:

$$\dot{Q}^{k=2hcalc}(47) = \dot{Q}^{k=2h}(47) = \dot{E}^{k=2hcalc}(47) = \dot{E}^{k=2h}(47)$$

Where:

$\dot{Q}^{k=2hcalc}(47)$ and $\dot{E}^{k=2hcalc}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations,

$\dot{Q}^{k=2}{}_h(47)$ is the capacity measured in the high temperature test ($H1_2$ or $H1_N$) which used the same compressor speed as the $H3_2$ test, and

$\dot{E}^{k=2}{}_h(47)$ is the power input measured in the high temperature test ($H1_2$ or $H1_N$) which used the same compressor speed as the $H3_2$ test.

Evaluate the quantities $\dot{Q}^{h=2}(47)$ and $\dot{E}^{k=2}(47)$ according to section 3.7 of this appendix.

Otherwise (if no high temperature test is conducted using the same speed (RPM or power input frequency) as the $H3_2$ test), calculate the 47 °F capacity and power input values used for calculation of HSPF2 as follows:

$\dot{Q}^{k=2hcalc}(47) = \dot{Q}^{k=2h}(17) * (1 + 30\ °F\ CSF)$; and

$\dot{E}^{k=2hcalc}(47) = \dot{E}^{k=2h}(17) * (1 + 30\ °F\ PSF)$; and

Where:

$\dot{Q}^{k=2hcalc}$ and $\dot{E}^{k=2hcalc}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations,

$\dot{Q}^{k=2h}$ is the capacity measured in the $H3_2$ test,

$\dot{E}^{k=2h}(47)$ is the power input measured in the $H3_2$ test,

CSF is the capacity slope factor, equal to 0.0204/ °F for split systems, and

PSF is the Power Slope Factor, equal to 0.00455/ °F.

c. Determine the quantities $\dot{Q}^{k=2}{}_h(17)$ and $\dot{E}^{k=2}{}_h(5)$ from the $H3_2$ test, determine the quantities $\dot{Q}^{k=2}{}_h(5)$ and $\dot{E}^{k=2}{}_h(5)$ from the $H4_2$ test, and evaluate all four according to section 3.10 of this appendix.

TABLE 14B—HEATING MODE TEST CONDITIONS FOR VARIABLE-SPEED NON-COMMUNICATING COIL-ONLY HEAT PUMPS

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ test (required, steady)	70	60 (max)	62	56.5	Heating Minimum	Heating Minimum.[1]
$H1_2$ test (optional, steady)	70	60 (max)	47	43	Heating Full [4]	Heating Full-Load.[3]
$H1_1$ test (required, steady)	70	60 (max)	47	43	Heating Minimum	Heating Minimum.[1]
$H1_N$ test (required, steady)	70	60 (max)	47	43	Heating Full [5]	Heating Full-Load.[3]
$H1C_1$ test (optional, cyclic)	70	60 (max)	47	43	Heating Minimum	([2])
$H2_2$ test (required)	70	60 (max)	35	33	Heating Full [6]	Heating Full-Load.[3]
$H2_1$ test (required)	70	60 (max)	35	33	Heating Minimum [7]	Heating Minimum.[1]
$H3_2$ test (required, steady)	70	60 (max)	17	15	Heating Full [4]	Heating Full-Load.[3]
$H3_1$ test (required, steady)	70	60 (max)	17	15	Heating Minimum [8]	Heating Minimum.[1]
$H4_2$ test (optional, steady)	70	60 (max)	5	4 (max)	Heating Full [9]	Heating Full-Load.[3]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_1$ test.
[3] Defined in section 3.1.4.4 of this appendix.
[4] Maximum speed that the system controls would operate the compressor in normal operation in 17 °F ambient temperature. The $H1_2$ test is not needed if the $H1_N$ test uses this same compressor speed.
[5] Maximum speed that the system controls would operate the compressor in normal operation in 47 °F ambient temperature.
[6] Maximum speed that the system controls would operate the compressor in normal operation in 35 °F ambient temperature.
[7] Minimum speed that the system controls would operate the compressor in normal operation in 35 °F ambient temperature.
[8] Minimum speed that the system controls would operate the compressor in normal operation in 17 °F ambient temperature.
[9] Maximum speed that the system controls would operate the compressor in normal operation in 5 °F ambient temperature.

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3.6.6 Heating Mode Tests for Northern Heat Pumps With Triple-Capacity Compressors

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TABLE 15—HEATING MODE TEST CONDITIONS FOR UNITS WITH A TRIPLE-CAPACITY COMPRESSOR

Test description	Air entering indoor unit (°F)		Air entering outdoor unit (°F)		Compressor capacity	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ Test (required, steady)	70	60 (max)	62	56.5	Low	Heating Minimum.[1]
$H1_2$ (required, steady)	70	60 (max)	47	43	High	Heating Full-Load.[2]
$H1C_2$ Test (optional,[8] cyclic	70	60 (max)	47	43	High	(3)
$H1_1$ Test (required, steady)	70	60 (max)	47	43	Low	Heating Minimum.[1]
$H1C_1$ Test (optional, cyclic)	70	60 (max)	47	43	Low	(4)
$H2_3$ Test (optional, steady)	70	60 (max)	35	33	Booster	Heating Full-Load.[2]
$H2_2$ Test (required)	70	60 (max)	35	33	High	Heating Full-Load.[2]
$H2_1$ Test (required	70	60 (max)	35	33	Low	Heating Minimum.[1]
$H3_3$ Test (required, steady)	70	60 (max)	17	15	Booster	Heating Full-Load.[2]
$H3C_3$ Test[5 6] (optional, cyclic)	70	60 (max)	17	15	Booster	(7)
$H3_2$ Test (required, steady)	70	60 (max)	17	15	High	Heating Full-Load.[2]
$H3_1$ Test[5] (required, steady)	70	60 (max)	17	15	Low	Heating Minimum.[1]
$H4_3$ Test (required, steady)	70	60 (max)	5	4 (max)	Booster	Heating Full-Load.[2]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Defined in section 3.1.4.4 of this appendix.
[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H1_2$ test.
[4] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H1_1$ test.
[5] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37 °F is needed to complete the HSPF2 calculations in section 4.2.6 of this appendix.
[6] If note #5 to this table applies, the equations for $\dot{Q}^{k=1h}(35)$ and $\dot{E}^{k=1h}(17)$ in section 3.6.6 of this appendix may be used in lieu of conducting the $H2_1$ test.
[7] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H3_3$ test.
[8] Required only if the heat pump locks out low-capacity operation at lower outdoor temperatures

* * * * *

3.7 Test Procedures for Steady-State Maximum Temperature and High Temperature Heating Mode Tests (the $H0_1$, H1, $H1_2$, $H1_1$, and $H1_N$ tests)

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c. For mobile home and space-constrained ducted coil-only system tests,

(1) For two-stage or variable-speed systems, for all steady-state maximum temperature and high temperature tests (*i.e.,* the $H0_1$, $H1_1$, $H1_2$, and $H1_N$ tests), increase $Q_c^k(T)$ by the quantity calculated in Equation 3.7–1 to this appendix and increase $\overline{E_c}^k(T)$ by the quantity calculated in Equation 3.7–2 to this appendix.

$$\text{Equation 3.7-1} \quad \frac{(\mathrm{DFPC}_{MHSC}*3.412)\ Btu/h}{1000\ scfm} * \dot{V}_S$$

$$\text{Equation 3.7-2} \quad \frac{\mathrm{DFPC}_{MHSC}\ W}{1000\ scfm} * \dot{V}_S,$$

Where:

DFPC_{MHSC} is the default fan power coefficient (watts) for mobile-home and space-constrained systems,

$$\mathrm{DFPC}_{MHSC} = 308 + \frac{(406 - 308) * (\%FLAVR - 75\%)}{100\% - 75\%}$$

And %FLAVR is the air volume rate used for the test, expressed as a percentage of the cooling full load air volume rate. For all tests specifying the full-load air volume rate (*e.g.,* the $H1_2$ and $H1_N$ tests), set %FLAVR to 100%. For tests that specify the heating minimum air volume rate or heating intermediate air volume rate (*i.e.,* the $H0_1$ and $H1_1$ tests) and for which the specified minimum or intermediate air volume rate is greater than or equal to 75 percent of the cooling full-load air volume rate and less than the cooling full-load air volume rate, set %FLAVR to the ratio of the specified air volume rate and the cooling full-load air volume rate, expressed as a percentage.

(2) For single-stage systems, for all steady-state maximum temperature and high temperature tests (*i.e.,* the H1 test), increase $Q_c^k(T)$ by the quantity calculated in Equation 3.7–3 to this appendix and increase $E_c^k(T)$ by the quantity calculated in Equation 3.7–4 to this appendix.

$$\text{Equation 3.7-3} \quad \frac{1385\ Btu/h}{1000\ scfm} * \dot{V}_S$$

$$\text{Equation 3.7-4} \quad \frac{406\,W}{1000\,scfm} * \dot{V}_S.$$

Where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

d. For non-mobile, non-space-constrained home ducted coil-only system tests,

(1) For two-stage or variable-speed systems, for all steady-state maximum temperature and high temperature tests (*i.e.,* the $H0_1$, $H1_1$, $H1_2$, and $H1_N$ tests), increase $Q_c^k(T)$ by the quantity calculated in Equation 3.7–5 to this appendix and increase $E_c^k(T)$ by the quantity calculated in Equation 3.7–6 to this appendix.

$$\text{Equation 3.7-5} \quad \frac{(\mathrm{DFPC}_C * 3.412)\,Btu/h}{1000\,scfm} * \dot{V}_S$$

$$\text{Equation 3.7-6} \quad \frac{\mathrm{DFPC}_C\,W}{1000\,scfm} * \dot{V}_S,$$

Where:

DFPC_C is the default fan power coefficient (watts) for non-mobile-home and non-space-constrained systems,

$$\mathrm{DFPC}_C = 335 + \frac{(441 - 335) * (\%FLAVR - 75\%)}{100\% - 75\%}$$

And %FLAVR is the air volume rate used for the test, expressed as a percentage of the cooling full load air volume rate. For all tests specifying the full-load air volume rate (*e.g.,* the $H1_2$ and $H1_N$ tests), set %FLAVR to 100%. For tests that specify the heating minimum air volume rate or heating intermediate air volume rate (*i.e.,* the $H0_1$ and $H1_1$ tests) and for which the specified minimum or intermediate air volume rate is greater than or equal to 75 percent of the cooling full-load air volume rate and less than the cooling full-load air volume rate, set %FLAVR to the ratio of the specified air volume rate and the cooling full-load air volume rate, expressed as a percentage.

(2) For single-stage systems, for all steady-state maximum temperature and high temperature tests (*i.e.,* the H1 test), increase Q_c^k(T) by the quantity calculated in Equation 3.7–7 to this appendix and increase $E_c^k(T)$ by the quantity calculated in Equation 3.7–8 to this appendix.

$$\text{Equation 3.7-7} \quad \frac{1505\,Btu/h}{1000\,scfm} * \dot{V}_S$$

$$\text{Equation 3.7-8} \quad \frac{441\,W}{1000\,scfm} * \dot{V}_S.$$

Where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

* * * * *

3.8 Test Procedures for the Cyclic Heating Mode Tests (the $H0C_1$, H1C, $H1C_1$ and $H1C_2$ Tests).

* * * * *

b. For ducted coil-only system heat pumps (excluding the special case where a variable-speed fan is temporarily removed),

(1) For mobile home and space-constrained ducted coil-only systems,

(i) For two-stage or variable-speed systems, for all cyclic heating tests (*i.e.,* the $H1C_1$ and $H1C_2$ tests), increase q_{cyc} by the amount calculated using Equation 3.5–2 to this appendix. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–3 to this appendix.

(ii) For single-stage systems, for all cyclic heating tests (*i.e.,* the H1C and $H1C_1$ tests), increase q_{cyc} by the amount calculated using Equation 3.5–4 to this appendix. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–5 to this appendix.

(2) For non-mobile home and non-space-constrained ducted coil-only systems,

(i) For two-stage or variable-speed systems, for all cyclic heating tests (*i.e.,* the $H1C_1$ and $H1C_2$ tests), increase q_{cyc} by the amount calculated using Equation 3.5–6 to this appendix. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–7 to this appendix.

(ii) For single-stage systems, for all cyclic heating tests (*i.e.,* the H1C and $H1C_1$ tests), increase q_{cyc} by the amount calculated using Equation 3.5–8 to this appendix. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–9 to this appendix.

In making these calculations, use the average indoor air volume rate (V_s) determined from the section 3.7 of this appendix steady-state heating mode test conducted at the same test conditions.

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3.9.1 Average Space Heating Capacity and Electrical Power Calculations

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b. Evaluate average electrical power, $\dot{E}_h^{\,k}(35) = \frac{e_{def}(35)}{\Delta_{\tau_{FR}}}$, when expressed in units of watts, using:

(1) For mobile home and space-constrained ducted coil-only system tests,

(i) For two-stage or variable-speed systems, for all frost accumulation tests (*i.e.,* the $H2_1$, $H2_2$, and $H2_V$ tests), increase $Q_h^k(35)$ by the quantity calculated in Equation 3.9.1–1 to this appendix and increase $E_h^k(35)$ by the quantity calculated in Equation 3.9.1–2 to this appendix.

$$\text{Equation 3.9.1-1} \quad \frac{(\text{DFPC}_{MHSC}*3.412)\ ^{Btu}/_{h}}{1000\ scfm} * \dot{V}_S$$

$$\text{Equation 3.9.1-2} \quad \frac{\text{DFPC}_{MHSC}\ W}{1000\ scfm} * \dot{V}_S,$$

Where:

$DFPC_{MHSC}$ is the default fan power coefficient (watts) for mobile-home and space-constrained systems,

$$\text{DFPC}_{MHSC} = 308 + \frac{(406-308)*(\%FLAVR-75\%)}{100\%-75\%}$$

And %FLAVR is the air volume rate used for the test, expressed as a percentage of the cooling full load air volume rate. For all tests specifying the full-load air volume rate (*e.g.,* the $H2_2$ test), set %FLAVR to 100%. For tests that specify the heating minimum air volume rate or heating intermediate air volume rate (*i.e.,* the $H2_1$ and $H2_v$ tests) and for which the specified minimum or intermediate air volume rate is greater than or equal to 75 percent of the cooling full-load air volume rate and less than the cooling full-load air volume rate, set %FLAVR to the ratio of the specified air volume rate and the cooling full-load air volume rate, expressed as a percentage.

(ii) For single-stage systems, for all frost accumulation tests (*i.e.,* the H2 test), increase $Q_h^k(35)$ by the quantity calculated in Equation 3.9.1–3 to this appendix and increase $Q_h^k(35)$ by the quantity calculated in Equation 3.9.1–4 to this appendix.

$$\text{Equation 3.9.1-3} \quad \frac{1385\ ^{Btu}/_{h}}{1000\ scfm} * \dot{V}_S$$

$$\text{Equation 3.9.1-4} \quad \frac{406\ W}{1000\ scfm} * \dot{V}_S.$$

Where V_s is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

(2) For non-mobile home and non-space-constrained ducted coil-only systems,

(i) For two-stage or variable-speed systems, for all frost accumulation tests (*i.e.,* the $H2_1$, $H2_2$, and $H2_V$ tests), increase $Q_h^k(35)$ by the quantity calculated in Equation 3.9.1–5 to this appendix and increase $E_h^k(35)$ by the quantity calculated in Equation 3.9.1–6 to this appendix.

$$\text{Equation 3.9.1-5} \quad \frac{(\text{DFPC}_{C}*3.412)\ ^{Btu}/_{h}}{1000\ scfm} * \dot{V}_S$$

$$\text{Equation 3.9.1-6} \quad \frac{\text{DFPC}_{C}\ W}{1000\ scfm} * \dot{V}_S,$$

Where:

$DFPC_C$ is the default fan power coefficient (watts) for non-mobile-home and non-space-constrained systems,

$$\text{DFPC}_{C} = 335 + \frac{(441-335)*(\%FLAVR-75\%)}{100\%-75\%}$$

And %FLAVR is the air volume rate used for the test, expressed as a percentage of the cooling full load air volume rate. For all tests specifying the full-load air volume rate (*e.g.,* the $H2_2$ test), set %FLAVR to 100%. For tests that specify the heating minimum air volume rate or heating intermediate air volume rate (*i.e.,* the $H2_1$ and $H2_v$ tests) and for which the specified minimum or intermediate air volume rate is greater than or equal to 75 percent of the cooling full-load air volume rate and less than the cooling full-load air volume rate, set %FLAVR to the ratio of the specified air volume rate and the cooling full-load air volume rate, expressed as a percentage.

(ii) For single-stage systems, for all frost accumulation tests (*i.e.,* the H2 test), increase $Q_h^k(35)$ by the quantity calculated in Equation 3.9.1–7 to this appendix and increase $E_h^k(35)$ by the quantity calculated in Equation 3.9.1–8 to this appendix.

Equation 3.9.1-7 $\frac{1505^{Btu}/_{h}}{1000\,scfm} * \dot{V}_S$, and

Equation 3.9.1-8 $\frac{441\,W}{1000\,scfm} * \dot{V}_S$.

Where V_s is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

* * * * *

4.1.4 SEER2 Calculations for an Air Conditioner or Heat Pump Having a Variable-Speed Compressor

Calculate SEER2 using Equation 4.1–1 to this appendix. Evaluate the space cooling capacity, $Q_c^{k=1}(T_j)$, and electrical power consumption, $E_c^{k=1}(T_j)$, of the test unit when operating at minimum compressor speed and outdoor temperature T_j. Use:

Equation 4.1.4-1 $$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(67) + \frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} * (T_j - 67)$$

Equation 4.1.4-2 $$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(67) + \frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} * (T_j - 67)$$

Where $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ are determined from the B_1 test, $\dot{Q}_c^{k=1}(67)$ and $E_c^{k=1}(67)$ are determined from the F_1 test, and all four quantities are calculated as specified in section 3.3 of this appendix. Evaluate the space cooling capacity, $\dot{Q}_c^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at full compressor speed and outdoor temperature T_j. Use Equations 4.1.3–3 and 4.1.3–4 to this appendix, respectively, where $\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ are determined from the A_2 test, $\dot{Q}_c^{k=2}(82)$ and $\dot{E}_c^{k=2}(82)$ are determined from the B_2 test, and all four quantities are calculated as specified in section 3.3 of this appendix. For units other than variable-speed non-communicating coil-only air-conditioners or heat pumps, calculate the space cooling capacity, $\dot{Q}_c^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=v}(T_j)$, of the test unit when operating at outdoor temperature T_j and the intermediate compressor speed used during the section 3.2.4 (and Table 8) E_V test of this appendix using:

Equation 4.1.4-3 $$\dot{Q}_c^{k=v}(T_j) = \dot{Q}_c^{k=v}(87) + M_Q * (T_j - 87)$$

Equation 4.1.4-4 $$\dot{E}_c^{k=v}(T_j) = \dot{E}_h^{k=v}(87) + M_E * (T_j - 87)$$

Where $\dot{Q}_c^{k=v}(87)$ are determined from the E_V test and calculated as specified in section 3.3 of this appendix.

Approximate the slopes of the k=v intermediate speed cooling capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} * (1 - N_Q)\right] + \left[N_Q * \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95-82}\right]$$

$$M_E = \left[\frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} * (1 - N_E)\right] + \left[N_E * \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95-82}\right]$$

Where:

$$N_Q = \frac{\dot{Q}_c^{k=v}(87) - \dot{Q}_c^{k=1}(87)}{\dot{Q}_c^{k=2}(87) - \dot{Q}_c^{k=1}(87)} \text{ and } N_E = \frac{\dot{E}_c^{k=v}(87) - \dot{E}_c^{k=1}(87)}{\dot{E}_c^{k=2}(87) - \dot{E}_c^{k=1}(87)}$$

Use Equations 4.1.4–1 and 4.1.4–2 to this appendix, respectively, to calculate $\dot{Q}_c^{k=1}(87)$ and $\dot{E}_c^{k=1}(87)$.

* * * * *

4.1.4.2.1 Units That Are Not Variable-Speed Non-Communicating Coil-Only Air Conditioners or Heat Pumps

If the unit operates at an intermediate compressor speed (k=i) in order to match the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=i}(T_j) * \frac{n_j}{N} \quad \frac{e_c(T_j)}{N} = \dot{E}_c^{k=i}(T_j) * \frac{n_j}{N}$$

Where:

$\dot{Q}_c^{k=i}(T_j) = BL(T_j)$, the space cooling capacity delivered by the unit in matching the building load at temperature T_j, in Btu/h. The matching occurs with the unit operating at compressor speed k = i.

$$\dot{E}_c^{k=i}(T_j) = \frac{\dot{Q}_c^{k=i}(T_j)}{EER^{k=i}(T_j)}$$ the electrical power input required by the test unit when operating at a compressor speed of k = i and temperature T_j, in W.

$EER^{k=i}(T_j)$ = the steady-state energy efficiency ratio of the test unit when operating at a compressor speed of k = i and temperature T_j, Btu/h per W.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 19 of this section. For each temperature bin where the unit operates at an intermediate compressor speed, determine the energy efficiency ratio $EER^{k=i}(T_j)$ using the following equations:

For each temperature bin where $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=v}(T_j)$,

$$EER^{k=i}(T_j) = EER^{k=1}(T_j) + \frac{EER^{k=v}(T_j) - EER^{k=1}(T_j)}{Q^{k=v}(T_j) - Q^{k=1}(T_j)} * (BL(T_j) - Q^{k=1}(T_j))$$

For each temperature bin where $\dot{Q}_c^{k=v}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$,

$$EER^{k=i}(T_j) = EER^{k=v}(T_j) + \frac{EER^{k=2}(T_j) - EER^{k=v}(T_j)}{Q^{k=2}(T_j) - Q^{k=v}(T_j)} * (BL(T_j) - Q^{k=v}(T_j))$$

Where:

$EER^{k=1}(T_j)$ is the steady-state energy efficiency ratio of the test unit when operating at minimum compressor speed and temperature Tj, in Btu/h per W, calculated using capacity $\dot{Q}_c^{k=1}(T_j)$ calculated using Equation 4.1.4–1 to this appendix and electrical power consumption $\dot{E}_c^{k=1}(T_j)$ calculated using Equation 4.1.4–2 to this appendix;

$EER^{k=v}(T_j)$ is the steady-state energy efficiency ratio of the test unit when operating at intermediate compressor speed and temperature Tj, in Btu/h per W, calculated using capacity $\dot{Q}_c^{k=v}(T_j)$ calculated using Equation 4.1.4–3 to this appendix and electrical power consumption $\dot{E}_c^{k=v}(T_j)$ calculated using Equation 4.1.4–4 to this appendix;

$EER^{k=2}(T_j)$ is the steady-state energy efficiency ratio of the test unit when operating at full compressor speed and temperature Tj, Btu/h per W, calculated using capacity $\dot{Q}_c^{k=2}(T_j)$ and electrical power consumption $\dot{E}_c^{k=2}(T_j)$, both calculated as described in section 4.1.4 of this appendix; and

$BL(T_j)$ is the building cooling load at temperature T_j, Btu/h.

4.1.4.2.2 Variable-Speed Non-Communicating Coil-Only Air Conditioners or Heat Pumps

If the unit alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = [X^{k=1}(T_j) * \dot{Q}_c^{k=1}(T_j) + X^{k=2}(T_j) * \dot{Q}_c^{k=2}(T_j)] * \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = [X^{k=1}(T_j) * \dot{E}_c^{k=1}(T_j) + X^{k=2}(T_j) * \dot{E}_c^{k=2}(T_j)] * \frac{n_j}{N}$$

Where:

$$X^{k=1}(T_j) = \frac{\dot{Q}_c^{k=2}(T_j) - BL(T_j)}{\dot{Q}_c^{k=2}(T_j) - \dot{Q}_c^{k=1}(T_j)}$$ the cooling mode, low capacity load factor for

the cooling mode, low capacity load factor for temperature bin j (dimensionless); and $X^{k=2}(T_j) = 1 - X^{k=1}(T_j)$, the cooling mode, high capacity load factor for temperature bin j (demensionless).

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 19 to this appendix. Obtain $\dot{Q}_c^{k=1}(T_j)$, $\dot{E}_c^{k=1}(T_j)$, $\dot{Q}_c^{k=2}(T_j)$, and $\dot{E}_c^{k=2}(T_j)$ as described in section 4.1.4 of this appendix.

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4.2 Heating Seasonal Performance Factor 2 (HSPF2) Calculations

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Evaluate the building heating load using:

Equation 4.2-2 $BL(T_j) = \frac{T_{zl} - T_j}{T_{zl} - 5°F} * C * \dot{Q}_c(95°F)$

Where:

T_j = the outdoor bin temperature, °F;

T_{zl} = the zero-load temperature, °F, which varies by climate region according to Table 20 to this appendix;

C = slope (adjustment) factor, which varies by climate region according to Table 20 to this appendix. When calculating building load for a variable-speed compressor system, substitute C_{VS} for C;

$Q_c(95 °F)$ = the cooling capacity at 95 °F determined from the A or A_2 test, Btu/h. For heating-only heat pump units, replace $Q_c(95 °F)$ in Equation 4.2–2 with $Q_h(47 °F)$;

$Q_h(47 °F)$ = the heating capacity at 47 °F determined from the H1 test for units having a single-speed compressor, $H1_2$ for units having a two-capacity compressor, and $H1_N$ test for units having a variable-speed compressor, Btu/h.

* * * * *

4.2.3 Additional Steps for Calculating the HSPF2 of a Heat Pump Having a Two-Capacity Compressor

The calculation of the Equation 4.2–1 to this appendix quantities differ depending upon whether the heat pump would operate at low capacity (section 4.2.3.1 of this appendix), cycle between low and high capacity (section 4.2.3.2 of this appendix), or operate at high capacity (sections 4.2.3.3 and 4.2.3.4 of this appendix) in responding to the building load. For heat pumps that lock out low capacity operation at low outdoor temperatures, the outdoor temperature at which the unit locks out must be that specified by the manufacturer in the certification report so that the appropriate equations can be selected.

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4.2.3.4 Heat Pump Must Operate Continuously at High (k=2) Compressor Capacity at Temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=2}(T_j) * \delta'(T_j) * \frac{n_j}{N}$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - [\dot{Q}_h^{k=2}(T_j) * \delta'(T_j)]}{3.413 \frac{Btu}{Wh}} * \frac{n_j}{N}$$

Where:

$$\delta'(T_j) = \begin{cases} 0, & if\ T_j \leq T_{off}\ or\ \frac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} < 1 \\ \frac{1}{2}, & if\ T_{off} < T_j \leq T_{on}\ and\ \frac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \geq 1 \\ 1, & if\ T_j > T_{on}\ and\ \frac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \geq 1 \end{cases}$$

4.2.4 Additional Steps for Calculating the HSPF2 of a Heat Pump Having a Variable-Speed Compressor. Calculate HSPF2 Using Equation 4.2–1

* * * * *

a. Minimum Compressor Speed. For units other than variable-speed non-communicating coil-only heat pumps, evaluate the space heating capacity, $Q_h^{k=1}(T_j)$, and electrical power consumption, $E_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor speed and outdoor temperature T_j using:

Equation 4.2.4-1

$$\dot{Q}_h^{k=1}(T_j) = \dot{Q}_h^{k=1}(47) + \frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62 - 47} * (T_j - 47); \text{ and}$$

Equation 4.2.4-2

$$\dot{E}_h^{k=1}(T_j) = \dot{E}_h^{k=1}(47) + \frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62 - 47} * (T_j - 47)$$

Where $Q_h^{k=1}(62)$ and $E_h^{k=1}(62)$ are determined from the $H0_1$ test, $Q_h^{k=1}(47)$ and $E_h^{k=1}(47)$ are determined from the $H1_1$ test, and all four quantities are calculated as specified in section 3.7 of this appendix.

For variable-speed non-communicating coil-only heat pumps, when T_j is greater than or equal to 47 °F, evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor

speed as described in Equations 4.2.4–1 and 4.2.4–2 to this appendix, respectively. When T_j is less than 47 °F, evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$ using:

Equation 4.2.4-3

$$\dot{Q}_h^{k=1}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(35) + \dfrac{\left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(35)\right] * (T_j - 35)}{47 - 35}, & if\ 35\ °F \leq T_j < 47\ °F \\ \dot{Q}_h^{k=1}(17) + \dfrac{\left[\dot{Q}_h^{k=1}(35) - \dot{Q}_h^{k=1}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F \leq T_j < 35\ °F \\ \dot{Q}_h^{k=2}(T_j) * \left(\dot{Q}_h^{k=1}(17) / \dot{Q}_h^{k=2}(17)\right), & if\ T_j < 17\ °F \end{cases}$$

And

Equation 4.2.4-4

$$\dot{E}_h^{k=1}(T_j) = \begin{cases} \dot{E}_h^{k=1}(35) + \dfrac{\left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(35)\right] * (T_j - 35)}{47 - 35}, & if\ 35\ °F \leq T_j < 47\ °F \\ \dot{E}_h^{k=1}(17) + \dfrac{\left[\dot{E}_h^{k=1}(35) - \dot{E}_h^{k=1}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F \leq T_j < 35\ °F \\ \dot{E}_h^{k=2}(T_j) * \left(\dot{E}_h^{k=1}(17) / \dot{E}_h^{k=2}(17)\right), & if\ T_j < 17\ °F \end{cases}$$

Where $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_1$ test, and both quantities are calculated as specified in section 3.7 of this appendix; $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ are determined from the $H2_1$ test, and are calculated as specified in section 3.9 of this appendix; $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17)$ are determined from the $H3_1$ test, and are calculated as specified in section 3.10 of this appendix; and $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ are calculated as described in section 4.2.4.c or 4.2.4.d of this appendix, as appropriate.

b. Minimum Compressor Speed for Minimum-speed-limiting Variable-speed Heat Pumps. For units other than variable-speed non-communicating coil-only heat pumps, evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor speed and outdoor temperature T_j using:

Equation 4.2.4-5

$$\dot{Q}_h^{k=1}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(47) + \dfrac{\left[\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)\right] * (T_j - 47)}{62 - 47}, & if\ T_j \geq 47\ °F \\ \dot{Q}_h^{k=v}(35) + \dfrac{\left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=v}(35)\right] * (T_j - 35)}{47 - 35}, & if\ 35\ °F \leq T_j < 47\ °F \\ \dot{Q}_h^{k=v}(T_j), & if\ T_j < 35\ °F \end{cases}$$

And

Equation 4.2.4-6

$$\dot{E}_h^{k=1}(T_j) = \begin{cases} \dot{E}_h^{k=1}(47) + \frac{[\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)] * (T_j - 47)}{62 - 47}, & if\ T_j \geq 47\ °F \\ \dot{E}_h^{k=v}(35) + \frac{[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=v}(35)] * (T_j - 35)}{47 - 35}, & if\ 35\ °F \leq T_j < 47\ °F \\ \dot{E}_h^{k=v}(T_j), & if\ T_j < 35\ °F \end{cases}$$

Where $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ are determined from the $H0_1$ test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_1$ test, and all four quantities are calculated as specified in section 3.7 of this appendix; $\dot{Q}_h^{k=v}(35)$ and $\dot{E}_h^{k=v}(35)$ are determined from the $H2_v$ test and are calculated as specified in section 3.9 of this appendix; and $\dot{Q}_h^{k=v}(T_j)$ and $\dot{E}_h^{k=v}(T_j)$ are calculated using Equations 4.2.4–7 and 4.2.4–8 to this appendix, respectively.

For variable-speed non-communicating coil-only heat pumps, evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump as described in section 4.2.4.a of this appendix, using Equations 4.2.4–1, 4.2.4–2, 4.2.4–3, and 4.2.4–4 to this appendix, as appropriate.

c. Full Compressor Speed for Heat Pumps for which the $H4_2$ test is not conducted. Evaluate the space heating capacity, $\dot{Q}_h^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=2}(T_j)$, of the heat pump when operating at full compressor speed and outdoor temperature T_j using:

$$\dot{Q}_h^{k=2}(T_j) =$$

$$\begin{cases} \left\{\dot{Q}_h^{k=2}(17) + \frac{[\dot{Q}_{hcalc}^{k=2}(47) - \dot{Q}_h^{k=2}(17)] * (T_j - 17)}{47 - 17}\right\} * \left(\frac{\dot{Q}_h^{k=N}(47)}{\dot{Q}_{hcalc}^{k=2}(47)}\right), & if\ T_j \geq 45\ °F \\ \dot{Q}_h^{k=2}(17) + \frac{[\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=2}(17)] * (T_j - 17)}{35 - 17}, & if\ 17\ °F \leq T_j < 45\ °F \\ \dot{Q}_h^{k=2}(17) + \frac{[\dot{Q}_{hcalc}^{k=2}(47) - \dot{Q}_h^{k=2}(17)] * (T_j - 17)}{47 - 17}, & if\ T_j < 17\ °F \end{cases}$$

And

$$\dot{E}_h^{k=2}(T_j) =$$

$$\begin{cases} \left\{\dot{E}_h^{k=2}(17) + \frac{[\dot{E}_{hcalc}^{k=2}(47) - \dot{E}_h^{k=2}(17)] * (T_j - 17)}{47 - 17}\right\} * \left(\frac{\dot{E}_h^{k=N}(47)}{\dot{E}_{hcalc}^{k=2}(47)}\right), & if\ T_j \geq 45\ °F \\ \dot{E}_h^{k=2}(17) + \frac{[\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=2}(17)] * (T_j - 17)}{35 - 17}, & if\ 17\ °F \leq T_j < 45\ °F \\ \dot{E}_h^{k=2}(17) + \frac{[\dot{E}_{hcalc}^{k=2}(47) - \dot{E}_h^{k=2}(17)] * (T_j - 17)}{47 - 17}, & if\ T_j < 17\ °F \end{cases}$$

Determine $\dot{Q}_h^{k=N}(47)$ and $\dot{E}_h^{k=N}(47)$ from the $H1_N$ test and the calculations specified in section 3.7 of this appendix. See section 3.6.4.b of this appendix regarding determination of the capacity $\dot{Q}_{hcalc}^{k=2}(47)$ and power input $\dot{E}_{hcacl}^{k=2}(47)$ used in the HSPF2 calculations to represent the $H1_2$ Test. Determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ test and the calculations specified in section 3.9 of this appendix or, if the $H2_2$ test is not conducted, by conducting the calculations specified in section 3.6.4 of this appendix. Determine $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test and the methods specified in section 3.10 of this appendix.

* * * * *

e. Intermediate Compressor Speed. For units other than variable-speed non-communicating coil-only heat pumps, calculate the space heating capacity, $\dot{Q}_h^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=v}(T_j)$, of the heat pump when operating at outdoor temperature T_j and the intermediate compressor speed used during the $H2_V$ test in section 3.6.4 of this appendix using:

$$\text{Equation 4.2.4-7 } \dot{Q}_h^{k=v}(T_j) = \dot{Q}_h^{k=v}(35) + M_Q * (T_j - 35), \text{ and}$$

$$\text{Equation 4.2.4-8 } \dot{E}_h^{k=v}(T_j) = \dot{E}_h^{k=v}(35) + M_E * (T_j - 35)$$

Where $\dot{Q}_h^{k=v}(35)$ and $\dot{E}_h^{k=v}(35)$ are determined from the $H2_V$ test and calculated as specified in section 3.9 of this appendix.

Approximate the slopes of the k=v intermediate speed heating capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62 - 47} * (1 - N_Q)\right] + \left[N_Q * \frac{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=2}(17)}{35 - 17}\right]$$

$$M_E = \left[\frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62 - 47} * (1 - N_E)\right] + \left[N_E * \frac{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=2}(17)}{35 - 17}\right]$$

Where:

$$N_Q = \frac{\dot{Q}_h^{k=v}(35) - \dot{Q}_h^{k=1}(35)}{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=1}(35)} \text{ and } N_E = \frac{\dot{E}_h^{k=v}(35) - \dot{E}_h^{k=1}(35)}{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=1}(35)}$$

Use Equations 4.2.4–1 and 4.2.4–2 to this appendix, respectively, to calculate $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$, whether or not the heat pump is a minimum-speed-limiting variable-speed heat pump.

For variable-speed non-communicating coil-only heat pumps, there is no intermediate speed.

4.2.4.1 Steady-State Space Heating Capacity When Operating at Minimum Compressor Speed is Greater Than or Equal to the Building Heating Load at Temperature T_j, $\dot{Q}_h^{k=1}(T_j \geq BL(T_j)$.

Evaluate the Equation 4.2–1 to this appendix quantities:

$$\frac{RH(T_j)}{N} \quad \text{and} \quad \frac{e_h(T_j)}{N}$$

As specified in section 4.2.3.1 of this appendix. Except now use Equations 4.2.4–1 and 4.2.4–2 (for heat pumps that are not minimum-speed-limiting and are not variable-speed non-communicating coil-only heat pumps), Equations 4.2.4–1, 4.2.4–2, 4.2.4–3, and 4.2.4–4 as appropriate (for variable-speed non-communicating coil-only heat pumps), or Equations 4.2.4–5 and 4.2.4.-6 (for minimum-speed-limiting variable-speed heat pumps that are not variable-speed non-communicating coil-only heat pumps) to this appendix to evaluate $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$, respectively, and replace section 4.2.3.1 references to ''low capacity'' and section 3.6.3 of this appendix with ''minimum speed'' and section 3.6.4 of this appendix.

4.2.4.2 Heat Pump Operates at an Intermediate Compressor Speed (k = i) or, for a Variable-Speed Non-Communicating Coil-Only Heat Pump, Cycles Between High and Low Speeds, in Order to Match the Building Heating Load at a Temperature T_j, $\dot{Q}_h^{k=1}(T_j) < \dot{Q}BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

For units that are not variable-speed non-communicating coil-only heat pumps, calculate:

$$\frac{RH(T_j)}{N} \text{ using Equation 4.2.3-2 while evaluating } \frac{e_h(T_j)}{N} \text{ using,}$$

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=i}(T_j) * \delta(T_j) * \frac{n_j}{N}$$

Where:

$$\dot{E}_h^{k=i}(T_j) = \frac{\dot{Q}_h^{k=i}(T_j)}{3.413 \frac{Btu/h}{W} * COP^{k=i}(T_j)}$$

And $\delta(T_j)$ is evaluated using Equation 4.2.3–3, while:

$\dot{Q}_h^{k=i}(T_j) = BL(T_j)$, the space heating capacity delivered by the unit in matching the building load at temperature (T_j), in Btu/h. The matching occurs with the heat pump operating at compressor speed k=i, and

$COP^{k=i}(T_j)$ = the steady-state coefficient of performance of the heat pump when operating at compressor speed k=i and temperature T_j (dimensionless). For each temperature bin where the heat pump operates at an intermediate compressor speed, determine $COP^{k=i}(T_j)$ using the following equations,

For each temperature bin where $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=v}(T_j)$,

$$COP_h^{k=i}(T_j) = COP_h^{k=1}(T_j) + \frac{COP_h^{k=v}(T_j) - COP_h^{k=1}(T_j)}{Q_h^{k=v}(T_j) - Q_h^{k=1}(T_j)} * (BL(T_j) - Q_h^{k=1}(T_j))$$

For each temperature bin where $\dot{Q}_h^{k=v}(T_j) \leq BL(T_j) < \dot{Q}_h^{k=2}(T_j)$,

$$COP_h^{k=i}(T_j) = COP_h^{k=v}(T_j) + \frac{COP_h^{k=2}(T_j) - COP_h^{k=v}(T_j)}{Q_h^{k=2}(T_j) - Q_h^{k=v}(T_j)} * (BL(T_j) - Q_h^{k=v}(T_j))$$

Where:

$COP_h^{k=1}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at minimum compressor speed and temperature Tj, dimensionless, calculated using capacity $\dot{Q}_h^{k=1}(T_j)$ calculated using Equation 4.2.4–1 or 4.2.4–3 to this appendix and electrical power consumption $\dot{E}_h^{k=1}(T_j)$ calculated using Equation 4.2.4–2 or 4.2.4–4 to this appendix;

$COP_h^{k=v}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at intermediate compressor speed and temperature Tj, dimensionless, calculated using capacity $\dot{Q}_h^{k=v}(T_j)$ calculated using Equation 4.2.4–7 to this appendix and electrical power consumption $\dot{E}_h^{k=v}(T_j)$ calculated using Equation 4.2.4–8 to this appendix;

$COP_h^{k=2}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at full compressor speed and temperature Tj (dimensionless), calculated using capacity $\dot{Q}_h^{k=2}(T_j)$ and electrical power consumption $\dot{E}_h^{k=2}(T_j)$, both calculated as described in section 4.2.4 of this appendix; and

$BL(T_j)$ is the building heating load at temperature T_j, in Btu/h.

For variable-speed non-communicating heat pumps, calculate $\frac{RH(T_j)}{N}$ and $\frac{e_h(T_j)}{N}$ as described in section 4.2.3.2 of this appendix with the understanding that $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ correspond to full compressor speed operation, $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$ correspond to minimum compressor speed operation, and all four quantities are derived from the results of the specified section 3.6.4 tests of this appendix.

* * * * *

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Part III

Securities and Exchange Commission

17 CFR Part 240

Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–95763; File No. S7–23–22]

RIN 3235–AN09

Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') proposes to amend the standards applicable to covered clearing agencies for U.S. Treasury securities to require that such covered clearing agencies have written policies and procedures reasonably designed to require that every direct participant of the covered clearing agency submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty. In addition, the Commission proposes additional amendments to the Covered Clearing Agency Standards, with respect to risk management. These requirements are designed to protect investors, reduce risk, and increase operational efficiency. Finally, the Commission proposes to amend the broker-dealer customer protection rule to permit margin required and on deposit with covered clearing agencies for U.S. Treasury securities to be included as a debit in the reserve formulas for accounts of customers and proprietary accounts of broker-dealers (''PAB''), subject to certain conditions.

DATES: Comments should be received on or before December 27, 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 S7–23–22 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 S7–23–22. 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 website (*http://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 our 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: Elizabeth L. Fitzgerald, Assistant Director, Office of Clearance and Settlement at (202) 551–5710, Division of Trading and Markets; Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522; Raymond Lombardo, Assistant Director, at 202–551–5755; Sheila Dombal Swartz, Senior Special Counsel, at (202) 551–5545; or Nina Kostyukovsky, Special Counsel, at (202) 551–8833, Office of Broker-Dealer Finances, Division of Trading and Markets; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: First, the Commission proposes to amend 17 CFR 240.17Ad–22(e)(18) (''Rule 17Ad–22(e)(18)'') to require covered clearing agencies that provide central counterparty (''CCP'') services for U.S. Treasury securities to establish, implement, maintain and enforce written policies and procedures reasonably designed, as applicable, to establish objective, risk-based and publicly disclosed criteria for participation, which require that any direct participant of such a covered clearing agency submit for clearance and settlement all the eligible secondary market transactions in U.S. Treasury securities to which such direct participant is a counterparty. In addition, these policies and procedures must be reasonably designed, as applicable, to identify and monitor the covered clearing agency's direct participants' submission of transactions for clearing as required above, including how the covered clearing agency would address a failure to submit transactions. These policies and procedures must also be reasonably designed, as applicable, to ensure that the covered clearing agency has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, which policies and procedures the board of directors of such U.S. Treasury securities CCA must review annually. The Commission would define eligible secondary market transactions as a secondary market transaction in U.S. Treasury securities of a type accepted for clearing by a registered covered clearing agency that is either a repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities, in which one of the counterparties is a direct participant, or certain specified categories of cash purchase or sale transactions. Second, the Commission proposes to amend 17 CFR 240.17Ad–22(e)(6)(i) (''Rule 17Ad–22(e)(6)(i)'') to require that a covered clearing agency providing central counterparty services for U.S. Treasury securities establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, calculate, collect, and hold margin for transactions in U.S. Treasury securities submitted on behalf of an indirect participant separately from those submitted on behalf of the direct participant. In connection with these proposed amendments, the Commission is also proposing to include as part of 17 CFR 240.17Ad–22(a) (''Rule 17Ad–22(a)'') definitions of ''U.S. Treasury security,'' ''central bank,'' ''eligible secondary market transaction,'' ''international financial institution,'' and ''sovereign entity.'' Third, the Commission proposes to amend 17 CFR 240.15c3–3a (''Rule 15c3–3a'') to permit margin required and on deposit at covered clearing agencies providing central counterparty services for U.S. Treasury securities to be included by broker-dealers as a debit in the customer and PAB reserve formulas, subject to certain conditions.

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4. Require U.S. Treasury Securities CCAs To Change CCA Access Provisions and Netting and Margin Practices for House and Customer Accounts and Rule 15c3–3
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A. Clearing Agencies
Statutory Authority

I. Introduction

A. The Commission's Role in Facilitating the National System of Clearance and Settlement for Securities, Including Treasury Securities

In 1975, Congress added section 17A to the Securities Exchange Act of 1934 (''Exchange Act'') as part of the Securities Acts Amendments of 1975, which directed the Commission to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions (other than exempt securities which typically includes U.S. Treasury securities, except as discussed further below), and (ii) linked or coordinated facilities for clearance and settlement of securities transactions.[1] In so doing, Congress made several findings related to the importance of the clearance and settlement of securities transactions and the relationship of clearance and settlement of securities transactions to the protection of investors.[2] The Commission carries out its statutory mandate in this regard through its supervision and regulation of registered clearing agencies, which may provide

[1] *See* 15 U.S.C. 78q–1; Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 4 (1975) (stating the Committee's belief that ''the banking and security industries must move quickly toward the establishment of a fully integrated national system for the prompt and accurate processing and settlement of securities transactions'').

[2] *See* 15 U.S.C. 78q–1(a)(1)(A) (finding that ''[t]he prompt and accurate clearance and settlement of securities transactions . . . are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors''); *see also* 15 U.S.C. 78q–1(B), (C), and (D) (setting forth additional findings related to the national system of clearance and settlement).

different services to the market including, but not limited to, central counterparty services.

In 1986, Congress passed the Government Securities Act, which, among other things, authorized the Commission to regulate clearing agencies engaged in the clearance and settlement of government securities transactions, including those in U.S. Treasury securities, by providing that government securities would not be considered exempt securities for purposes of section 17A of the Exchange Act.[3] This inclusion of government securities, including U.S. Treasury securities, within the Commission's authority for the national system of clearance and settlement underscores the importance of, among other things, the U.S. Treasury market.

U.S. Treasury securities play a critical and unique role in the U.S. and global economy, serving as a significant investment instrument and hedging vehicle for investors, a risk-free benchmark for other financial instruments, and an important mechanism for the Federal Reserve's implementation of monetary policy.[4] Consequently, confidence in the U.S. Treasury market, and in its ability to function efficiently, even in times of stress, is critical to the stability of the global financial system.[5]

B. The Role of Central Counterparty Services

The Commission defines a CCP as a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer.[6] The Commission previously has stated that registered clearing agencies that provide CCP services can help increase the safety and efficiency of securities trading, while reducing costs.[7] These benefits could be particularly significant in times of market stress, as CCPs would mitigate the potential for a single market participant's failure to destabilize other market participants or the financial system more broadly, and/or reduce the effects of misinformation and rumors.[8] A CCP also addresses concerns about counterparty risk by substituting the creditworthiness and liquidity of the CCP for the creditworthiness and liquidity of the counterparties.[9] Further, the Commission has recognized that ''the centralization of clearance and settlement activities at covered clearing agencies allows market participants to reduce costs, increase operational efficiency, and manage risks more effectively.'' [10] However, the Commission has also recognized that this centralization of activity at clearing agencies makes risk management at such entities a critical function, as reflected in the adoption of additional enhanced Commission requirements, discussed further in section II.B.1 *infra.*[11]

Since the enactment of the Securities Acts Amendments of 1975, the Commission has had extensive experience with the risks associated with bilateral clearing and the benefits of centralized clearance and settlement systems for securities. Based on its experience supervising registered clearing agencies, the Commission believes that, over the years, the clearing agencies registered with the Commission that provide CCP services have reduced costs of securities trading, and have been carefully structured, consistent with the Commission's statutory and regulatory authority, to provide the benefits of clearing, such as multilateral netting [12] and centralized default management, while also managing and reducing counterparty risk. To further the establishment of linked and coordinated facilities for clearance and settlement of securities transactions, the Commission adopted 17 CFR 240.17Ad–22, which sets forth standards for clearing agencies registered with the Commission. These standards address all aspects of a CCP's operations, including financial risk management, operational risk, default management, governance, and participation requirements.

C. Existing CCP Services for the U.S. Treasury Market

Currently, only one registered clearing agency, the Fixed Income Clearing Corporation (''FICC''),[13] provides CCP services for U.S. Treasury securities transactions, including cash transactions and repurchase transactions (''repos''), which are described more fully in section II.A *infra.*[14] As a CCP, FICC novates transactions between two counterparties, effectively becoming the buyer to every seller and the seller to every buyer, and guarantees the settlement of the novated transactions. This means that FICC is exposed to a number of risks arising from such transactions, including counterparty credit risk.[15] Because the vast majority of counterparty credit risk is managed bilaterally in the U.S. Treasury market, as discussed more fully in section III.A.3 *infra,* FICC may face potential contagion risk arising from transactions entered into by one of its participants, even if those transactions are not centrally cleared.[16] Currently, most of

[3] Government Securities Act of 1986, section 102(a); 15 U.S.C. 78c(a)(12)(B)(i).

[4] *See, e.g.,* Staffs of the U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Securities and Exchange Commission, and U.S. Commodity Futures Trading Commission, *Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report,* at 1 (Nov. 2021), *available at https://home.treasury.gov/system/files/136/IAWG-Treasury-Report.pdf* (''Inter-Agency Working Group for Treasury Market Surveillance (''IAWG'') Report''); Staffs of the U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Securities and Exchange Commission, and U.S. Commodity Futures Trading Commission, *Joint Staff Report: The U.S. Treasury Market on October 15, 2014,* at 1, 8 (2015), *available at https://home.treasury.gov/system/files/276/joint-staff-report-the-us-treasury-market-on-10-15-2014.pdf* (''Joint Staff Report''). These reports represent the views of Commission and other Federal regulatory staff. The reports are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content in the reports. These reports, like all staff reports, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[5] Group of Thirty Working Group on Treasury Market Liquidity, *U.S. Treasury Markets: Steps Toward Increased Resilience,* at 1 (2021), *available at https://group30.org/publications/detail/4950* (''G–30 Report'').

[6] 17 CFR 240.17Ad–22(a)(2).

[7] Covered Clearing Agency Standards Proposing Release, Exchange Act Release No. 71699 (Mar. 12, 2014), 79 FR 29507, 29510 (May 27, 2014) (''CCA Standards Proposing Release'').

[8] *See, e.g.,* Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request of Liffe Administration and Management and Lch.Clearnet Ltd. Related to Central Clearing of Credit Default Swaps, and Request for Comments, Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139, 140 (Jan. 2, 2009).

[9] *Id.*

[10] CCA Standards Proposing Release, *supra* note 7, 79 FR at 29587.

[11] *See, e.g., id.* at 29510.

[12] With multilateral netting, the CCP is able to offset obligations involving the same security across multiple counterparties, thereby reducing the overall amount of securities and funds that need to be delivered. *See* notes 251 and 252 and accompanying text *infra* for additional explanation, as well as an example, of multilateral netting.

[13] FICC has two divisions. The Government Securities Division generally provides clearing services for U.S. Treasury securities, and the Mortgage-Backed Securities Division, generally provides clearing services for mortgage-backed securities. For purposes of this release, references to FICC will refer to FICC's Government Securities Division (''GSD''), unless otherwise indicated.

[14] For purposes of this release, an entity providing CCP services in the U.S. Treasury market and therefore serving as a covered clearing agency will be referred to as a ''U.S. Treasury securities CCA.''

[15] Counterparty credit risk refers to the potential for a market participant's counterparty to a given transaction to default on the transaction and therefore the market participant will not receive either the cash or securities necessary to settle the transaction.

[16] *See, e.g.,* U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities Capital Markets,* at 81 (Oct. 2017), *available at https://home.treasury.gov/system/files/*

FICC's direct participants are banks and broker-dealers, while other types of entities, such as registered investment companies, investment advisers, and asset owners, rely on FICC's direct participants to access central clearing indirectly and are not direct participants of FICC.

As the only entity providing CCP services in the U.S. Treasury market, if FICC were unable to provide its CCP services for any reason, it could have a broad and severe impact on the overall U.S. economy, as the Financial Stability Oversight Council (''FSOC'') recognized when it designated FICC as a systemically important financial market utility in 2012.[17] Designation of an entity as a systemically important financial market utility brings heightened risk management requirements and additional regulatory supervision, by both its primary regulator and the Board of Governors of the Federal Reserve System.[18] The Commission relied, in part, on this heightened supervisory authority under Title VIII of the Dodd-Frank Act to adopt the Covered Clearing Agency Standards.

Over the past several years, both the private and public sectors have observed the increased volume of U.S. Treasury secondary market transactions that are not centrally cleared.[19] However, because data for these transactions is subject to different and incomplete reporting requirements, it is difficult to quantify this activity. The best available estimates at this time are those developed by private sector organizations. In particular, the Treasury Market Practice Group[20] estimates that only 13 percent of the overall volume in U.S. dollars of U.S. Treasury cash transactions were centrally cleared as of the first half of 2017, and that an additional 19 percent were what the TMPG refers to as ''hybrid'' clearing, that is, executed on an interdealer broker platform (as described in section II.A.1 *infra*) in which one counterparty is a member of a CCA and submits its transaction with the interdealer broker for central clearing, while the other counterparty is not a member of a CCA and bilaterally clears its transaction with the interdealer broker.[21] In addition, the G–30 Report estimated that ''roughly 20 percent of commitments to settle U.S. Treasury security trades are cleared through FICC.''[22]

Both the TMPG and the Group of 30 also identified the significant risks associated with bilateral clearing.[23] For example, the TMPG stated that ''[b]ilateral clearing involves varying risk management practices that are less uniform and less transparent to the broader market and may be less efficient with regard to netting exposures and use of collateral as compared to central clearing. An increase in bilaterally cleared trades likely increases the aggregate liquidity risk in the clearing and settlement process because, unlike a CCP, bilateral arrangements may not have the discipline of establishing a contingent liquidity risk framework or uniform requirements for emergency liquidity.''[24]

D. Proposal

The Commission believes that a covered clearing agency, including one that provides CCP services,[25] is most effective when its participation standards enable the CCA to understand and control the risks presented by its direct participants because such standards are an important tool to limit the potential for member defaults and, as a result, losses to non-defaulting members in the event of a member default, thereby protecting the securities market as a whole.[26] For example, when proposing the Covered Clearing Agency Standards in Rule 17Ad–22 in 2014, the Commission explained that ''[a]ppropriate minimum operational, legal, and capital requirements for membership that are maintained and enforced through the supervisory practices of a clearing agency help to ensure all members will be reasonably capable of meeting their various obligations to the clearing agency in stressed market conditions and upon member default.''[27] To that end, the Commission's rules governing the participation requirements of a CCA are designed to achieve that goal. Rule 17Ad–22(e)(18) requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, establish objective, risk-based and publicly disclosed criteria for participation,[28] and 17 CFR 240.17Ad–22(e)(19) (''Rule 17Ad–22(e)(19)'') requires a CCA to maintain written policies and procedures reasonably designed to, as applicable, identify, monitor and manage the material risks to it arising from arrangements in which firms that are indirect participants in the CCA rely on the services provided to it by direct participants to access the CCA's payment, clearing, or settlement facilities.[29]

As described more fully in section III *infra,* the increasing volume of non-centrally cleared transactions in U.S. Treasury securities may render U.S. Treasury securities CCAs more susceptible to member defaults from risks outside the transactions cleared by the CCA, and as a result the

136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf (''2017 Treasury Report'') (discussing issues caused by fragmented central clearing with respect to [interdealer brokers] at FICC and describing this contagion risk and stating ''if a large [proprietary trading firm] with unsettled trading volumes were to fail, the failure could introduce risk to the market and market participants'').

[17] Financial Stability Oversight Council, *2012 Annual Report,* Appendix A, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf* (''FSOC 2012 Annual Report'').

[18] *Id.* at 119. The Commission previously has acknowledged that the Clearing Supervision Act reflects Congressional recognition that multilateral clearing or settlement activities ''may reduce risks for clearing participants and the broader financial system,'' but also may create ''new risks that require multilateral payment, clearing or settlement activities to be well-designed and operated in a safe and sound manner.'' Exchange Act Release No. 64017 (Mar. 3, 2014), 76 FR 14472, 14474 (Mar. 16, 2011) (''Clearing Agency Standards Proposing Release''); *see also* 12 U.S.C. 5462(9), 5463(a)(2). The Commission also recognized that the Clearing Supervision Act is designed, in part, to provide a regulatory framework to help address such risk management issues, ''which is generally consistent with the Exchange Act requirement that clearing agencies be organized in a manner so as to facilitate prompt and accurate clearance and settlement, safeguard securities and funds and protect investors.'' *Id.*

[19] *See, e.g.,* IAWG Report, *supra* note 4, at 5–6; 2017 Treasury Report, *supra* note 15, at 81; Joint Staff Report, *supra* note 4, at 36–37.

[20] The Treasury Market Practices Group (''TMPG'') is a group of ''market professionals committed to supporting the integrity and efficiency of the Treasury, agency debt, and agency mortgage-backed securities markets.'' *See https://www.newyorkfed.org/TMPG/index.html.* The TMPG is sponsored by the Federal Reserve Bank of New York. *Id.*

[21] TMPG, *White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities,* at 12 (July 2019), *available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CS_FinalPaper_071119.pdf* (''TMPG White Paper''). These estimates use FR2004 data, which are reports provided to the Federal Reserve Bank of New York regarding primary dealer market activity in U.S. Government securities, covering the first half of 2017 and are based on various assumptions specified in the TMPG White Paper. *See also* FR2004, Government Securities Dealer Reports, *available at https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDZq2f74T6b1cw.*

[22] G–30 Report, *supra* note 5, at 11. *See also* IAWG Report, *supra* note 4, at 5–6; Joint Staff Report, *supra* note 4, at 36–37.

[23] TMPG White Paper, *supra* note 21, at 3.

[24] *Id.*

[25] Hereafter covered clearing agencies are referred to as ''CCAs.''

[26] Covered Clearing Agency Standards Adopting Release, Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70839 (Oct. 13, 2016) (''CCA Standards Adopting Release''); *see also* CCA Standards Proposing Release, *supra* note 7, 79 FR at 29552.

[27] CCA Standards Proposing Release, *supra* note 7, 79 FR at 29552; *see also* CCA Standards Adopting Release, *supra* note 25, 81 FR at 70839.

[28] 17 CFR 240.17Ad–22(e)(18).

[29] 17 CFR 240.17Ad–22(e)(19).

Commission is proposing to amend Rule 17Ad–22(e)(18). In particular, and as set forth more fully below, the Commission believes that amending Rule 17Ad–22(e)(18) to require the CCAs to address their direct participants' non-centrally cleared transactions, both for repos and certain categories of cash transactions, will help reduce contagion risk to the CCA and bring the benefits of central clearing to more transactions involving U.S. Treasury securities, thereby lowering overall systemic risk in the market. As discussed further in section III.A.3 *infra,* these benefits include centralized default management, increased multilateral netting, and reduction of settlement fails. The Commission also believes that increasing the volume of transactions submitted for central clearing is consistent with promoting the prompt and accurate clearance and settlement of securities transactions.[30]

The Commission also proposes to impose additional requirements on how U.S. Treasury securities CCAs calculate, collect, and hold margin posted on behalf of indirect participants (*i.e.,* customers) who rely on the services of a direct participant (*i.e.,* the member of the U.S. Treasury securities CCA) to access the CCA's services. As set forth in more detail below, the Commission believes that such requirements also will improve the risk management practices at U.S. Treasury securities CCAs and incentivize and facilitate additional central clearing in the U.S. Treasury market, thereby lowering systemic risk. Individually and collectively, these two proposals should further incentivize and facilitate additional central clearing.

In addition, the Commission recognizes that the proposal could cause a substantial increase in the margin broker-dealers must post to a U.S. Treasury securities CCA resulting from their customers' cleared U.S. Treasury securities positions. Currently, broker-dealers are not permitted to include a debit in the customer reserve formula equal to this amount of margin or, more generally, to use customer cash or customer fully paid or excess margin securities to meet a margin requirement. To address this, the Commission proposes an amendment that, subject to certain conditions, would allow the broker-dealer to include a debit in the customer or PAB reserve formula when delivering customer cash or U.S. Treasury securities to meet the margin requirement at an entity providing CCP services in the U.S. Treasury market.

E. Current Regulatory and Industry Discussions Regarding the U.S. Treasury Market

In normal market conditions, the U.S. Treasury market has functioned extremely well. Even under stress, the market generally has been highly resilient. However, several episodes in the U.S. Treasury market, including the ''flash rally'' of 2014, the U.S. Treasury repo market stress of September 2019, and the COVID–19 shock of March 2020, have raised questions about the U.S. Treasury market's continued capacity to absorb shocks and what factors may be limiting the resilience of the U.S. Treasury market under stress.[31] Although different in their scope and magnitude, these events all generally involved dramatic increases in market price volatility and/or sharp decreases in available liquidity.

A number of recent publications and industry discussions have considered the overall structure and resilience of the U.S. Treasury market, in light of, among other things, the market events noted above.[32] The Commission believes that, although this proposal will not, by itself, necessarily prevent future market disruptions, the proposal will support efficiency by reducing counterparty credit risk and improving transparency, as discussed in section III.A.3 *infra.* Moreover, the Commission believes that enhancing the membership standards applicable to U.S. Treasury securities CCAs should improve the resilience of such CCAs by expanding their ability to manage the risks arising from direct participants who currently engage in non-centrally cleared transactions away from the CCA. In addition, the Commission believes that the risk management standards should facilitate and incentivize additional central clearing, thereby bringing the benefits of additional central clearing to the market for U.S. Treasury securities.

The Commission believes that these changes should lower systemic risk in the U.S. Treasury market by increasing the volume of transactions that are subject to central clearing and ensuring that those additional transactions are subject to standardized risk management. The Commission also believes that increased central clearing would provide greater transparency into the market and could, potentially facilitate all-to-all trading.[33] The Commission believes that these benefits arising from central clearing should help improve the functioning of the U.S. Treasury market.

II. Background

A. Current U.S. Treasury Market Structure and Central Clearing Within That Structure

U.S. Treasury securities are direct obligations of the U.S. Government issued by the U.S. Department of the Treasury (''Treasury Department''). Market participants use U.S. Treasury securities as an investment instrument and as a hedging vehicle, among other things. For example, U.S. Treasury securities are often used as collateral in lending arrangements or as margin on other financial transactions. The Treasury Department issues several different types of securities, including U.S. Treasury bills, nominal coupons notes and bonds, Floating Rate Notes, and Treasury Inflation-Protected Securities (''TIPS''). For each U.S. Treasury security type, the most recently issued (''on-the-run'') securities are the most liquid in the secondary market.[34] Market participants commonly refer to securities issued prior to ''on-the-run'' securities as ''off-the-run'' securities. Trading in off-the-run U.S. Treasury securities has always been less active than on-the-run trading, and price discovery primarily occurs in on-the-run securities.[35]

The U.S. Treasury market consists of two components: the primary market

[30] *See* Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Trade Submission Requirements and Pre-Netting, Exchange Act Release No. 51908 (June 22, 2005), 70 FR 37450 (June 29, 2005) (describing a rule designed to bring additional transactions into FICC's netting system as ''clearly designed to promote the prompt and accurate clearance and settlement of those transactions and to preserve the safety and soundness of the national clearance and settlement system.'').

[31] G–30 Report, *supra* note 5, at 1; IAWG Report, *supra* note 4, at 7; Peter Ryan and Robert Toomey, *Improving Capacity and Resiliency in US Treasury Markets: Part I* (Mar. 24, 2021), *available at https://www.sifma.org/resources/news/improving-capacity-and-resiliency-in-us-treasury-markets-part-1/.*

[32] *See generally* IAWG Report, *supra* note 4; G–30 Report, *supra* note 5; Nellie Liang & Patrick Parkinson, *Enhancing Liquidity of the U.S. Treasury Market Under Stress* (Dec. 16, 2020), *available at https://www.brookings.edu/wp-content/uploads/2020/12/WP72_Liang-Parkinson.pdf* (''Liang & Parkinson'').

[33] *See* notes 184 through 186 *infra.*

[34] On-the-run U.S. Treasury securities are the most recently auctioned nominal coupon securities. These securities are referred to as ''on-the-run'' starting the day after they are auctioned. Nominal coupon securities pay a fixed semi-annual coupon and are currently issued at original maturities of 2, 3, 5, 7, 10, 20, and 30 years. These standard maturities are commonly referred to as ''benchmark'' securities because the yields for these securities are used as references to price a number of private market transactions.

[35] Joint Staff Report, *supra* note 4, at 35–36. Price discovery also occurs in when-issued trading of U.S. Treasury securities prior to and on the day of the auction (pre- on-the-run trading). *See* note 38 *infra.*

and the secondary market. The primary market is where the Treasury Department auctions securities (*i.e.,* debt) to the public through a competitive bidding process and subsequently issues awarded securities to finance the Federal government.[36] These U.S. Treasury securities, which are issued after the auction, are marketable securities and are primarily sold to financial institutions. Financial institutions designated by the Federal Reserve Bank of New York as ''primary dealers'' are expected to submit competitive bids on a pro-rata basis and participate meaningfully in all U.S. Treasury auctions at reasonably competitive rates or yields.[37] U.S. Treasury securities are typically issued a few days after the auction and trade on the secondary market.[38] The secondary market is where the subsequent trading of U.S. Treasury securities occurs. The secondary market includes the ''cash market,'' for outright purchases and sales of securities, and the repo market, where one participant sells a U.S. Treasury security to another participant, along with a commitment to repurchase the security at a specified price on a specified later date.[39] This proposal applies to the secondary market for U.S. Treasury securities.

1. Cash Market

The cash market has two main components: the interdealer market and the dealer-to-customer market. In the interdealer market, dealers primarily trade with each other and with principal trading firms (''PTFs''), which trade as principals for their own accounts. The majority of trading in the interdealer market in on-the-run U.S. Treasury securities occurs on electronic platforms operated by interdealer brokers that bring together buyers and sellers anonymously using order books or other trading facilities supported by advanced electronic trading technology (''IDBs'').[40] These IDBs are generally direct participants of a U.S. Treasury securities CCA and stand as counterparties to both sides of each trade on their platforms.[41]

Typically, an IDB provides a trading facility for multiple buyers and sellers for U.S. Treasury securities to enter orders at specified prices and sizes and have these orders displayed to all users on an anonymous basis. The trading facility automatically matches these orders according to priority and execution rules that are programmed in the trading facility. When a match occurs and a trade is executed, the IDB then books two trades, with the IDB functioning as the principal to each respective counterparty, thereby protecting the anonymity of each party, but taking on credit risk from each counterparty.[42]

Although the term ''IDB'' is sometimes used to refer to platforms that may provide voice-based or other trading technology, as referenced below, in this release, consistent with existing commentary on the U.S. Treasury markets, the term IDB does not encompass platforms that provide voice-based or other non-anonymous methods of bringing together buyers and sellers of U.S. Treasury securities and instead refers to electronic platforms providing anonymous methods of bringing together buyers and sellers.[43]

The majority of trades in the interdealer markets are trades in ''on-the-run'' issues. The majority of interdealer trading for off-the-run U.S. Treasury securities occurs via bilateral transactions through traditional voice-assisted brokers and electronic trading platforms offering various protocols to bring together buyers and sellers, although some interdealer trading in off-the-run U.S. Treasury securities does occur on IDBs that anonymously bring together buyers and sellers.[44]

Until the mid-2000s, most interdealer trading occurred between primary dealers, who are required to be members of FICC, and was centrally cleared.[45] However, in recent years, much of the trading on IDBs, in terms of number of trades and overall volume, has been conducted by PTFs.[46]

Most IDBs are FICC direct participants, and the trades between an IDB, that is a FICC direct participant, and another FICC direct participant are submitted for central clearing to FICC, which, as noted above, is currently the only U.S. Treasury securities CCA. Various types of market participants are direct participants of FICC, including dealers (both bank-affiliated and independent), banks, and IDBs. FICC's current rules generally require that FICC direct participants submit for clearing all trades with other FICC direct participants.[47] However, FICC's rules do not require that a trade between a FICC direct participant and a party that is not a FICC direct participant be submitted for clearing. Therefore, for trades on IDBs between a party that is not a FICC direct participant (which, on an IDB, is generally a PTF) and a dealer which is a FICC direct participant—which results in two separate transactions, between the IDB and the dealer, on the one hand, and between the IDB and the PTF, on the other hand—the transaction between the dealer and the IDB would be centrally cleared. But the transaction

[36] TMPG White Paper, *supra* note 21, at 6. The Federal Reserve Bank of New York serves as fiscal agent for the U.S. Treasury in conducting auctions of marketable U.S. Treasury debt. *See* 12 U.S.C. 391.

[37] *See* Federal Reserve Bank of New York, Administration of Relationships with Primary Dealers, *available at https://www.newyorkfed.org/markets/primarydealers.html.* Specifically, primary dealers are required to be either (1) a registered broker-dealer or government securities broker-dealer, which is approved as a member of the Financial Industry Regulatory Authority, Inc. and has net regulatory capital of at least $50 million, or (2) a state or federally chartered bank or savings association (or a state or federally licensed branch or agency of a foreign bank) that is subject to bank supervision and maintains at least $1 billion in Tier 1 capital. *Id.* Thus, for those primary dealers that fall into the former category, they are a subset of the broader set of registered broker-dealers or government securities broker-dealers, which may also participate in the Treasury market, as discussed further in section II.A.1 and 2 *infra.*

[38] The Treasury Department typically announces a new security that it intends to sell several days before the auction at which it is first sold to the public. These securities begin trading after announcement before the auction and through issuance, which occurs a few days after the auction. Such trading is known generally as ''when-issued'' trading; however, in the timeframe between the announcement and the auction, such trading is known as when-issued and referred to as such by market participants, but after the auction and before issuance, the securities are typically referred to simply as on-the-run, consistent with market practice. Michael Fleming, Or Shachar, and Peter Van Tassel, Treasury Market When-Issued Trading Activity, Liberty Street Economics (Nov. 30, 2020) (''Fleming, Shachar, and Van Tassel''), *available at https://libertystreeteconomics.newyorkfed.org/2020/11/treasury-market-when-issued-trading-activity/.*

[39] *See* IAWG Report, *supra* note 4, at 3. The secondary market also includes the market for U.S. Treasury futures, which trade electronically on the Chicago Board of Trade, a designated contract market operated by the Chicago Mercantile Exchange (''CME'') Group, and centrally cleared by CME Clearing. U.S. Treasury futures are generally regulated by the U.S. Commodity Futures Trading Commission and are not the subject of this proposal.

[40] Joint Staff Report, *supra* note 4, at 11, 35–36.

[41] IAWG Report, *supra* note 4, at 21.

[42] TMPG White Paper, *supra* note 21, at 6.

[43] The entities referred to as IDBs here are encompassed in the ATSs category in the tables set forth in section IV.B.1 *infra* because of the way that such IDBs are categorized in TRACE. Specifically, the ''ATS'' category in TRACE encompasses these IDBs. By contrast, the non-ATS IDBs category in TRACE encompasses the voice-based or other non-anonymous methods of bringing together buyers and sellers, which are also sometimes referred to as interdealer brokers by market participants.

[44] Joint Staff Report, *supra* note 4, at 35.

[45] G–30 Report, *supra* note 5, at 9; IAWG Report, *supra* note 4, at 5–6; TMPG White Paper, *supra* note 21, at 6. *See also supra* note 37 (setting forth conditions for being a primary dealer).

[46] G–30 Report, *supra* note 5, at 1.

[47] FICC Rule 2A section 7(e) (requirement that FICC Netting Members submit to FICC all of its eligible trades with other Netting Members); FICC Rule 18 section 2 (similar requirement with regard to Repo transactions). The Rules for FICC's GSD are available at *https://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.* Unless otherwise indicated, all references to ''FICC Rule'' in this release refer to the GSD Rulebook.

between a PTF which is not a FICC member and the IDB, on the other side, would not be centrally cleared and instead would be settled bilaterally with the IDB, often through a clearing agent acting on behalf of the non-FICC direct participant.[48]

A 2015 inter-agency staff publication found that PTFs account for more than half of the trading activity in the futures and electronic IDB markets for U.S. Treasury securities, providing the vast majority of market depth, and questioned whether trades cleared by such firms outside of a CCP are subject to the same level of risk mitigation.[49] In 2018, the TMPG determined that ''a majority of trades in the secondary [cash] Treasury market now clear bilaterally, a trend that is contrary to the direction of recent regulatory requirements in other markets (*i.e.,* swaps) that for some products mandate clearing and for others encourage it through higher margin requirements on bilaterally cleared transactions.'' [50] The trading volume of non-FICC members, at least in the cash U.S. Treasury market, is now estimated to exceed that of FICC members.[51] Whether or not a trade is centrally cleared impacts the risk management requirements applicable to the trade. Specifically, trades cleared and settled outside of a CCP may not be subject to the same extent of risk management associated with central clearing, which includes requirements for margin determined by a publicly disclosed method that applies objectively and uniformly to all members of the CCP, loss mutualization, and liquidity risk management.[52]

Dealer-to-customer trading generally involves ''off-the-run'' issues more often than the interdealer market and typically is conducted via voice or electronically (*i.e.,* electronic ''request for quote'' systems referred to section IV *infra* as non-ATS IDBs).[53] Trading in the dealer-to-customer cash market is generally—and has historically been—conducted through bilateral transactions. Customers have not traditionally traded directly with other end users.[54] Rather, non-dealers primarily trade with dealers, and dealers use the interdealer market as a source of orders and trading interest to help facilitate their trading with customers in the dealer-to-customer market. Generally, trades in the dealer-to-customer market are not centrally cleared.[55]

2. U.S. Treasury Repo Market

In a U.S. Treasury repo transaction, one party sells a U.S. Treasury security to another party, along with a commitment to repurchase the security at a specified price on a specified later date. A reverse repo transaction is the same transaction from the buyer's perspective.[56] The effect of such a repo transaction is similar to a cash loan, using the U.S. Treasury securities as collateral. The difference in price between the purchase and repurchase is typically converted to an interest rate, and represents the ''cost'' of the loan. U.S. Treasury repos can use a particular security as collateral (known in the industry as ''specific collateral'') or can designate a broad class of securities as collateral (known as ''general collateral''). Most U.S. Treasury repos are overnight, though the parties can set the term for longer (generally no longer than one year).

The U.S. Treasury repo market plays a key role in facilitating the flow of cash and securities in the financial system by allowing market participants to access low cost secured financing, supporting dealer market-making activities, enabling institutional investors with large cash balances to invest cash on a secured basis, and contributing to price discovery and efficient capital allocation.[57] The Federal Reserve also engages in U.S. Treasury repos to bring about liquidity in the financial system, implement monetary policy, and promote financial stability. As of March 31, 2022, total repo assets were approximately $6 trillion, while repo liabilities were approximately $5.6 trillion, with over half collateralized by U.S. Treasury securities.[58] Of that amount, 38 percent is attributable to the Federal Reserve's reverse repo programs, 27 percent to securities dealers, 20 percent to what is referred to as ''rest of world'' and includes, among other entities, foreign hedge funds, and the rest to banks, mortgage real estate investment trusts, and insurance companies.[59]

Depending on clearing and settlement practices, the U.S. Treasury repo market consists of four main components: (1) non-centrally cleared, settled bilaterally, (2) centrally cleared, settled bilaterally, (3) non-centrally cleared, settled on a triparty platform, and (4) centrally cleared, settled on a triparty platform.

For non-centrally cleared bilateral U.S. Treasury repos, the parties agree to the terms and settle the trades between themselves, without involving a CCP or other third-party. As mentioned above, FICC's rules require its direct participants to submit for central clearing all eligible trades with other direct participants. Therefore, non-centrally cleared bilateral U.S. Treasury repos involve at least one party that is not a FICC direct participant (*e.g.,* a hedge fund); such repos may also involve a repo structure that FICC does not accept for clearing.

For centrally cleared bilateral U.S. Treasury repos, the parties are FICC direct participants that submit agreed-upon trade details to FICC for central clearing, and those trades are settled delivery versus payment using the members' clearing banks and/or Fedwire Securities Service.[60] Additionally, some institutional participants (*e.g.,* money market funds and hedge funds) that are not FICC direct participants also centrally clear repos through FICC's sponsored service. In 2005, FICC established this service (the ''Sponsored Service''), allowing eligible direct participants (Sponsoring Members) to sponsor their clients into a limited form of FICC membership and then to submit certain eligible securities transactions of their clients (Sponsored Members) to FICC for central clearing.[61] FICC interacts solely with the Sponsoring Member/direct participant as agent for purposes of the Sponsoring Member's clients/Sponsored Members' obligations to and from FICC. Sponsoring Members also guarantee to FICC the payment and performance obligations of their Sponsored

[48] *See* TMPG White Paper, *supra* note 21, at Figures 5A and 5B (providing graphical description of this type of clearing).

[49] Joint Staff Report, *supra* note 4, at 2, 55.

[50] TMPG White Paper, *supra* note 21, at 2.

[51] IAWG Report, *supra* note 4, at 30; TMPG White Paper, *supra* note 21, at 12.

[52] IAWG Report, *supra* note 4, at 30; G–30 Report, *supra* note 5.

[53] G–30 Report, *supra* note 5, at 1; TMPG White Paper, *supra* note 21, at 1–2.

[54] *See* Exchange Act Release No. 90019 (Sep. 28, 2020), 85 FR 87106, 87108 (Dec. 30, 2020).

[55] G–30 Report, *supra* note 5, at 1; IAWG Report, *supra* note 4, at 3; TMPG White Paper, *supra* note 21, at 6.

[56] For purposes of this release, we generally refer to both repos and reverse repos collectively as ''repos.''

[57] Viktoria Baklanova, Isaac Kuznits, Trevor Tatum, *Primer: Money Market Funds and the Repo Market* (Feb. 18, 2021), *available at https://www.sec.gov/files/mmfs-and-the-repo-market-021721.pdf* (''MMF Primer'').

[58] The Financial Accounts of the United States (Q1 2022), *available at https://www.federalreserve.gov/releases/z1/20220609/html/l207.htm.* The difference between repo assets and repo liabilities in the Financial Accounts is largely attributed to incomplete repo data collections and is calculated as instrument discrepancies.

[59] *See id.*

[60] *See* note 249 *infra.*

[61] *See* Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Establishing a Sponsored Membership Program, Exchange Act Release No. 51896 (June 21, 2005), 70 FR 36981 (June 27, 2005).

Members.[62] Sponsoring Members can be either bank direct participants of FICC which meet certain capital and other requirements or any other FICC direct participant which meets what FICC determines to be the appropriate financial resource requirements; in practice, Sponsoring Members include both banks and broker-dealers.[63] Sponsored Members have to be ''qualified institutional buyers'' as defined by Rule 144A under the Securities Act of 1933, as amended, or otherwise meet the financial standards necessary to be a ''qualified institutional buyer,'' and currently, Sponsored Members generally consist of hedge funds, money market funds, other asset managers, and smaller banks.[64]

For non-centrally cleared triparty U.S. Treasury repos, cash lenders (*e.g.,* money market funds) provide financing to cash borrowers (*e.g.,* dealers). The parties agree to the terms of a trade and arrange for a clearing bank to facilitate settlement. Like non-centrally cleared bilateral repos, at least one party to the transaction is not a FICC member. While the clearing bank provides a triparty platform to help facilitate the movement of cash and securities among accounts of counterparties to the transaction, it does not itself become a counterparty to the transactions and does not guarantee either counterparty's performance of its obligations. Collateral posted to the triparty platform generally cannot be repledged outside the platform, thereby protecting against settlement fails.[65]

For centrally cleared U.S. Treasury triparty repos, the parties are FICC members that submit agreed-upon trade details to FICC for central clearing through FICC's General Collateral Finance (''GCF'') Repo Service. Unlike centrally cleared bilateral repos, these triparty repos are settled on the clearing bank's triparty platform. Like centrally cleared bilateral repos, centrally cleared triparty repos are novated by FICC, and FICC acts as a CCP for these transactions, including by collecting margin pursuant to its margin methodology for such transactions. Until recently, centrally cleared triparty repos were only conducted through the GCF Repo Service, *i.e.,* between two direct members of FICC. However, in September 2021, FICC introduced its Sponsored General Collateral Service (''Sponsored GC Service''), which enables centrally cleared triparty repos between a sponsored member and its sponsoring member.[66] The Sponsored GC Service accepts general collateral in a number of generic CUSIPs, and though U.S. Treasury securities are among the general collateral types acceptable in the Sponsored GC Service, other types of collateral including agency and mortgage backed securities are acceptable for use as collateral as well.[67] Each type of eligible collateral for the Sponsored GC Service is assigned its own generic CUSIP number, and security types are not mixed.[68]

B. Current Regulatory Framework

1. Clearing Agency Regulation Under Section 17A of the Exchange Act

As noted above, when Congress added section 17A to the Exchange Act as part of the Securities Acts Amendments of 1975, it directed the Commission to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions (other than exempt securities) and (ii) linked or coordinated facilities for clearance and settlement of securities transactions,[69] and the Government Securities Act of 1986 specifically included government securities within the scope of section 17A.[70] In facilitating the establishment of the national clearance and settlement system, the Commission must 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.[71] The Commission's ability to achieve these goals is based upon the regulation of clearing agencies registered with the Commission.[72] Specifically, section 17A of the Exchange Act provides the Commission with authority to adopt rules as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act (including for the prompt and accurate clearance and settlement of securities transactions) and prohibits a clearing agency from engaging in any activity in contravention of such rules and regulations.[73]

The Commission has exercised its broad authority to prescribe requirements for the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds described above. As noted above, most recently, the Commission has promulgated the Covered Clearing Agency standards, which apply to, among others, any entity providing CCP services, such as FICC.[74] These standards require covered clearing agencies, to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, meet certain minimum standards regarding, among other things, operations, governance, and risk management.

The Commission has previously explained that membership requirements like those set forth in this proposal are an important tool for managing a clearing agency's risk. For example, when proposing the Covered Clearing Agency Standards, the Commission explained that appropriate minimum membership requirements, including operational, legal, and capital requirements, help ''to ensure all

[62] *See* Exchange Act Release No. 51896 (June 21, 2005), 70 FR 36981 (June 27, 2005); *see also* FICC Rule 3A, *supra* note 47. For general information and statistics regarding the Sponsored Service, see *https://www.dtcc.com/clearing-services/ficc-gov/sponsored-membership,* as well as section IV.B.7.d.i *infra.* The Sponsored Service also allows the submission of cash transactions; however, at this time, the service is generally used only for U.S. Treasury repo transactions.

[63] *See* FICC Rule 3A, section 2(a) and (b), *supra* note 47; FICC Membership Listing, *available at https://www.dtcc.com/-/media/Files/Downloads/client-center/FICC/Mem-GOV-by-name.xlsx* (identifying Sponsoring Members as those with Omnibus accounts).

[64] *See* FICC Rule 3A, section 3(a), *supra* note 47; FICC Sponsored Membership Listing, *available at https://www.dtcc.com/client-center/ficc-gov-directories.*

[65] *See generally* Reference Guide to U.S. Repo and Securities Lending Markets (Nov. 9, 2015), *available at https://www.financialresearch.gov/working-papers/files/OFRwp-2015-17_Reference-Guide-to-U.S.-Repo-and-Securities-Lending-Markets.pdf.*

[66] Exchange Act Release No. 92808 (Aug. 30, 2021), 86 FR 49580 (Sept. 3, 2021). Currently, the Bank of New York Mellon operates the triparty platform that facilitates trades conducted via the GCF Repo Service and Sponsored GC Service.

[67] *See generally* DTCC Sponsored General Collateral Service, *available at https://www.dtcc.com/-/media/Files/Downloads/Clearing-Services/FICC/GOV/SponsoredGC-FS-INTL.pdf.*

[68] *Id.*

[69] *See supra* note 1.

[70] Specifically, the Government Securities Act, among other things, authorized the Commission to regulate clearing agencies engaged in the clearance and settlement of government securities transactions, including those in U.S. Treasury securities, by providing that government securities would no longer be exempt securities for purposes of section 17A of the Exchange Act. Government Securities Act of 1986, section 102(a); 15 U.S.C. 78c(a)(12)(B)(i).

[71] *See* 15 U.S.C. 78q–1(a)(2)(A).

[72] Under the Exchange Act and the regulations thereunder, any entity providing such central counterparty services is a clearing agency and must register with the Commission or seek an exemption from registration. 15 U.S.C. 78q–1(b)(1); *see also* 17 CFR 240.17Ad–22(a)(5) (defining covered clearing agency).

[73] *See* 15 U.S.C. 78q–1(d)(1); *see also* 15 U.S.C. 78q–1(b)(2) (referring to the Commission's ability to adopt rules with respect to the application of section 17A). As noted above, for purposes of section 17A, the Commission's authority over securities also includes ''government securities.'' Government Securities Act of 1986, section 102(a); 15 U.S.C. 78c(a)(12)(B)(i).

[74] *See supra* note 7 and 17 CFR 240.17Ad–22(a)(5).

members will be reasonably capable of meeting their various obligations to the clearing agency in stressed market conditions and upon member default.'' [75] Clearing agency member defaults have long been a concern of the Commission; the Commission has explained that ''[m]ember defaults challenge the safe functioning of a clearing agency by creating credit and liquidity risks, which impede a clearing agency's ability to settle securities transactions in a timely manner.'' [76]

In particular, among other things, the Covered Clearing Agency Standards impose requirements on a covered clearing agency with respect to both its direct and indirect participants. For example, Rule 17Ad–22(e)(18) requires that covered clearing agencies establish implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, establish objective, risk-based and publicly disclosed criteria for participation.[77] Similarly, Rule 17Ad–22(e)(19) imposes requirements on a covered clearing agency to maintain written policies and procedures reasonably designed to, as applicable, identify, monitor and manage the risks posed to it by indirect participants.[78]

2. The Broker-Dealer Customer Protection Rule

Rule 15c3–3 is designed ''to give more specific protection to customer funds and securities, in effect forbidding brokers and dealers from using customer assets to finance any part of their businesses unrelated to servicing securities customers; *e.g.,* a firm is virtually precluded from using customer funds to buy securities for its own account.'' [79] To meet this objective, Rule 15c3–3 requires a broker-dealer that maintains custody of customer securities and cash (a ''carrying broker-dealer'') to take two primary steps to safeguard these assets, as described below. The steps are designed to protect customers by segregating their securities and cash from the broker-dealer's proprietary business activities. If the broker-dealer fails financially, the customer securities and cash should be readily available to be returned to the customers. In addition, if the failed broker-dealer is liquidated in a formal proceeding under the Securities Investor Protection Act of 1970 (''SIPA''), the customer securities and cash should be isolated and readily identifiable as ''customer property'' and, consequently, available to be distributed to customers ahead of other creditors.[80]

The first step required by Rule 15c3–3 is that a carrying broker-dealer must maintain physical possession or control over customers' fully paid and excess margin securities.[81] Control means the broker-dealer must hold these securities in one of several locations specified in Rule 15c3–3 and free of liens or any other interest that could be exercised by a third-party to secure an obligation of the broker-dealer.[82] Permissible locations include a clearing corporation and a bank, as defined in section 3(a)(6) of the Exchange Act.[83]

The second step is that a carrying broker-dealer must maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers.[84] The account must be titled ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' (''customer reserve account'').[85] The amount of net cash owed to customers is computed weekly pursuant to a formula set forth in 17 CFR 240.15c3–3a (''Rule 15c3–3a'').[86] Under the formula, the broker-dealer adds up customer credit items and then subtracts from that amount customer debit items.[87] The credit items include credit balances in customer accounts and funds obtained through the use of customer securities.[88] The debit items include money owed by customers (*e.g.,* from margin lending), securities borrowed by the broker-dealer to effectuate customer short sales, and required margin posted to certain clearing agencies as a consequence of customer securities transactions.[89] If credit items exceed debit items, the net amount must be on deposit in the customer reserve account in the form of

[75] CCA Standards Proposing Release, *supra* note 7, 79 FR at 29552; *see also* CCA Standards Adopting Release, *supra* note 25, 81 FR at 70839 (stating that the use of risk-based criteria helps to protect investors ''by limiting the participants of a covered clearing agency to those for which the covered clearing agency has assessed the likelihood of default.'').

[76] CCA Standards Proposing Release, *supra* note 7, 79 FR at 29552.

[77] 17 CFR 240.17Ad–22(e)(18).

[78] 17 CFR 240.17Ad–22(e)(19).

[79] *See* Exchange Act Release No. 21651 (Jan. 11, 1985), 50 FR 2690, 2690 (Jan. 18, 1985). *See also* Exchange Act Release No. 9856 (Nov. 10, 1972), 37 FR 25224, 25224 (Nov. 29, 1972).

[80] *See* 15 U.S.C. 78aaa *et seq.* At a high level, in such a liquidation, SIPA would provide for the appointment of a trustee, who is required to return customer name securities to customers of the debtor (15 U.S.C. 78fff–2(c)(2)), distribute the fund of ''customer property'' ratably to customers (15 U.S.C. 78fff–2(b)), and pay, with money from the SIPC fund, remaining customer net equity claims, to the extent provided by the Act (15 U.S.C. 78fff–2(b) and 3(a)). Customer property is defined as ''cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted.'' 15 U.S.C. 7*lll*(4).

[81] *See* 17 CFR 240.15c3–3(d). The term ''fully paid securities'' means all securities carried for the account of a customer in a cash account as defined in Regulation T (12 CFR 220.1 *et seq.*), as well as securities carried for the account of a customer in a margin account or any special account under Regulation T that have no loan value for margin purposes, and all margin equity securities in such accounts if they are fully paid: provided, however, that the term fully paid securities does not apply to any securities purchased in transactions for which the customer has not made full payment. 17 CFR 240.15c3–3(a)(3). The term ''margin securities'' means those securities carried for the account of a customer in a margin account as defined in section 4 of Regulation T (12 CFR 220.4), as well as securities carried in any other account (such accounts referred to as ''margin accounts'') other than the securities referred to in paragraph (a)(3) of Rule 15c3–3. 17 CFR 240.15c3–3(a)(4). The term ''excess margin securities'' means those securities referred to in paragraph (a)(4) of Rule 15c3–3 carried for the account of a customer having a market value in excess of 140% of the total of the debit balances in the customer's account or accounts encompassed by paragraph (a)(4) of Rule 15c3–3 which the broker-dealer identifies as not constituting margin securities. 17 CFR 240.15c3–3(a)(5).

[82] *See* 17 CFR 240.15c3–3(c). Customer securities held by the carrying broker-dealer are not assets of the firm. Rather, the carrying broker-dealer holds them in a custodial capacity, and the possession and control requirement is designed to ensure that the carrying broker-dealer treats them in a manner that allows for their prompt return.

[83] *Id.*

[84] 17 CFR 240.15c3–3(e). The term ''qualified security'' is defined in Rule 15c3–3 to mean a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States. *See* 17 CFR 240.15c3–3(a)(6).

[85] *See* 17 CFR 240.15c3–3(e)(1). The purpose of giving the account this title is to alert the bank and creditors of the broker-dealer that this reserve fund is to be used to meet the broker-dealer's obligations to customers (and not the claims of general creditors) in the event the broker-dealer must be liquidated in a formal proceeding.

[86] Some broker-dealers perform a daily computation in order to more dynamically match the deposit requirement with the amount of net cash owed to customers. For example, a broker-dealer that performs a weekly computation generally cannot withdraw excess cash or U.S. Treasury securities from the account until the following week even if the value of the account assets exceeds the net cash owed to customers. Further, the rule permits certain broker-dealers to perform a monthly computation. *See* 17 CFR 240.15c3–3(e)(3).

[87] *See id.*

[88] *See* 17 CFR 240.15c3–3a, Items 1–9. Broker-dealers are permitted to use customer margin securities to, for example, obtain bank loans to finance the funds used to lend to customers to purchase the securities. The amount of the bank loan is a credit in the formula because this is the amount that the broker-dealer would need to pay the bank to retrieve the securities. Similarly, broker-dealers may use customer margin securities to make stock loans to other broker-dealers in which the lending broker-dealer typically receives cash in return. The amount payable to the other broker-dealer on the stock loan is a credit in the formula because this is the amount the broker-dealer would need to pay the other broker-dealer to retrieve the securities.

[89] *See* 17 CFR 240.15c3–3a, Items 10–14.

cash and/or qualified securities.[90] A broker-dealer cannot make a withdrawal from the customer reserve account until the next computation and even then only if the computation shows that the reserve requirement has decreased.[91] The broker-dealer must make a deposit into the customer reserve account if the computation shows an increase in the reserve requirement.

The Rule 15c3–3a formula permits the broker-dealer to offset customer credit items only with customer debit items.[92] This means the broker-dealer can use customer cash to facilitate customer transactions such as financing customer margin loans and borrowing securities to make deliveries of securities customers have sold short.[93] The broker-dealer margin rules require securities customers to maintain a minimum level of equity in their securities accounts. In addition to protecting the broker-dealer from the consequences of a customer default, this equity serves to over-collateralize the customers' obligations to the broker-dealer. This buffer protects the customers whose cash was used to facilitate the broker-dealer's financing of securities purchases. For example, if the broker-dealer fails, the customer debits, because they generally are over-collateralized, should be attractive assets for another broker-dealer to purchase or, if not purchased by another broker-dealer, they should be able to be liquidated to a net positive equity.[94] The proceeds of the debits sale or liquidation can be used to repay the customer cash used to finance the customer obligations. This cash plus the funds and/or U.S. Treasury securities held in the customer reserve account should equal or exceed the total amount of customer credit items (*i.e.,* the total amount owed by the broker-dealer to its customers).[95]

As noted above, debit items in the Rule 15c3–3a formula include margin required and on deposit at certain clearing agencies. In particular, Item 13 of the Rule 15c3–3a formula identifies as a debit item margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in accounts of securities customers.[96] Similarly, Item 14 of the Rule 15c3–3a formula identifies as a debit item margin related to security futures products written, purchased, or sold in accounts carried for security-based swap customers required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act[97] or a derivatives clearing organization (''DCO'') registered with the Commodities Futures Trading Commission under section 5b of the Commodity Exchange Act.[98] These debit items reflect the fact that customer options and security futures transactions that are cleared generate margin requirements in which the broker-dealer must deliver collateral to the Options Clearing Corporation in the case of options or a clearing agency or DCO in the case of security futures products. Further, 17 CFR 240.15c3–3b (''Rule 15c3–3b'') sets forth a customer reserve formula for security-based swaps.[99] Items 13 and 14 of this formula are identical to Items 13 and 14 of the Rule 15c3–3a formula. The Rule 15c3–3b formula also permits a debit item for margin related to cleared security-based swaps required and on deposit in a qualified clearing agency account at a clearing agency registered pursuant to section 17A of the Exchange Act.

Identifying the collateral delivered to the Options Clearing Corporation, a clearing agency, or a DCO as a debit item permits the broker-dealer to offset credit items, which reduces the amount of cash or qualified securities that must be deposited in the customer reserve account. In addition, under SIPA, ''customer property'' in a liquidation proceeding of a broker-dealer includes resources provided through the use or realization of customers' debit cash balances and other customer-related debit items as defined by the Commission by rule.[100] Therefore, by defining margin required and on deposit at the Options Clearing Corporation, a clearing agency, or a DCO as a debit item in Rule 15c3–3a, this property is available to the trustee to be used to return cash and securities to the failed broker-dealer's customers ahead of any other creditors of the broker-dealer.

III. Proposed Amendments

A. U.S. Treasury Securities CCA Membership Requirements

For the reasons set forth below, the Commission believes that direct participants in a U.S. Treasury securities CCA not centrally clearing cash or repo transactions in U.S. Treasury securities creates contagion risk to CCAs clearing and settling in these markets, as well as to the market as a whole, and that this contagion risk can be ameliorated at least in part by increasing the number of such transactions that are centrally cleared. Currently, the only U.S. Treasury securities CCA requires its direct participants to submit for central clearing are their cash and repo transactions in U.S. Treasury securities with other direct participants.[101] However, the CCA's rules do not require its direct participants to submit either cash or repo transactions[102] with

[90] 17 CFR 240.15c3–3(e). Customer cash is a balance sheet item of the carrying broker-dealer (*i.e.,* the amount of cash received from a customer increases the amount of the carrying broker-dealer's assets and creates a corresponding liability to the customer). The reserve formula is designed to isolate these broker-dealer assets so that an amount equal to the net liabilities to customers is held as a reserve in the form of cash or U.S. Government securities. The requirement to establish this reserve is designed to effectively prevent the carrying broker-dealer from using customer funds for proprietary business activities such as investing in securities. The goal is to put the carrying broker-dealer in a position to be able to readily meet its cash obligations to customers by requiring the firm to make deposits of cash and/or U.S. Government securities into the customer reserve account in the amount of the net cash owed to customers.

[91] *See* 17 CFR 240.15c3–3(e).

[92] *See* 17 CFR 240.15c3–3a.

[93] For example, if a broker-dealer holds $100 for customer A, the broker-dealer can use that $100 to finance a security purchase of customer B. The $100 the broker-dealer owes customer A is a credit in the formula and the $100 customer B owes the broker-dealer is a debit in the formula. Therefore, under the Rule 15c3–3a formula there would be no requirement to maintain cash and/or U.S. Government securities in the customer reserve account. However, if the broker-dealer did not use the $100 held in customer A's account for this purpose, there would be no offsetting debit and, consequently, the broker-dealer would need to have on deposit in the customer reserve account cash and/or U.S. Government securities in an amount at least equal to $100.

[94] The attractiveness of the over-collateralized debits facilitates the bulk transfer of customer accounts from a failing or failed broker-dealer to another broker-dealer.

[95] *See* Exchange Act Release No. 18417 (Jan. 13, 1982), 47 FR 3512, 3513 (Jan. 25, 1982) (''The alternative approach is founded on the concept that, if the debit items in the Reserve Formula can be liquidated at or near their contract value, these assets along with any cash required to be on deposit under the [customer protection] rule, will be sufficient to satisfy all liabilities to customers (which are represented as credit items in the Reserve Formula).'').

[96] *See* 17 CFR 240.15c3–3a, Item 13.

[97] 15 U.S.C. 78q–1.

[98] 7 U.S.C. 78q–1.

[99] *See also* Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872, 43938–42 (Aug. 22, 2019) (adopting a reserve computation for security-based swaps that permits a debit for margin delivered to a security-based swap clearing agency).

[100] *See* 15 U.S.C. 78*lll*(4)(B).

[101] FICC Rule 2A, section 7(e), *supra* note 47 (requirement that FICC Netting Members submit to FICC all of their eligible trades with other Netting Members); FICC Rule 18, section 2 (similar requirement with regard to Repo transactions); *cf.* FICC Rule 3, section 8(e) (providing clearing requirement for FICC IDB Members).

[102] With regard to Sponsored GC Repos, as noted above, these transactions can be secured with generic CUSIPs that include U.S. Treasury securities, and with other generic CUSIPs that include other securities, such as agency securities and mortgage backed securities. Because the Membership Proposal is limited to eligible secondary market transactions in U.S. Treasury

Continued

persons who are not direct participants for central clearing. The Commission now proposes to amend the Covered Clearing Agency Standards to impose additional requirements for any covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities regarding membership in such CCA.

Specifically, the proposal would require that such CCAs establish written policies and procedures reasonably designed to, as applicable, establish objective, risk-based, and publicly disclosed criteria for participation, which require that the direct participants of such covered clearing agency submit for clearance and settlement all eligible secondary market transactions to which they are a counterparty. As described in more detail below, an eligible secondary market transaction in U.S. Treasury securities would be defined to include:

- Repurchase agreements and reverse repurchase agreements in which one of the counterparties is a direct participant;
- Any purchases and sales entered into by a direct participant if the direct participant (A) brings together multiple buyers and sellers using a trading facility (such as a limit order book) and (B) is a counterparty to both the buyer and seller in two separate transactions; and
- Any purchases and sales of U.S. Treasury securities between a direct participant and a counterparty that is a registered broker-dealer, government securities dealer, or government securities broker, a hedge fund, or an account at a registered broker-dealer, government securities dealer, or government securities broker where such account may borrow an amount in excess of one-half of the value of the account or may have gross notional exposure of the transactions in the account that is more than twice the value of the account.

However, any transaction (both cash transactions and repos) where the counterparty to the direct participant of the CCA is a central bank, sovereign entity, international financial institution, or a natural person would be excluded from the definition of an eligible secondary market transaction. In addition, the proposal would require that such CCAs establish written policies and procedures reasonably designed to, as applicable, identify and monitor their direct participants' submission of transactions for clearing, including how the CCA would address a failure to submit transactions.

For the reasons set forth below, the Commission believes that taking these incremental steps, which build on the existing rules of the only U.S. Treasury securities CCA, will strengthen risk management at the current and any other future U.S. Treasury securities CCA. Further, the Commission believes that this proposal would bring the benefits of clearance and settlement to a potentially significant portion of the U.S. Treasury securities market.

This section first explains what the Membership Proposal is and to whom and what aspects of the U.S. Treasury markets it applies.[103] It then describes what constitutes an eligible secondary market transaction and what transactions are excluded from that definition. Finally, it discusses the benefits of the Membership Proposal.

1. Requirement To Clear Eligible Secondary Market Transactions

The Membership Proposal would apply to ''direct participants'' in a U.S. Treasury securities CCA, which would distinguish entities that access a CCA directly (*i.e.,* members of the CCA) from indirect participants who ''rely on the services provided by direct participants to access the covered clearing agency's payment, clearing or settlement facilities.''[104] For purposes of the Covered Clearing Agency Standards, ''participants'' of a CCA are referred to as ''members'' or ''direct participants'' to differentiate these entities from ''direct participants' customers'' or ''indirect participants.''[105] Consequently, for purposes of this proposal and consistent with the terminology already used in the Covered Clearing Agency Standards,[106] the term ''direct participants'' would refer to the entities that directly access a U.S. Treasury securities CCA (generally banks and broker-dealers), and the term ''indirect participants'' would refer to those entities which rely on a direct participant to clear and settle their U.S. Treasury securities transactions with the U.S. Treasury securities CCA (generally their customers or clients).[107]

Moreover, persons who provide services in connection with clearance and settlement, such as settlement agent, settlement bank, or clearing bank services, and do not submit trades for clearing to a U.S. Treasury securities CCA would not be ''direct participants'' or ''indirect participants'' within the meaning of this proposal and the terminology used in the Covered Clearing Agency Standards.[108]

2. Eligible Secondary Market Transactions

As discussed further below, the Commission would also define what constitutes an eligible secondary market transaction in U.S. Treasury securities subject to the Membership Proposal.[109] This definition would apply to all types of transactions that are of a type currently accepted for clearing at a U.S. Treasury securities CCA; it would not impose a requirement on a U.S.

securities, it would not apply to Sponsored GC Repo generic CUSIPs that do not include U.S. Treasury securities.

[103] The Commission would add this requirement to the current text of Rule 17Ad–22(e)(18). The Commission is also proposing to adjust the numbering of Rule 17Ad–22(e)(18), 17 CFR 240.17Ad–22(e)(18). But other than adding this proposal as new Rule 17Ad–22(e)(18)(iv), the Commission is not proposing any other substantive changes to the current text of Rule 17Ad–22(e)(18). The other changes to Rule 17Ad–22(e)(18) are entirely stylistic and designed to enhance readability in light of the proposed addition of Rule 17Ad–22(e)(18)(iv). In addition, the Commission proposes to define a U.S. Treasury security as ''any security issued by the U.S. Department of the Treasury.'' This term is not currently defined in Rule 17Ad–22, and this definition would be codified as Rule 17Ad–22(a)(23).

[104] 17 CFR 240.17Ad–22(e)(18) and (19). *See also* CCA Standards Proposing Release, *supra* note 7, at 29553 (noting that some market participants would not meet a covered clearing agency's direct participation requirements and proposing risk management requirements for indirect and tiered participants).

[105] *See, e.g.,* 17 CFR 240.14Ad–22 (e)(6) (referring to participants) and (e)(2)(vi) (referring to direct participants' customers). In addition, the Exchange Act defines a participant of a clearing agency as ''any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities.'' 15 U.S.C. 78c(a)(24). Indirect participants are expressly excluded from the Exchange Act definition of a ''participant'' of a clearing agency because the Exchange Act provides that a person whose only use of a clearing agency is through another person who is a participant or as a pledgee of securities is not a ''participant'' of the clearing agency. *Id.*

[106] *See* 17 CFR 240.17Ad–22(e)(19) (referring to firms that are indirect participants in a covered clearing agency as those that ''rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities'').

[107] For example, FICC maintains the Sponsored Service. *See supra* notes 64 through 66 and accompanying text. Because sponsored members cannot clear or settle government securities transactions without a sponsoring member, the Commission believes that these sponsored members are not ''direct participants.'' As noted above, such persons are referred to in this release as ''indirect participants'' or ''customers.''

[108] The Commission recognizes that some entities may access more limited services of a U.S. Treasury securities CCA without use of its CCP services. For example, FICC provides ''comparison only'' services for a certain membership type. *See* FICC Rule 8, *supra* note 47. Consistent with the definition of a ''participant'' under the Exchange Act, such entities would not be considered participants of a CCA and therefore would not be subject to this proposed requirement.

[109] The Commission proposes to define the scope of an ''eligible secondary market transaction,'' including transactions that would be excluded from that definition, in Proposed Rule 17Ad–22(a).

Treasury securities CCA to offer additional products for clearing.

The proposal does not apply to the primary market, *i.e.,* the issuance and sale of a U.S. Treasury security to a primary dealer or other bidder in a U.S. Treasury auction. By statute, the Treasury Department is authorized to borrow money on behalf of the Federal government through the sale and issuance of U.S. Treasury securities to the public.[110] The terms and conditions for the sale and issuance for these securities are contained in the applicable Treasury Department auction rules or the securities offering (or auction) announcements.[111] The Treasury Department determines when auctions will occur and in what amounts and retains discretion as to the conduct of auctions, including, among other things, whether to award more or less than the amount of securities specified in an auction announcement and reserves the right to modify the terms and conditions of an auction.[112] In addition, the Treasury Department gives successful bidders the option of instructing that ''delivery and payment be made through the clearing corporation for securities awarded to the submitter for its own account, but it does not require the use of a clearing corporation for delivery and payment in connection with securities awarded in the auctions.[113] In light of the existing regulatory regime for these primary market transactions, as well as the role of such transactions in directly financing the Federal government, the Commission believes that it would be inappropriate for the Membership Proposal to include primary market transactions.

As stated above,[114] U.S. Treasury securities start trading after the auction announcement, before the auction and continue trading through issuance and afterwards. The trading that occurs after announcement and prior to issuance is generally referred to as when-issued trading and it covers two distinct periods: before the auction and after the auction. The latter, *i.e.,* when-issued trades that occur the day after the auction are considered on-the-run on some IDBs. All when-issued transactions are reported to TRACE.[115] In addition, based on its supervisory experience, the Commission understands that FICC already clears when-issued securities. Accordingly, in light of the fact that trading in when issued securities that takes place the day after the auction shares similar characteristics to secondary market transactions and such trading is already reported as a secondary market transaction, the Membership Proposal would apply to when-issued trades that occur the day after the auction and are considered on-the-run on some IDBs, to the extent that such when-issued trades otherwise meet the definition of an eligible secondary market transaction, as discussed further in section III.A.2 *infra.* However, since when-issued trading that takes place before and including the day of the auction does not share these characteristics and is primarily used as a tool for price discovery leading to the auction, such transactions would not be encompassed by the Membership Proposal.

a. Repo Transactions

The Commission proposes to include all U.S. Treasury repurchase and reverse repurchase agreements entered into by a direct participant of a U.S. Treasury securities CCA as eligible secondary market transactions subject to the Membership Proposal, subject to the exclusions discussed in section III.A.2.c *infra.*[116] As noted above, the U.S. Treasury repo market plays a key role in facilitating the flow of cash and securities in the financial system by allowing market participants to access financing, supporting dealer market-making activities, enabling institutional investors with large cash balances to invest cash on a secured basis, and contributing to price discovery and efficient capital allocation, as well as supporting the calculation of the Secured Overnight Financing Rate (''SOFR'') by the Federal Reserve Bank of New York.[117] Significant gaps persist in the coverage of transaction data in U.S. Treasury repo activity, but the available data indicates that the volume of repo transactions that are bilaterally cleared and settled remains substantial.[118] For example, recent research with respect to primary dealers indicates that 38 percent of their repo and 60 percent of their reverse repo activity is not centrally cleared, and, overall, that 20 percent of all their repo and 30 percent of their reverse repo activity is centrally cleared through FICC.[119] Nevertheless, FICC lacks visibility into its members' non-centrally cleared repo trades, and the default of one counterparty can have cascading effects on multiple other market participants, including members of FICC, thereby risking contagion to the CCP.

In addition, particularly with respect to banks and dealers, an important potential benefit of repo central clearing stems from mitigating the constraints on intermediaries' balance sheets under the existing accounting and regulatory capital rules.[120] Recent research indicates that for primary dealers, use of the centrally cleared bilateral repo market leads to a reduction in balance sheet allocation of approximately 20 percent relative to their total repo exposure.[121] The Commission believes that the benefit of this resulting additional balance sheet capacity could be shared by all market participants

[110] 31 U.S.C. 3101 *et seq.*

[111] Uniform Offering Circular, 31 CFR 356. The circular covers all aspects of the sale and issue of U.S. Treasury securities, including bidding, certifications, payment, determination of auction awards, and settlement.

[112] *See, e.g.,* Treasury Marketable Securities Offering Announcement Press Releases, *available at https://www.treasurydirect.gov/instit/annceresult/press/press_secannpr.htm;* 31 CFR 356.33.

[113] 31 CFR 356.17(d)(2).

[114] *See* note 38 *supra.*

[115] Trades in a security that occurred the day after it was auctioned accounted, on average, for approximately 12% of all trades in U.S. Treasury securities between July 1, 2019, and June 30, 2020, with approximately half of such trades taking place on an IDB. *Id.*

[116] *See* paragraphs (i) and (iii) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a).

[117] MMF Primer, *supra note 57; see also* Secured Overnight Financing Rate Data, *available at https://www.newyorkfed.org/markets/reference-rates/sofr.*

[118] IAWG Report, *supra* note 4, at 29 (stating that non-centrally cleared bilateral repo represents a significant portion of the market, roughly equal in size to centrally cleared repo) (citing a 2015 pilot program by the Treasury Department); *see also* TMPG, *Clearing and Settlement Practices for Treasury Secured Financing Transactions Working Group Update* (''TMPG Repo White Paper''), at 1 (Nov. 5, 2021), *available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CSP_SFT_Note.pdf;* Katy Burne, ''Future Proofing the Treasury Market,'' BNY Mellon Aerial View, at 7 (Nov. 2021), *available at https://www.bnymellon.com/content/dam/bnymellon/documents/pdf/aerial-view/future-proofing-the-us-treasury-market.pdf.coredownload.pdf* (noting that 63% of repo transactions remain non-centrally cleared according to Office of Financial Research data as of Sept. 10, 2021).

[119] Sebastian Infante, *et al., Insights from revised Form FR2004 into primary dealer securities financing and MBS activity* (Aug. 5, 2022), *available at https://www.federalreserve.gov/econres/notes/feds-notes/insights-from-revised-form-fr2004-into-primary-dealer-securities-financing-and-mbs-activity-20220805.htm. See* section IV.B.2 for a more detailed discussion of this analysis.

[120] In effect, accounting rules allow purchases and sales of the same security to be netted but do not allow repos of the same security to be netted, unless the repos are with the same counterparty and the trades have been documented under a master netting agreement. *See, e.g.,* G–30 Report, *supra* note 5, at 13; Program on International Financial Systems, *Mandatory Central Clearing for U.S. Treasuries and U.S. Treasury Repos,* at 25–27 (Nov. 2021), *available at https://www.pifsinternational.org/wp-content/uploads/2021/11/PIFS-Mandatory-Central-Clearing-for-U.S.-Treasury-Markets-11.11.2021.pdf* (''PIFS Paper''). Thus, if a dealer's repos are all with a U.S. Treasury securities CCA, greater netting is allowed.

[121] Infante, *et al., supra* note 117.

through improved market liquidity and smooth market functioning.[122]

Moreover, it appears that, as with cash markets, risk management practices in the bilateral clearance and settlement of repos are not uniform across market participants and are not transparent.[123] Indeed, a recent publication stated that competitive pressures in the bilaterally settled market for repo transactions have exerted downward pressure on haircuts, sometimes to zero.[124] The reduction of haircuts, which serve as a counterparty credit risk mitigant in bilateral repos, could result in greater exposure to potential counterparty default risk in non-centrally cleared repos.

By contrast, a U.S. Treasury securities CCA is subject to the Commission's risk management requirements addressing financial, operational, and legal risk management, which include, among other things, margin requirements commensurate with the risks and particular attributes of each relevant product, portfolio, and market.[125] Therefore, repos cleared at a U.S. Treasury securities CCA would be subject to transparent risk management standards that are publicly available and applied uniformly and objectively to all participants in the CCA.

As discussed in section II.A.2 *supra,* many market participants have already chosen to centrally clear some of their repo transactions. FICC provides central clearing for its direct participants in both centrally cleared bilateral and triparty repo. In addition, in the Sponsored Program, FICC recently has made several changes to the program with the intent of increasing overall participation in the service and ensuring that market participants can use the service consistent with their applicable regulatory requirements and business strategies. For example, in 2021, FICC expanded the available products to allow Sponsored Members to clear triparty repos through the program,[126] in addition to the existing ability to sponsor bilateral repo into central clearing. There are now approximately 30 Sponsoring Members and 1,900 Sponsored Members with access to central clearing, including money market funds, hedge funds, and other asset managers.[127]

Recent research indicates that, as of the second quarter of 2022, money market funds held had close to $63 billion in centrally cleared U.S. Treasury repos, or 3% of their total Treasury repo volume.[128] Most of that centrally cleared repo is through FICC's Sponsored Program away from the triparty platform.[129] In addition, certain private funds participate in the centrally cleared Treasury repo market, through FICC's Sponsored Program. These firms benefit from improved ability to access the repo market and more advantageous pricing.[130] The Commission considered these currently available methods for accessing central clearing for U.S. Treasury repos for both dealers and buy-side entities when determining to propose the inclusion of repos as eligible secondary market transactions and believes that this factor further supports its determination.

b. Purchases and Sales of U.S. Treasury Securities

An estimated 68 percent of the overall dollar value of cash market transactions in U.S. Treasury securities are not centrally cleared, and an estimated 19 percent of the overall dollar value of such transactions are subject to so-called hybrid clearing (as stated above).[131] The Commission has identified certain categories of purchases and sales of U.S. Treasury securities that it believes should be part of the definition of an eligible secondary market transaction subject to the Membership Proposal, *i.e.,* for which U.S. Treasury securities CCAs would be obligated to impose membership rules to require clearing of such transactions, for the reasons described below. The Commission believes that including this set of transactions in the eligible secondary market definition and therefore subjecting these transactions to the Membership Proposal represents an incremental first step to address potential risks arising to a U.S. Treasury securities CCA.

i. IDB Transactions

The Commission proposes to include within the definition of an eligible secondary market transaction any purchase or sale between a direct participant of a U.S. Treasury securities CCA and any counterparty, if the direct participant of the covered clearing agency (A) brings together multiple buyers and sellers using a trading facility (such as a limit order book) and (B) is a counterparty to both the buyer and seller in two separate transactions.[132] As a result, this definition will only encompass the transactions of those IDBs in the Treasury market that are direct participants of a U.S. Treasury securities CCA and stand as counterparties to both sides of each trade on their platforms.[133]

The Commission believes that this aspect of the Membership Proposal generally would result in the benefits described in section III.A.3 *infra.* Chiefly, the Commission believes that this aspect of the Membership Proposal would specifically address the potential for contagion risk associated with hybrid clearing that a number of commentators have highlighted. As explained above, the configuration of counterparty risk presented by hybrid clearing allows the U.S. Treasury securities CCA to manage the risks arising from the IDB–CCA direct participant transaction, on the one hand, but the U.S. Treasury securities CCA cannot manage the risks arising from the IDB's offsetting transaction with its non-member counterparty and the potential counterparty credit risk and settlement risk arising to the IDB from that trade.[134] Thus, under the current hybrid clearing model, the U.S. Treasury securities CCA is indirectly exposed to the IDB's non-centrally cleared transaction, but it lacks the ability to risk manage its indirect exposure to this non-centrally cleared leg of the transaction. Specifically, it does not know who the ultimate

[122] *See* Committee on the Global Financial System, *Repo Market Functioning,* at 24 (Apr. 2017), *available at https://www.bis.org/publ/cgfs59.pdf.*

[123] TMPG Repo White Paper, *supra* note 118, at 1.

[124] G–30 Report, *supra* note 5, at 13.

[125] 17 CFR 240.17Ad–22(e)(6).

[126] *See, e.g., supra* note 64; Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change to Expand Sponsoring Member Eligibility in the Government Securities Division Rulebook and Make Other Changes, Exchange Act Release No. 85470 (Mar. 29, 2019), 84 FR 13328 (Apr. 4, 2019).

[127] *See* FICC Membership Directories, *available at https://www.dtcc.com/client-center/ficc-gov-directories.*

[128] Viktoria Baklanova *et al., Money Market Funds in the Treasury Market* (Sept. 1, 2022), *available at https://www.sec.gov/files/mmfs-treasury-market-090122.pdf* (''MMFs in the Treasury Market'').

[129] *Id.*

[130] *See, e.g.,* G–30 Report, *supra* note 5, at 13 (''Buyside firms benefit because dealers are willing to intermediate cleared repos at narrower spreads, which are reflected in part in higher rates paid to buyside repo investors on cleared repos than on uncleared repos and in part in lower rates charged to repo borrowers (including hedge funds and smaller broker-dealers) on cleared repos.'').

[131] IAWG Report, *supra* note 4, at 30; *see also* TMPG White Paper, *supra* note 21, at 12.

[132] *See* paragraph (ii)(A) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a).

[133] *See* notes 40–43 and accompanying text *supra.*

[134] *See, e.g.,* TMPG White Paper, *supra* note 21, at 22 (noting that in a hybrid clearing arrangement, an IDB's rights and obligations to the CCP are not offset and the IDB is not in a net zero settlement position with respect to the CCP at settlement date). Thus, the IDB is not able to net all of its positions for clearing at a U.S. Treasury securities CCA, and the IDB's positions appear to the CCA to be directional, which impacts the amount of margin that the CCA collects for the transaction.

counterparty of the transaction is and cannot collect margin on that transaction. This, in turn, results in margin collection at the CCP which is based upon only one transaction and has been calculated to cover this seemingly directional position, as well as an inability to net these offsetting transactions and provide the benefits of central clearing. In particular, if the IDB's non-CCP member counterparty fails to settle a transaction that is subject to hybrid clearing, such IDB may not be able to settle the corresponding transaction that has been cleared with the U.S. Treasury securities CCA due to a lack of financial resources at the IDB, which could lead the IDB to default.[135] As part of its existing default management procedures, the U.S. Treasury securities CCA could seek to mutualize its losses from the IDB's default, which could in turn transmit stress to the market as a whole.

As noted above, the Commission has previously stated that membership requirements help to guard against defaults of any CCP member, as well as to protect the CCP and the financial system as a whole from the risk that one member's default could cause others to default, potentially including the CCP itself. Further, contagion stemming from a CCP member default could undermine confidence in the financial system as a whole, even if the health of the CCP is not implicated. This is because the default could cause others to back away from participating in the market. This risk of decreased participation could be particularly problematic if the defaulting participant was an IDB, whose withdrawal from the market could impact other market participants' ability to access the market for on-the-run U.S. Treasury securities, approximately 49.7% of which trade on IDBs.[136] Including such transactions as eligible secondary market transactions subject to the Membership Proposal would therefore help protect against this risk by requiring that a U.S. Treasury securities CCA ensure that direct participants who are IDBs centrally clear both sides of their transactions, thereby eliminating the various aspects of potential contagion risk posed by so-called hybrid clearing.

[135] *See* IAWG Report, *supra* note 4, at 31; Depository Trust and Clearing Corporation, *More Clearing, Less Risk: Increasing Centrally Cleared Activity in the U.S. Treasury Cash Market,* at 5 (May 2021), *available at https://www.dtcc.com/-/media/Files/PDFs/DTCC-US-Treasury-Whitepaper.pdf* (''DTCC May 2021 White Paper'').

[136] TMPG White Paper, *supra* note 21, at 32; section IV.B.4 (Table 1) *infra.*

ii. Other Cash Transactions

The Commission proposes to include certain additional categories of cash transactions of U.S. Treasury securities by the direct participants of a U.S. Treasury securities CCA in the definition of an eligible secondary market transaction subject to the Membership Proposal.

First, the Commission is proposing that the definition of an eligible secondary market transaction include those cash purchase and sale transactions in which the counterparty of the direct participant is a registered broker-dealer, government securities broker, or government securities dealer.[137] Each of these entities is a type of market intermediary that is engaged in the business of effecting transactions in securities for the account of others (in the case of brokers) or for their own accounts (in the case of dealers).[138] As stated in section II.A.1 *supra,* in 2018, the TMPG determined that a majority of trades in the secondary cash Treasury market now clear bilaterally,[139] and estimated that the trading volume of non-FICC members exceeds that of FICC members.[140] As a result, the Commission believes that their collective trading activity likely is responsible for a not insignificant portion of the volume of transactions involving Treasury securities and could present contagion risk to a U.S. Treasury securities CCA.[141] In addition, registered broker-dealers, government securities brokers, or dealers that are not direct members of a U.S. Treasury securities CCA are typically ''introducing firms'' that establish mechanisms to clear and settle their transactions. For example, currently, many registered brokers and dealers rely on the correspondent clearing service provided by FICC to have a FICC member submit their transactions for clearing at FICC.[142]

The Commission believes that the benefits that would result from imposing a requirement on U.S. Treasury securities CCAs to require that their direct participants submit for clearing and settlement such transactions in which their counterparties are registered broker-dealers or government securities brokers or government securities dealers would be consistent with the benefits of central clearing set forth in section III.A.3 *infra.* Moreover, because these entities are already either part of or able to access the national system of clearance and settlement, there should be fewer obstacles to submission of such trades.

Second, the Commission proposes to include within the definition of an eligible secondary market transaction any purchase and sale transaction between a direct participant of a U.S. Treasury securities CCA and a hedge fund, that is any private fund (other than a securitized asset fund): (a) with respect to which one or more investment advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses); (b) that may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration). This definition of a hedge fund is consistent with the Commission's definition of a hedge fund in Form PF.[143]

The Commission's intent in including transactions with hedge funds in the definition of an eligible market transaction is two-fold. First, hedge funds generally can engage in trading

[137] *See* paragraph (ii)(B) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a). *See also* 15 U.S.C. 78o(a) and 78o–5(a) (requirement to register) and 78c(4), (5), (43), and (44) (definitions of broker, dealer, government securities dealer, and government securities broker). The Commission acknowledges that the transactions encompassed by paragraph (ii)(B) in the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) could also encompass certain transactions that would be encompassed by paragraph (ii)(A) of the same proposed definition, in the event that the direct participant is an IDB transacting with a registered broker-dealer. However, the set of transactions encompassed by paragraph (ii)(B) of the proposed definition is broader than that of paragraph (ii)(A). The Commission believes that this overlap is appropriate because these paragraphs of the proposed definition are designed to accomplish different purposes, which is not impacted by the potential overlap.

[138] *See generally* TMPG, *Automated Trading in Treasury Markets (White Paper)* (June 2015), *available at https://www.newyorkfed.org/TMPG/medialibrary/microsites/tmpg/files/TPMG-June-2015-Automated-Trading-White-Paper.pdf (''TMPG Automated Trading White Paper'').*

[139] TMPG White Paper, *supra* note 21, at 2.

[140] IAWG Report, *supra* note 4, at 30; TMPG White Paper, *supra* note 21, at 12.

[141] *See supra* note 15 and TMPG Automated Trading White Paper, *supra* note 138.

[142] *See, e.g.,* FICC Rule 8 (describing the service), *supra* note 47; FICC Executing Firm Master List, *available at https://www.dtcc.com/client-center/ficc-gov-directories.*

[143] 17 CFR 279.9 (Form PF Glossary of Terms).

strategies that may pose heightened risks of potential financial distress to their counterparties, including those who are direct participants of a U.S. Treasury securities CCA. For example, the Commission observed when proposing Form PF that hedge funds often use financial institutions that may have systemic importance to obtain leverage, and that hedge funds may employ investment strategies that may use leverage, derivatives, complex structured products, and short selling in an effort to generate returns, as well as employ strategies involving high volumes of trading and concentrated investments.[144] The Commission recognized that the strategies employed by hedge funds ''can increase the likelihood that the fund will experience stress or fail, and amplify the effects on financial markets.'' [145] The Commission also stated that significant hedge fund failures, resulting from their investment positions or use of leverage or both, could result in material losses at the financial institutions that lend to them if collateral securing this lending is inadequate, and that these losses could have systemic implications if they require these financial institutions to scale back their lending efforts or other financing activities generally.[146]

Similarly, the FSOC acknowledged, in light of recent market events, the importance of understanding how hedge fund activities may impact the broader market, including ''how financial strain at hedge funds—particularly those with significant leverage—could create risks to financial stability, and how a reduction in financial intermediation by hedge funds during periods of market stress could exacerbate market impairment.'' [147] Thus, as a general matter, the Commission believes that if any of a hedge fund's activities, even those that are not related to the U.S. Treasury market, cause financial stress to a counterparty that is a direct participant of a U.S. Treasury securities CCA, the inclusion of a hedge fund's U.S. Treasury securities cash transactions with a direct participant in the definition of an eligible secondary market transaction should help ensure that such financial stress would not transmit to the U.S. Treasury securities CCA and through to the U.S. Treasury market.

In addition, hedge funds are increasingly large players in the U.S. Treasury market. For example, as of the fourth quarter of 2021, the Commission's Private Funds Statistics indicated that qualifying hedge funds held aggregate gross notional exposure of $1,760 billion in U.S. Treasury securities.[148] However, qualifying hedge funds generally report central clearing of about 15 percent of their overall net asset value.[149] There has been a great deal of commentary regarding the role of hedge funds in the U.S. Treasury markets, particularly with respect to the March 2020 market events.[150] For example, the FSOC observed that hedge funds were among the three largest types of sellers of Treasury securities, materially contributing to the Treasury market disruption during this period, although not as its sole cause.[151] The IAWG staffs stated that, in March 2020, hedge funds were among the largest sellers of Treasury securities as expected price relationships broke down, highly levered positions magnified losses, and some funds faced margin calls.[152]

This demonstrates the potential contagion risk that could arise from hedge funds' activities in the U.S. Treasury market. Similar to the risks posed to a U.S. Treasury securities CCA by non-centrally cleared trades entered into by an IDB, non-centrally cleared transactions entered into between hedge funds and direct participants of the CCA could cause risks to the CCA in the event that the hedge fund is not able to meet its obligations to the direct participant, which could, in turn, create stress to the direct participant and through to the CCA. Therefore, including the direct participant's purchase and sale transactions with hedge funds within the definition of an eligible secondary market transaction should reduce the potential for financial distress arising from the transactions that could affect the direct participant and the U.S. Treasury securities CCA. This aspect of the proposal would also result in consistent and transparent risk management being applied to such transactions, as discussed further in section III.A.3 *infra.*

The Commission believes that defining a hedge fund in a manner consistent with Form PF is reasonable, because such definition should encompass those funds that use strategies that the Commission has determined merit additional reporting to allow a better picture of the potential systemic risks posed by such activities.[153] Including transactions with such funds within the definition of an eligible secondary market transaction should help to limit the potential

[144] Proposing Release, Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Release No. IA–3145 (Jan. 26, 2011), 76 FR 8068, 8073 (Feb. 12, 2011) (''Form PF Proposing Release''). The Commission adopted the hedge fund definition with some amendments thereafter. Final Rule, Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Release No. IA–3308 (Oct. 31, 2011), 76 FR 71127 (Nov. 16, 2011).

[145] Form PF Proposing Release, *supra* note 144, 76 FR at 8073 (citing President's Working Group on Financial Markets, Hedge Funds, Leverage, and the Lessons of Long Term Capital Management (Apr. 1999), at 23).

[146] *Id.* (also noting that the simultaneous failure of several similarly positioned hedge funds could create contagion through the financial markets if the failing funds had to liquidate their investment positions at firesale prices).

[147] FSOC Statement on Nonbank Financial Intermediation (Feb. 4, 2022), *available at https://home.treasury.gov/news/press-releases/jy0587.*

[148] Private Funds Statistics for Q4 2021, Table 46 (July 22, 2022), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2021-q4.pdf.* Qualifying hedge funds refers to those hedge funds that have a net asset value (individually or in combination with any feeder funds, parallel funds and/or dependent parallel managed accounts) of at least $500 million as of the last day of any month in the fiscal quarter immediately preceding its most recently completed fiscal quarter. *See* Form PF (Glossary of Terms).

[149] Private Funds Statistics for Q4 2021, Figure 17 (July 22, 2022), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2021-q4.pdf.*

[150] *See generally* Ayelen Banegas *et al., Sizing Hedge Funds' Treasury Market Activities and Holdings* (Oct. 6, 2021), *available at https://www.federalreserve.gov/econres/notes/feds-notes/sizing-hedge-funds-treasury-market-activities-and-holdings-20211006.htm; see also* Daniel Barth & R. Jay Kahn, *Hedge Funds and the Treasury Cash-Futures Disconnect* (Apr. 1, 2021), *available at https://www.financialresearch.gov/working-papers/2021/04/01/hedge-funds-and-the-treasury-cash-futures-disconnect/;* Hedge Fund Treasury Trading and Funding Fragility: Evidence from the COVID–19 Crisis, *available at https://www.federalreserve.gov/econres/feds/files/2021038pap.pdf.*

[151] FSOC Feb. 2022, *supra* note 172; *see also* IAWG, *supra* note 4, at 34.

[152] IAWG, *supra* note 4, at 34. *See also* SEC Staff Report on U.S. Credit Markets Interconnectedness and the Effects of the COVID–19 Economic Shock (Oct. 2020), *available at https://www.sec.gov/files/US-Credit-Markets_COVID-19_Report.pdf.*

[153] Final Rule, Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Release No. IA–3308 (Oct. 31, 2011), 76 FR 71127 (Nov. 16, 2011). The reporting requirements for Form PF vary based on the amount of private fund assets under management for an investment adviser registered with the Commission. For example, if an investment adviser's private fund assets under management, including with respect to hedge funds, are less than $150 million on the last day of the most recent fiscal year, then the investment adviser is not required to file Form PF. Separately, additional reporting requirements apply to large hedge fund advisers with at least $1.5 billion in hedge fund assets under management. *See* Form PF, Instructions 1 and 3. However, the Commission believes that including all hedge funds within paragraph (ii)(C) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad-22(a) would be consistent with its overall policy goals for central clearing in the U.S. Treasury market and ensuring that hedge fund transactions with direct participants in a U.S. Treasury securities CCA do not adversely impact the direct participant and, potentially, the CCA.

contagion risk that could arise from any financial distress experienced at such a fund that could, in turn, be transmitted to a direct participant of a U.S. Treasury securities CCA (and to the CCA) via any non-centrally cleared transactions. Specifically, using such definition would allow the definition of an eligible secondary market transaction to include transactions between direct participants of a U.S. Treasury securities CCA and a private fund whose characteristics make it more likely that it would have an impact on systemic risk, *i.e.,* its ability to short sell and take on significant leverage. For example, as the Commission recently stated, large investment losses or a margin default involving one large highly levered hedge fund may have systemic risk implications, and large investment losses at multiple hedge funds may indicate market stress that could have systemic effects.[154] The Commission believes that using a definition consistent with that of Form PF to identify transactions with a U.S. Treasury securities CCA's direct participant as part of the definition of an eligible secondary market transaction subject to the Membership Proposal should capture transactions with entities whose default would be most likely to cause potential contagion risk to the Treasury securities CCA. For example, hedge funds' use of leverage can make them more vulnerable to liquidity shocks, which could, in turn, make them unable to deliver in a transaction with a direct participant of a U.S. Treasury securities CCA.

Third, the Commission proposes to include within the definition of an eligible secondary market transaction subject to the Membership Proposal any purchase and sale transaction between a direct participant of a U.S. Treasury securities CCA and an account at a registered broker-dealer, government securities dealer, or government securities broker that either may borrow an amount in excess of one-half of the net value of the account or may have gross notional exposure of the transactions in the account that is more than twice the net value of the account.[155] This would apply to accounts that can take on significant leverage, that is, by borrowing an amount that is more than one half of its net value or take on exposures worth more than twice the account's net value.

The Commission believes that the inclusion of transactions with such accounts within the definition of an eligible secondary market transaction should allow the proposal to encompass transactions between direct participants of a U.S. Treasury securities CCA and a prime brokerage account, which, based on the Commission's supervisory knowledge, may hold assets of entities, such as, for example, private funds or separately managed accounts, and may use leverage that poses a risk to U.S. Treasury securities CCA and the broader financial system. Covering such accounts would also allow for inclusion of, for example, accounts used by family offices or separately managed accounts that may use strategies more similar to those of a hedge fund. The account provider (*i.e.,* the prime broker) does not have access to, or knowledge of, the account owner's entire portfolio of assets and is limited to the assets in that particular account. Therefore, the account provider may be unable to make a counterparty whole in the event of a default by the account owner if the account has taken on significant leverage. Typically, the entity providing an account has a lien or some other priority on assets in the account to make a counterparty whole if necessary. By including the account, and not the entity using the account, this aspect of the proposal is targeted to the activity that could bring the most potential risk to a U.S. Treasury securities CCA and the financial system more generally.

c. Exclusions From the Definition of an Eligible Secondary Market Transaction

The Commission is proposing to exclude transactions between direct participants of a U.S. Treasury securities CCA and certain counterparties from the definition of an eligible secondary market transaction in U.S. Treasury securities. These exclusions would apply to any purchase or sale transaction in U.S. Treasury securities or repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities. First, recognizing the importance of U.S. Treasury securities not only to the financing of the United States government, but also their central role in the formulation and execution of monetary policy and other governmental functions, the Commission is proposing to exclude any transactions in U.S. Treasury securities between a direct participant of a U.S. Treasury securities CCA and a central bank. For similar reasons, the Commission is also proposing to exclude any transactions in U.S. Treasury securities between a direct participant of a U.S. Treasury securities CCA and a sovereign entity or an international financial institution.[156] Together, these exclusions are referred to as the ''Official Sector Exclusions.''

In addition, the Commission is also proposing to exclude transactions in U.S. Treasury securities between a direct participant of a U.S. Treasury securities CCA and a natural person. The Commission does not believe that such transactions should be included in light of the likely low volumes of transactions entered into by natural persons and the low potential for contagion risk arising from such transactions.

i. Official Sector Exclusions From the Membership Proposal

The Official Sector Exclusions are designed to permit domestic and international policy makers, *i.e.,* central banks, to continue to pursue important policy goals. Because these transactions should present limited to no risk of contagion to a U.S. Treasury securities CCA, the Commission believes that these exclusions are appropriate.

For purposes of the Official Sector Exclusion, the Commission proposes to define a central bank as a reserve bank or monetary authority of a central government (including the Board of Governors of the Federal Reserve System or any of the Federal Reserve Banks). The proposed definition would also include the Bank for International Settlements (''BIS'').[157] The BIS is owned by central banks.[158] The Commission therefore believes it is appropriate to include the BIS in the definition of central bank for purposes of this proposal. The Commission proposes to define a sovereign entity as a central government (including the U.S. Government), or an agency, department, or ministry of a central government.[159] Finally, the Commission proposes to define an international financial institution by specifying the entities, *i.e.,* (1) African Development Bank; (2) African Development Fund; (3) Asian Development Bank; (4) Banco Centroamericano de Integración Económica; (5) Bank for Economic Cooperation and Development in the

[154] Proposing Release, Amendments to Form PF To Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Release No. IA–5950 (Jan. 26, 2022), 87 FR 9106, 9109 (Feb. 17, 2022).

[155] *See* paragraph (ii)(D) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a).

[156] As discussed more fully below, these exclusions would be codified in paragraph (iii) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a).

[157] The Commission proposes to codify this definition in Proposed Rule 17Ad–22(a).

[158] *See https://www.bis.org/about/index.htm* (noting that ''the BIS is owned by 63 central banks, representing countries from around the world that together account for about 95% of world GDP'').

[159] The Commission proposes to codify this definition in Proposed Rule 17Ad–22(a).

Middle East and North Africa; (6) Caribbean Development Bank; (7) Corporación Andina de Fomento; (8) Council of Europe Development Bank; (9) European Bank for Reconstruction and Development; (10) European Investment Bank; (11) European Investment Fund; (12) European Stability Mechanism; (13) Inter-American Development Bank; (14) Inter-American Investment Corporation; (15) International Bank for Reconstruction and Development; (16) International Development Association; (17) International Finance Corporation; (18) International Monetary Fund; (19) Islamic Development Bank; (20) Multilateral Investment Guarantee Agency; (21) Nordic Investment Bank; (22) North American Development Bank, and providing that the term would also include any other entity that provides financing for national or regional development in which the United States government is a shareholder or contributing member.[160]

The Commission believes that the proposed exclusion is appropriate to central banks because these entities are created by statute and are part of, or aligned with, a central government.[161] Further, the purpose of a central bank is generally to effectuate monetary policy for its respective nation.[162] For example, transactions in U.S. Treasury securities are an important tool in the fiscal and monetary policy of the United States, as well as other jurisdictions.[163] In particular, cash and repo transactions in U.S. Treasury securities are one of the primary tools used by the Federal Reserve Bank of New York to conduct open market transactions at the direction of the Federal Open Market Committee.[164] The System Open Market Account, which is managed by the Federal Reserve Bank of New York's System Open Market Trading Desk, is ''the largest asset on the Federal Reserve's balance sheet.'' [165] In light of the key role of open market operations conducted by the Federal Reserve Bank of New York in the monetary policy of the United States, the Commission believes an exemption from the Membership Proposal is appropriate for the Federal Reserve System.[166] In particular, the Commission believes the Federal Reserve System should be free to choose the clearance and settlement mechanisms that are most appropriate to effectuating its policy objectives.

Further, the Commission believes that the Official Sector Exclusion should extend to foreign central banks, sovereign entities and international financial institutions for similar reasons and for reasons of international comity. Congress has decided to permit international financial institutions to enjoy a number of privileges and immunities from U.S. law,[167] which suggests that in these circumstances, the Commission should not place additional requirements on these institutions' transactions in U.S. Treasury securities. In addition, in light of ongoing expectations that Federal Reserve Banks and agencies of the Federal government would not be subject to foreign regulatory requirements in their transactions in the sovereign debt of other nations, the Commission believes principles of international comity counsel in favor of exempting foreign central banks, sovereign entities, and international financial institutions.[168]

ii. Natural Person Exclusion

The Commission is also proposing to exclude from the Membership Proposal otherwise eligible secondary market transactions in U.S. Treasury securities between a direct participant of a U.S. Treasury securities CCA and a natural person. The Commission believes that such an exclusion is appropriate because natural persons generally transact in small volumes and would not present much, if any, contagion risk to a U.S. Treasury securities CCA.[169]

3. How the Membership Proposal Facilitates Prompt and Accurate Clearance and Settlement in the U.S. Treasury Market

The Commission believes that the Membership Proposal would promote the prompt and accurate clearance and settlement of U.S. Treasury securities transactions, providing several benefits to the market for U.S. Treasury securities as a whole.

First, the Commission believes that the Membership Proposal would decrease the overall amount of counterparty credit risk in the secondary market for U.S. Treasury securities. Because a U.S. Treasury securities CCA would novate and guarantee each transaction submitted for central clearing, it would become a counterparty to each transaction, as the buyer to every seller and the seller to every buyer. The U.S. Treasury securities CCA would be able to risk manage these transactions centrally, pursuant to risk management procedures that the Commission has reviewed and approved, and would guarantee settlement of the trade in the event of a direct participant default.

By contrast, bilaterally cleared cash transactions in U.S. Treasury securities are subject to variable risk management methodologies in which exposures are often less mitigated with less rigorous

[160] The Commission proposes to codify this definition in Proposed Rule 17Ad–22(a). *Cf.* 17 CFR 50.76(b) (CFTC definition of international financial institution for purposes of exemptions from swap clearing requirement).

[161] The authorizing statutes generally provide that the government owns all or part of the capital stock or equity interest of the central bank. *See, e.g.,* Capital of the ECB Protocol on the Statute of the European System of Central Banks and of the European Central Bank (''ECB Protocol''), Article 28.2, *available at https://www.ecb.europa.eu/ecb/legal/pdf/en_statute_2.pdf.*

[162] *See, e.g.,* ECB Protocol Statute, *supra* note 106, Article 3.1; Bank of Japan Act, Articles 1 and 2, *available at https://www.boj.or.jp/en/about/boj_law/index.htm/#p01.*

[163] 12 U.S.C. 225a (defining goals of monetary policy); *see also https://www.federalreserve.gov/monetarypolicy/monetary-policy-what-are-its-goals-how-does-it-work.htm.*

[164] *See* Federal Reserve Bank; Monetary Policy Implementation, *available at https://www.newyorkfed.org/markets/domestic-market-operations/monetary-policy-implementation.*

[165] *Id.*

[166] Congress similarly exempted transactions in which one counterparty is a member of the Federal Reserve System from the regulation of swaps and security based swaps in Title VII of the Dodd-Frank Act. *See* 15 U.S.C. 78c(a)(68)(A) (noting that a security-based swap is a swap, as defined in 7 U.S.C. 1a(47), subject to certain other conditions); 7 U.S.C. 1a(47)(B)(ix) (excluding from the definition of swap any transaction in which one counterparty ''is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States'').

[167] *See, e.g.,* the International Organization and Immunities Act (22 U.S.C. 288) and the Foreign Sovereign Immunities Act (28 U.S.C. 1602). The United States has taken appropriate actions to implement international obligations with respect to such immunities and privileges. *See, e.g.,* International Bank for Reconstruction and Development (the ''World Bank'') and International Monetary Fund (22 U.S.C. 286g and 22 U.S.C. 286h), the European Bank for Reconstruction and Development (22 U.S.C. 290l–6), the Multilateral Investment Guarantee Agency (22 U.S.C. 290k–10), the Africa Development Bank (22 U.S.C. 290–8), the African Development Fund (22 U.S.C. 290g–7), the Asian Development Bank (22 U.S.C. 285g), the Inter-American Development Bank (22 U.S.C. 283g), the Bank for Economic Cooperation and Development in the Middle East and North Africa (22 U.S.C. 290o), and the Inter-American Investment Corporation (22 U.S.C. 283hh).

[168] For similar reasons, the CFTC has similarly determined to exempt swap transactions involving foreign central banks, sovereign entities, and international financial institutions from the statutory requirement that swap transactions be cleared with a Derivatives Clearing Organization. *See* 17 CFR 50.75, 50.76; Swap Clearing Exemptions, 85 FR 76428, 76429–30, 76432 (Nov. 30, 2020).

[169] For example, although it is not a precise indicator of activity by natural persons in the U.S. Treasury markets, the data available on household holdings of U.S. Treasury securities indicates that their activity is not significant to the overall market. *See, e.g.,* The Financial Accounts of the United States, at 119 (Q1 2022) (indicating that less than 3.1% of marketable U.S. Treasury securities are held by the household sector), *available at https://www.federalreserve.gov/releases/z1/20220609/z1.pdf.*

practices compared to CCP risk management.[170] Indeed, although various SRO margin rules provide for the collection of margin for certain transactions in U.S. Treasury securities, transactions between dealers and institutional customers are subject to a variable ''good-faith'' margin standard, which the Commission understands—based on its supervisory experience—can often result in fewer financial resources collected to margin exposures than those that would be collected if a CCP margin model, like the one used at FICC, were used.[171] The Membership Proposal is designed to ameliorate these risks by requiring Treasury securities CCAs to establish policies and procedures that require their direct participants to submit for clearance and settlement their eligible secondary market transactions, which would include all repo transactions, and specified cash transactions in U.S. Treasury securities, which are most likely to pose contagion risk to a U.S. Treasury securities CCA.

In particular, the Membership Proposal is designed to reduce the amount of ''contagion risk'' to a U.S. Treasury securities CCA arising from what has been described as ''hybrid clearing,'' as discussed above.[172] In a hybrid transaction, the leg of the trade between an IDB, which is a FICC member, and a FICC member counterparty is submitted to FICC for clearance and settlement but the leg between the IDB and a non-FICC member counterparty is not.[173] Consequently, this FICC-member counterparty would no longer have exposure to the IDB and vice versa. But the IDB must settle the other leg of the trade bilaterally with its non-FICC member counterparty, and the IDB and the non-FICC member counterparty would face counterparty credit risk to each other until the transaction settles. Although this release has discussed ''hybrid clearing,'' and, more generally, contagion risk, with respect to IDB transactions, the general concept can apply more broadly, in that a FICC member's transactions that are not submitted for central clearing pose an indirect risk to the CCP as any default on a bilaterally settled transaction could impact the FICC member's financial resources and ability to meet its obligations to FICC. The Commission believes that requiring U.S. Treasury securities CCAs to impose, as a condition of membership, an obligation on their direct participants to submit all eligible secondary market transactions for central clearing should address the transactions most likely to cause contagion risk.

Second, the Commission believes that the Membership Proposal would also help any U.S. Treasury securities CCA to avoid a potential disorderly member default. When cash market transactions are cleared bilaterally, market participants typically enter into bespoke arrangements to govern clearance and settlement with each of their trading counterparties, resulting in multiple interconnected counterparty credit risk exposures. Aside from the inefficiency of multiple sets of bilateral documentation that may differ in key respects, such as the amount of margin required, the default of one counterparty can have cascading effects on multiple other market participants. Defaults in bilaterally settled transactions are likely to be less orderly and subject to variable default management techniques because bilaterally settled transactions are not subject to the default management processes that are required to be in place and publicly disclosed at a CCP.[174] Centralized default management is a key feature of central clearing. Because the CCP has novated and guaranteed the transactions, it is uniquely positioned to coordinate the default of a member for trades that it has centrally cleared, and the non-defaulting members can rely on the CCP to complete the transactions of the defaulting member and cover any resulting losses using the defaulting member's resources and/or its default management tools. Even in a situation where two CCPs have to coordinate the default of a joint member, that coordination should result in more efficiency and market confidence than multiple bilateral settlements.

The Commission previously has stated that a CCP's default management procedures would provide certainty and predictability about the measures available to a covered clearing agency in the event of a default which would, in turn facilitate the orderly handling of member defaults and would enable members to understand their obligations to the covered clearing agency in extreme circumstances.[175] By contrast, as the TMPG has observed, independent management of bilateral credit risk by each participant in the clearance and settlement chain likely creates uncertainty about the levels of exposure across market participants and may make runs more likely, and any loss stemming from closing out the position of a defaulting counterparty is a loss to the non-defaulting counterparty and hence a reduction in its capital in many scenarios.[176] Moreover, the high quality and credit status of U.S. Treasury securities does not eliminate the potential risk of clearing and settling these securities in the event of a default of a counterparty to a secondary market transaction. For example, if a large participant in a U.S. Treasury trade defaults, it can leave a counterparty with a short position to cover, which may take place as prices of U.S. Treasury securities move rapidly.[177] In particular, the Commission notes that the market for U.S. Treasury securities experienced stresses in 1986, 1994, and 2008, with more recent episodes detailed in the recent IAWG Report.[178]

Having a CCP drawing on its expertise to manage hedging and an orderly liquidation of the portfolio(s) of a party (or parties) in default would constitute an improvement to uncoordinated liquidations. A covered clearing agency, including a U.S. Treasury securities CCA, is required to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, ensure the CCA has the authority and operational capacity to contain losses and liquidity demands and continue to meet its obligations, which must be

[170] TMPG White Paper, *supra* note 21, at 29.

[171] Although FINRA rules provide for the collection of margin for cash U.S. Treasury transactions, *see* FINRA Rule 4210(e)(2)(A) (setting forth margin rule for FINRA members for collection of margin on Treasuries and certain other bonds) these rules do not necessarily apply to exempt accounts, *see* FINRA Rule 4210(e)(2)(F) (permitting FINRA members not to collect margin from exempt accounts and providing for a capital charge for any uncollected mark-to-market loss); FINRA Rule 4210(a)(13) (defining exempt account). Although SRO rules also require a broker-dealer to establish procedures to review limits and types of credit extended to all customers, formulate their own ''house'' margin requirements, and review the need for instituting higher margin requirements than are required for individual securities or customer accounts, based on the Commission's supervisory experience, the resulting margin collection is often less than that required pursuant to FICC's margin model.

[172] TMPG White Paper, *supra* note 21, at 8 n.11 (''IDB platforms act as blind brokers to provide anonymity to their customers. Under the blind broker model, the IDB serves as principal so what might appear to be a single trade between two customers is really two: one between the broker and the buyer and one between the broker and the seller. The buyer and seller are no longer directly exposed to each other, but both are exposed to the blind broker, and the blind broker is exposed to both buyer and seller.'').

[173] TMPG White Paper, *supra* note 21, at 9.

[174] *See* Rule 17Ad–22(e)(13) and (e)(23)(i).

[175] CCA Standards Proposing Release, *supra* note 7, 79 FR at 29545.

[176] TMPG White Paper, *supra* note 21, at 32.

[177] TMPG White Paper, *supra* note 21, at 32 and at 13 n. 17 (noting counterparty risk associated with the Long-Term Capital Management experience in 1998).

[178] IAWG Report, *supra* note 4.

tested annually.[179] This transparent and established approach to potential defaults stands in contrast to the variable practices that currently prevail in the bilateral market, which are not subject to similar regulation. For these reasons, the Commission believes that a requirement for a U.S. Treasury securities CCA to require that its direct participants submit for clearance and settlement all the transactions encompassed by the definition of an eligible secondary market transaction would help reduce the potential for disorderly defaults, and runs, thereby bolstering the health of the CCP and the market as a whole—consistent with the purpose of robust membership requirements the Commission contemplated in the Covered Clearing Agency Standards, and the Commission's statutory charge to promote the prompt and accurate clearance and settlement of securities transactions.[180]

Third, the Commission believes that the Membership Proposal will further the prompt and accurate clearance and settlement of U.S. Treasury securities by increasing the multilateral netting of transactions in these instruments, thereby reducing operational and liquidity risks, among others. Central clearing of transactions nets down gross exposures across participants, which reduces firms' exposures while positions are open and reduces the magnitude of cash and securities flows required at settlement.[181] Consistent with the Commission's previous statements in this regard, FICC's failure to receive all eligible trading activity of an active market participant reduces the value of its vital multilateral netting process and causes FICC to be less well-situated to prevent future market crises.[182] Others have also noted that these reductions, particularly in cash and securities flow would reduce liquidity risks associated with those settlements and counterparty credit risks associated with failures to deliver on the contractual settlement date,[183] not only for CCP members but for the CCP itself, thereby promoting the safeguarding of U.S. Treasury securities and funds in the custody or control of the CCA and increasing the likelihood of prompt and accurate clearance and settlement of such transactions. In fact, it has been suggested that additional central clearing, based on assumptions broader than the proposal set forth in this release, may have lowered dealers' daily settlement obligations in the cash market by 60 percent in the run-up and aftermath of the March 2020 U.S. Treasury market disruption and reduced settlement obligations by 70 percent during the disruption itself.[184] The reduction in exposure is not limited to the cash market. For example, it has been estimated that introduction of central clearing for dealer-to-client repos would have reduced dealer exposures from U.S. Treasury repos by over 80% (from $66.5 billion to $12.8 billion) in 2015.[185]

The benefits of multilateral netting flowing from central clearing can improve market safety by lowering exposure to settlement failures, which would also tend to promote the prompt and accurate clearance and settlement of U.S. Treasury securities transactions.[186] Multilateral netting can also reduce the amount of balance sheet required for intermediation and could also enhance dealer capacity to make markets during normal times and stress events because existing bank capital and leverage requirements recognize the risk-reducing effects of multilateral netting of trades that CCP clearing accomplishes.[187]

Fourth, the potential benefits associated with the multilateral netting of transactions at a CCP that the Membership Proposal is designed to bring about could in turn help to unlock further improvements in U.S. Treasury market structure. The increase in clearing and consequent reduction in counterparty credit risk could ''enhance the ability of smaller bank and independent dealers to compete with the incumbent bank dealers.'' [188] Similarly, decreased counterparty credit risk—and potentially lower costs for intermediation—could result in narrower spreads, thereby enhancing market quality.[189] Moreover, increased accessibility of central clearing in U.S. Treasury markets could support movement toward all-to-all trading, even potentially in the repo market, which would further improve market structure and resiliency, although a movement in that direction is not assured.[190] This potential movement would stem from the fact that increased central clearing of U.S. Treasury securities transactions would, in turn, result in decreased counterparty risk, making all-to-all trading more attractive, that is, a market participant would be more willing to trade with any counterparty if a CCP were to serve as its ultimate counterparty.

Finally, increased central clearing should enhance regulatory visibility in the critically important U.S. Treasury market. Specifically, central clearing increases the transparency of settlement risk to regulators and market participants, and in particular allows a CCP to identify concentrated positions and crowded trades, adjusting margin requirements accordingly, which should help reduce significant risk to the CCP and to the system as a whole.[191] In light of the role of U.S. Treasury securities in financing the federal government, it is important that regulators improve their visibility into this market. Increased clearing would provide greater insight into the often opaque repo market, as discussed further in section III.A.2.a *supra,* as well as to the cash market where TRACE faces certain limitations, as discussed in section IV *infra.* Increased central clearing would also allow for a more aggregated view of market activity in one place.

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[179] *See* 17 CFR 240.17Ad–22(e)(13).

[180] *See* 15 U.S.C. 78q–1(a)(2)(A).

[181] IAWG Report, *supra* note 4, at 30. For an example of multilateral netting, please see note 252 and accompanying text *infra.*

[182] Exchange Act Release No. 51908, *supra* note 30.

[183] G–30 Report, *supra* note 5, at 13; *see also* PIFS Paper, *supra* note 120, at 28–31.

[184] G–30 Report, *supra* note 5, at 13 n.21 (citing Michael Fleming & Frank Keane, Staff Report No. 964: Netting Efficiencies of Marketwide Central Clearing, Federal Reserve Bank of New York (Apr. 2021), *available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr964.pdf*). However, this analysis relies upon the assumption that all dealers' purchases and sales of U.S. Treasury securities transactions would be centrally cleared and, therefore, netted; this proposal, if adopted, would not result in the same scope of central clearing, as it would apply only to eligible secondary market transactions of direct participants in a U.S. Treasury securities CCA.

[185] Office of Financial Research, *Benefits and Risks of Central Clearing in the Repo Market,* 5–6 (Mar. 9, 2017), *available at https://www.financialresearch.gov/briefs/files/OFRBr_2017_04_CCP-for-Repos.pdf.*

[186] Darrel Duffie, *Still the World's Safe Haven,* Hutchison Center on Fiscal & Monetary Policy, at 15 (June 2020), *available at https://www.brookings.edu/wp-content/uploads/2020/05/WP62_Duffie_v2.pdf* (''Duffie'').

[187] IAWG Report, *supra* note 4, at 30; Liang & Parkinson, *supra* note 32, at 9; Duffie, *supra* note 186, at 16–17.

[188] Liang & Parkinson, *supra* note 32, at 9.

[189] G–30 Report, *supra* note 5, at 13

[190] IAWG Report, *supra* note 4, at 30; Duffie, *supra* note 186, at 16; G–30 Report, *supra* note 5, at 13. All-to-all trading would be characterized by the ability for a bid or offer submitted by one market participant to be accepted by any other market participant, with trades executed at the best bid or offer. *See, e.g.,* Liang & Parkinson, *supra* note 32, at 9. All-to-all trading could improve the quality of trade execution in normal market conditions and broaden and stabilize the supply of market liquidity under stress. *See, e.g.,* G–30 Report, *supra* note 5, at 10.

[191] Duffie, *supra* note 186, at 15; IAWG Report, *supra* note 4, at 30 (centralization of transactions at a CCP ''can simplify data collection and improve visibility into market conditions for the authorities and, to some degree, for market participants'').

4. Policies and Procedures Regarding Direct Participants' Transactions

The proposal would also require that a U.S. Treasury securities CCA establish written policies and procedures reasonably designed to, as applicable, identify and monitor its direct participants' required submission of transactions for clearing, including, at a minimum, addressing a direct participant's failure to submit transactions.[192] The Commission believes that such a requirement should help ensure that a U.S. Treasury securities CCA has a framework in place for oversight of participants' compliance with the policies that would be adopted as part of the Membership Proposal requiring the submission of specified eligible secondary market transactions for clearing. Without such policies and procedures, it would be difficult for the CCA to assess if the direct participants are complying with the Membership Proposal, if adopted.

The Commission believes that there are a number of possible methods that a U.S. Treasury securities CCA could establish to assess its direct participants' compliance with the policies and procedures adopted pursuant to the Membership Proposal. For example, a U.S. Treasury securities CCA could seek attestation from its direct participants as to their submission of the required transactions.

The Commission believes that requiring a U.S. Treasury securities CCA to adopt policies and procedures that address a failure of a direct participant to submit transactions that are required to be submitted is consistent with section 17A(b)(3)(G) of the Exchange Act. That section requires that the rules of a registered clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction. The Commission believes that policies and procedures consistent with this aspect of the proposal should specify how a U.S. Treasury securities CCA would penalize its participants who do not submit the required transactions, whether by a particular fine or other action. Understanding the consequences of not complying with any Membership Proposal, if adopted, should, in turn, help incentivize compliance.

[192] *See* Proposed Rule 17Ad–22(e)(18)(iv)(B).

5. Request for Comment

The Commission generally requests comments on all aspects of the Membership Proposal. In addition, the Commission requests comments on the following specific issues, with accompanying data and analysis:

• Do commenters agree or disagree with any particular aspects of the Membership Proposal, including the definition of an eligible secondary market transaction? If so, which ones and why? If commenters disagree with any provision of the proposed rule, how should such provision be modified and why?

• Do commenters agree that transactions entered into by direct participants of a U.S. Treasury securities CCA that are not centrally cleared at the CCA present a contagion risk to the CCA, and thereby present systemic risk? Why or why not? Are there other benefits that expanded central clearing would bring that the Commission has not identified?

• Do commenters agree that the Commission should target the Membership Proposal, through the definition of an eligible secondary market transaction, at a subset of transactions entered into by direct participants of a U.S. Treasury securities CCA? Should the Commission instead require that a U.S. Treasury securities CCA adopt policies and procedures reasonably designed to require that its direct participants submit for clearance and settlement all of their transactions in U.S. Treasury securities?

• What implications would the increased transaction volume at a U.S. Treasury securities CCA have for participation in the U.S. Treasury market and for the U.S. Treasury market more broadly? For example, would the Membership Proposal help create all-to-all trading in the U.S. Treasury securities market?

• What impact would the Membership Proposal have on the liquidity risk of a U.S. Treasury securities CCA and how a Treasury securities CCA manages its liquidity risk consistent with Rule 17Ad–22(e)(7) (17 CFR 240.17Ad–22(e)(7))? [193] For example, what would be the potential impact to FICC's Capped Contingent Liquidity Facility (''CCLF'') and its participants' obligations under that requirement? [194] Are there any changes the Commission could adopt to the Membership Proposal that would, in turn, lead to a different impact on FICC's liquidity exposure and/or CCLF? As FICC, or any other U.S. Treasury securities CCA that may enter the market, considers implementing the Membership Proposal, are there actions it can take that may reduce its liquidity risk?

[193] 17 CFR 240.17Ad–22(e)(7).

[194] FICC Rule 22A, section 2a, *supra* note 47.

• More generally, what impact would the Membership Proposal have on other risks facing a U.S. Treasury securities CCA, including, for example, credit risk and operational risk, and how a U.S. Treasury securities CCA manages its liquidity risk consistent with the applicable Covered Clearing Agency Standards? Are there other changes that a U.S. Treasury securities CCA should make to expand the use of central clearing?

• In the event that a U.S. Treasury securities CCA were to offer clearance and settlement services for securities lending transactions in which U.S. Treasury securities are borrowed, should the Commission include such transactions in the definition of an eligible secondary market transaction in Proposed Rule 17Ad–22(a)? Would a failure to include such securities lending transactions in the definition of ''eligible secondary market transactions'' create opportunities for gaming or evasion of the requirements of Proposed Rule 17Ad–22(e)(18)(iv)(A)? Are there economic or other distinctions that mitigate against including securities lending transactions in the definition of an eligible secondary market transaction?

• In light of the fact that the Membership Proposal requires only a U.S. Treasury securities CCA to have written policies and procedures reasonably designed to require its direct members clear their eligible secondary market transactions, is there a risk that market participants will cease their direct participation in U.S. Treasury securities CCAs?

• Similarly, are market participants more likely to move some or all of their U.S. Treasury market activities from entities that are direct participants of a U.S. Treasury securities CCA into other affiliated entities? To what extent would a U.S. Treasury securities CCA be exposed to these other transactions? Should the Commission adopt rules to prohibit evasion of a U.S. Treasury securities CCA's membership requirements through the use of affiliates?

• Should either the repurchase, reverse repurchase, or purchase and sale transactions of certain direct participants of a U.S. Treasury securities CCA, *e.g.,* smaller or mid-sized dealers that would otherwise be subject to the Membership Proposal, be excluded from the definition of an eligible secondary

market transaction, such that a U.S. Treasury securities CCA would not need to have written policies and procedures requiring that all such direct participants' transactions in U.S. Treasury securities be cleared? If so, how would the risks described above in this release be mitigated? What criteria should be used to identify any direct participants who are excepted from Proposed Rule 17Ad–22(e)(18)(iv)(A)? Should any such exemption be subject to a gross notional value or other cap? If so, how should that cap be set? Should any exemption from the Membership Proposal be conditioned on the exchange of margin, haircuts and/or other risk management measures?

- As an alternative to the Membership Proposal, should the Commission establish volume thresholds for transactions by the direct participants of a Treasury CCA that should be submitted to the Treasury CCA for clearance and settlement? If so, what would be the appropriate volume thresholds?
- Do commenters agree that when-issued transactions that take place after the day of the auction and are considered on-the-run by some IDBs are part of the secondary market and would, therefore, be subject to the Membership Proposal, to the extent that such when-issued trades otherwise meet the definition of an eligible secondary market transaction in Proposed Rule 17Ad–22(a)? Do commenters also agree that when-issued securities transactions should not be considered part of the secondary market if they take place before and including the day of the auction? Do commenters have views more generally on whether when-issued transactions, either before, including, or after the day of the auction, are part of the primary or secondary market?
- In light of the likely additional balance sheet capacity that flows from clearing repo transactions in U.S. Treasury securities,[195] should the definition of an eligible secondary market transaction in Proposed Rule 17Ad–22(a) be limited to repo transactions? Are there any other reasons why the definition of eligible secondary market transactions in Proposed Rule 17Ad–22(a) should be limited to repo transactions? Please explain.
- As noted above, both bilateral and triparty repos are currently eligible for central clearing. Should the Commission limit Proposed Rule 17Ad–22(a) to either bilateral or triparty repo? Why or why not? Are there differences in prevailing haircuts or collateral that would make it more desirable to limit Proposed Rule 17Ad–22(a) to bilateral or triparty repo? What other considerations might be relevant to distinguishing between bilateral and triparty repo in the context of Proposed Rule 17Ad–22(a)?
- In light of the particular contagion risk posed by hybrid clearing at IDBs, should the definition of eligible secondary market transaction in Proposed Rule 17Ad–22(a) be limited to transactions—repurchase or outright purchase and sale or both—brokered by an IDB? Why or why not?
- Is the inclusion of purchase and sale transactions of a registered broker-dealer or government securities broker or government securities dealer in the definition of eligible secondary market transaction in Proposed Rule 17Ad–22(a) appropriate? Why or why not? Is the participation of the entities set forth in paragraph (ii)(B) of the proposed definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) in the national system of clearance and settlement likely to increase the potential risk their eligible secondary market transactions in U.S. Treasury securities pose to a U.S. Treasury securities CCA? Are there other reasons that participation in the national system of clearance and settlement should be the basis for being subject to the Membership Proposal? Are there other entities, *e.g.,* banks that also participate in the national system of clearance of and settlement and that should, on the same logic be included as part of paragraph (ii)(B) of the proposed definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a)? Do commenters have any data and/or quantification of the approximate dollar value of transactions that would be encompassed by paragraph (ii)(B) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a)? Are they material enough to warrant inclusion in the Membership Proposal?
- Could inclusion of transactions between a direct participant of a U.S. Treasury securities CCA and a registered broker-dealer or government securities broker or dealer in the definition of an eligible secondary market transaction result in pro- or anti-competitive effects in the market for intermediation in the market for U.S. Treasury securities, particularly as some registered broker-dealers have already highlighted that additional central clearing may affect their ability to compete with those firms with larger market share?
- Is the inclusion of the secondary market purchase and sale transactions between a direct participant of a U.S. Treasury securities CCA and a hedge fund in the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) desirable or appropriate? Why or why not? Do commenters agree that this aspect of the proposal would address the risks posed by hedge funds transacting in the U.S. Treasury market?
- Do commenters agree with the definition of a hedge fund in paragraph (ii)(C) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a)? If not, what should that definition be? Would a more limited definition of a hedge fund, *e.g.,* using only one of the subsections (a) through (c) of the proposed definition (and if so, which ones), be easier to administer or better targeted to reach transactions potentially posing risk to the CCA? For example, would a more limited definition that incorporated only subsection (b) of the proposed definition regarding leverage be used in paragraph (ii)(C) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) be a preferable approach?
- Should the definition of a hedge fund be limited so that, to qualify as a hedge fund under the leverage prong of the definition in subsection (b), a fund would have to continue to satisfy that subsection, but also must have actually borrowed or used any leverage during the past 12 months, excluding any borrowings secured by unfunded commitments (*i.e.,* subscription lines of credit); and/or to qualify as a hedge fund under the short selling prong of the definition in subsection (c), the fund must have actually engaged in the short selling activities described in that subsection during the past 12 months? If the Commission were to revise the proposed definition, would excluding actual borrowings secured by unfunded commitments (*i.e.,* subscription lines of credit) appropriately exclude private equity funds, which typically engage in such borrowings? Should any revised definition require actual borrowing or short selling in the last 12 months? Alternatively, should any revised definition require a longer or shorter time period, such as 18 months or nine months, or different time periods for borrowing versus short selling?
- Should the definition of a hedge fund be limited to hedge funds managed by an investment adviser registered with the Commission?
- Should the inclusion of transactions between hedge funds and direct participants of a U.S. Treasury securities CCA be limited to hedge funds of a certain size or hedge funds managed by

[195] *See supra* note 121 and accompanying text.

investment advisers of a certain size? If so, what is the appropriate threshold to use? For example, should the Commission limit the definition of a hedge fund to apply only to those with net asset value of at least $500 million? Is a fund of that size more likely to have an impact on particular markets in which it invests or on its particular counterparties? Or should the Commission limit the definition of a hedge fund to those which are managed by an investment adviser with, for example, at least $150 million in private fund assets under management?

• Instead of including a definition of a hedge fund in paragraph (ii)(C) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a), should the Commission incorporate by reference the definition of a hedge fund set forth in Form PF?

• Do commenters agree that a U.S. Treasury securities CCA should be required to adopt rules requiring that a direct participant of the CCA submit for clearing all transactions between the participant and an account at a registered broker-dealer, government securities dealer, or government securities broker where such account may borrow an in excess of one-half of the net value of the account or may have gross notional exposure of the transactions in the account that is more than twice the net value of the account as described in paragraph (ii)(D) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a)? Why or why not? Do commenters agree that there is an additional benefit from capturing these additional transactions beyond those in paragraph (ii)(D) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a)?

• Can the inclusion of particular accounts within the set of counterparties included in the definition of an eligible secondary market transaction in paragraph (ii) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) be administered by a U.S. Treasury securities CCA and/or its direct participant? Would a direct participant be able to know whether its counterparty is such an account?

• Should the particular accounts included within paragraph (ii)(D) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) also include accounts with banks? Why or why not?

• Do commenters agree that particular accounts identified in paragraph (ii)(D) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) pose (or have the potential to pose) potential contagion risk to a U.S. Treasury securities CCA as described in section III.A.3 *supra,* such that their purchase and sale transactions of secondary market U.S. Treasury securities should be included in the Membership Proposal? If so, does the definition of a specified account in paragraph (ii)(D) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) adequately capture the range of specified accounts that could pose (or have the potential to pose) significant system risk? If not, how should the definition of a specified account in paragraph (ii)(D) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) be adjusted to better capture this risk? For example, should the use of actual leverage in the preceding 12 months be required for such an account? Should different leverage thresholds or gross notional exposures be used? Should there be a size threshold in terms of the size of the account or the entity holding the account? Why or why not?

• Instead of identifying a particular set of eligible secondary market cash transactions in Proposed Rule 17Ad–22(a), should the Commission instead require that a U.S. Treasury securities CCA (i) require its direct participants to submit their U.S. Treasury security repurchase and reverse repurchase transactions, and (ii) in the event that a direct participant has such repurchase or reverse repurchase transactions to submit, require that the direct participant also submit its cash transactions? Would this approach be easier to administer? Would this approach capture the systemic and contagion risks to a U.S. Treasury securities CCA described above?

• Should the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) include all secondary market purchase and sale transactions by a direct participant of a U.S. Treasury securities CCA in the definition of an eligible secondary market transaction? If so, why? Would doing so materially protect U.S. Treasury CCAs from the potential risks discussed above? Would such a broad requirement have salutary effects on the market for U.S. Treasury as a whole, for example by helping to foster an all-to-all market for U.S. Treasury securities or in other ways?

• Are there other potential accounts, entities or market participants whose U.S. Treasury security purchase and sale activity as counterparties to direct participants of a U.S. Treasury securities CCA that should be included in the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a)? For example, should the Commission include purchase and sale activity in which the direct participant's counterparty is a registered investment company, a money market fund, or other buy-side entity? Has the Commission identified an appropriate set of purchase and sale transactions to include in the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a)? Why or why not? If the Commission were to include additional purchase and sale activity, should it do so in a staggered or sequenced manner?

• Are there particular purchases and sales of U.S. Treasury securities involving a direct participant of a U.S. Treasury securities CCA that the Commission should include or exclude from the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a)? Should the Commission include or exclude such transactions based on their potential to transmit risk to a U.S. Treasury securities CCA and the financial system as whole? If so, has the Commission identified the purchase and sale transactions most likely to be the source of such risk? If not, what criteria should the Commission use to identify the purchase and sale transactions that should be included or excluded?

• Is the Official Sector Exclusion to the definition of an eligible secondary market transaction appropriate? Why or why not? Does this proposed exclusion appropriately take into account transactions made on behalf of a central bank, sovereign entity, or international financial institution, *i.e.,* by an intermediary?

• Do commenters agree with the definitions of a central bank, sovereign entity, and international financial institution used in the Official Sector Exclusion? Why or why not?

• To the extent that they meet the proposed definition of a ''sovereign entity'' in Proposed Rule 17Ad–22(a), should sovereign wealth funds or other state-owned investment vehicles be removed from the Official Sector Exclusion? If so, how should these entities be defined for this purpose? Do these entities use leverage or otherwise pose risk to a U.S. Treasury securities CCA that is more similar to the entities that are subject to the Membership Proposal? Why or why not? Are there other factors the Commission should consider in deciding whether to exclude sovereign wealth funds from the Official Sector Exclusion?

• Is the Official Sector Exclusion to the Membership Proposal appropriate in

light of the fact that foreign governments and central banks are significant participants in the market for U.S. Treasury securities, accounting for a significant portion of sales during the volatility in U.S. Treasury securities during March 2020?

• Do central banks, sovereign entities, or international financial institutions, as defined in Proposed Rule 17Ad–22(a), pose risks to their counterparties that could potentially be transmitted back to a U.S. Treasury securities CCA and on to the broader financial system? How could such risk be mitigated? Should the Commission condition the Official Sector Exclusion, as set forth in paragraph (iii) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a), on the exchange of margin, haircuts and/or other risk management measures?

• How would a U.S. Treasury securities CCA craft policies and procedures reasonably designed to permit it to identify (and therefore exclude its members') transactions subject to the Official Sector Exclusion?

• Should the Official Sector Exclusion to the Membership Proposal include state or local governments? Why or why not? If so, how should these entities be defined for this purpose? Do these entities use leverage or otherwise pose risk to a U.S. Treasury securities CCA that is more similar to the entities that are subject to the Membership Proposal? Are there other factors the Commission should consider in deciding whether to include state or local governments within the Official Sector Exclusion?

• Is the exclusion of transactions with natural persons from the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) appropriate? If natural persons are transacting repurchase or reverse repurchase transactions with direct participants of a U.S. Treasury securities CCA, is there any reason to exclude those transactions from the Membership Proposal? What proportion of the specified accounts in paragraph (iii)(C) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) would be subject to the natural person exclusion contemplated in Proposed Rule 17Ad–22(a)? Is the exclusion of those accounts appropriate?

• Should the exclusion of transactions with natural persons from the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) be conditioned on the exchange of margin, haircuts and/or other risk management measures? If so what measures would be appropriate for this exclusion?

• Should the natural person exclusion in paragraph (iii) of the definition of an ''eligible secondary market transaction'' in Proposed Rule 17Ad–22(a) be subject to a volume or size cap, a net worth threshold, or any other limitation? If so, how should such limitation be set?

• Should inter-affiliate transactions be excluded from the definition of an eligible secondary market transaction by adding an exclusion to the definition in Proposed Rule 17Ad–22(a) for all such transactions? Why or why not? How should exceptions be identified? Should the Commission condition this potential exclusion from the Membership Proposal for inter-affiliate transactions on the exchange of margin, haircuts and/or other risk management measures?

• Should any additional exclusion to the definition of an eligible secondary market transaction in Proposed Rule 17Ad–22(a) be limited to certain transaction volumes or account size thresholds or to particular counterparties? If so, how should these thresholds or counterparty levels be set? Should they be accompanied by a transition period when a previously exempted transaction becomes subject to the clearing requirement? Would a U.S. Treasury securities CCA be able to write policies and procedures that would be effective in accomplishing this task while still promoting central clearing of other U.S. Treasury securities transactions?

• Are there any legal, operational or other considerations that could impede an indirect participant's ability to participate indirectly as proposed under the Membership Proposal? Are there any particular changes to the Membership Proposal that could help facilitate their ability to participate as indirect participants? Should any other indirect participants or transactions be excluded from the Membership Proposal on the basis of any such legal, operational or other considerations?

• Are there other changes the Commission can make to the design of the Membership Proposal to improve the resiliency of and liquidity in the U.S. Treasury securities market?

• Do commenters agree with Proposed Rule 17Ad–22(e)(18)(iv)(B) that would require a U.S. Treasury securities CCA to have policies and procedures to identify and monitor its direct participants' submission of transactions for clearing as required in the Membership Proposal, including how the CCA would address a failure to submit transactions? Why or why not?

• What types of policies and procedures should a U.S. Treasury securities CCA implement to comply with the requirements of Proposed Rule 17Ad–22(e)(18)(iv)(B), if adopted? What level of detail and transparency would commenters find appropriate regarding such policies and procedures?

• Do commenters believe that a U.S. Treasury securities CCA could develop appropriate procedures to comply with the requirements of Proposed Rule 17Ad–22(e)(18)(iv)(B), if adopted?

• In the event that there were to be more than one U.S. Treasury securities CCA, should the Commission amend Rule 17Ad–22(e)(20) (17 CFR 240.17Ad–22(e)(20)) to require each such CCA to establish a link with each other Treasury CCA so that the direct participant of either Treasury CCA may satisfy the requirements of Proposed Rule 17Ad–22(e)(18)(iv) without becoming a direct participant of each Treasury CCA? Are there any other steps that the Commission should take?

• Will the Membership Proposal have any impact on competition in the provision of CCP services in the U.S. Treasury market? Will the Membership Proposal inappropriately concentrate risk in a single U.S. Treasury securities CCA?

B. Other Changes to Covered Clearing Agency Standards

As proposed, the Membership Proposal will likely result in a significant increase in the volume of U.S. Treasury securities transactions submitted for central clearing, including transactions of market participants that currently may not submit such transactions for central clearing. For example, as noted above, approximately 68% of the overall dollar volume of cash market activity in the U.S. Treasury market is bilaterally cleared, and dealer-to-customer trading appears to comprise significant portion of that market.[196] Further, it appears that the customer side of this market is heterogeneous with diverse participants, including pension funds and asset managers who, as noted above, do not participate in central clearing to a great extent, especially for cash market transactions.[197]

The Commission believes that certain additional changes to its Covered Clearing Agency Standards that would apply only to U.S. Treasury securities CCAs are warranted in light of the Membership Proposal. Such changes, described further below, are designed to improve risk management by and access

[196] *See* note 20 *supra.*

[197] IAWG Report, *supra* note 4, at 3.

to the US Treasury securities CCA, and will also serve to help manage the risks and facilitate access that would likely result from the Membership Proposal. Thus, as part of ensuring its written policies and procedures are reasonably designed to ensure all of its direct participants clear all eligible secondary market transactions in U.S. Treasury securities, the Commission proposes to require that U.S. Treasury securities CCAs establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, calculate, collect, and hold margin for a direct participant's proprietary positions separately from the margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant (customer) that relies on the services provided by the direct participant to access the U.S. Treasury securities CCA. This proposal would prohibit a U.S. Treasury securities CCA from netting customer and proprietary positions. In addition, the Commission proposes to require that U.S. Treasury securities CCAs establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, ensure that they have appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, which policies and procedures the board of directors reviews annually.[198]

To the extent that changes to the U.S. Treasury securities CCA's rules or procedures are necessary in light of these proposed amendments to the Covered Clearing Agency Standards, the U.S. Treasury securities CCA, as a self-regulatory organization, would be required file such changes for Commission review and approval, as appropriate, under section 19(b) of the Exchange Act.[199] In addition, if a U.S. Treasury securities CCA has been designated as a systemically important financial market utility, changes to programs allowing indirect participants to clear or changes to margin methodologies or practices may need to be filed as advance notices, to the extent that the changes materially impact the nature or level of risk presented by that covered clearing agency, which would therefore require consultation with the Federal Reserve Board of Governors as well.[200]

1. Netting and Margin Practices for House and Customer Accounts

The Commission believes that, in conjunction with the Membership Proposal, further proposed changes with respect to risk management requirements could also reduce the potential risk to the U.S. Treasury securities CCA arising from such transactions. As described more fully below, the Commission is proposing amendments to Rule 17Ad–22(e)(6)(i) to require a U.S. Treasury securities CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, calculate, collect, and hold margin amounts from a direct participant for its proprietary U.S. Treasury securities positions separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities. Such changes should allow a U.S. Treasury securities CCA to better understand the source of potential risk arising from the U.S. Treasury securities transactions it clears and potentially further incentivize central clearing, as discussed further below.

Currently, the Commission's rules do not address how a U.S. Treasury securities CCA should calculate, collect, and hold margin amounts for any U.S. Treasury securities transactions, cash or repo, that a direct participant may submit on behalf of an indirect participant. This means that a U.S. Treasury securities CCA generally may determine a participant's margin for both proprietary and client positions using the methodology that it determines to be appropriate, while still remaining responsible for complying more generally with the applicable margin requirements under Rule 17Ad–22(e)(6).[201]

For example, in practice, at what is currently the only U.S. Treasury securities CCA, clearing a U.S. Treasury securities transaction between a direct participant and its customer, *i.e.,* a dealer to client trade, would not result in separate collection of margin for the customer transaction. Transactions between direct participants are novated by the U.S. Treasury securities CCA, and, by virtue of multilateral netting, all of a member's positions are netted into a single payment obligation—either to or from the CCP.[202] Under its current client clearing models (except the FICC sponsored member program),[203] for a dealer to client trade, although there is no transaction between two direct participants to novate, FICC novates the transaction and becomes a counterparty to the direct participant that has submitted that transaction, but does not have a direct relationship with the direct participant's client.[204] FICC margins the transactions in the direct participant's (*i.e.,* the dealer's) account on a net basis, allowing any of the trades for the participant's own accounts to net against trades by the participant's customers.[205]

Under the proposed amendments to Rule 17Ad–22(e)(6)(i), a U.S. Treasury securities CCA would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, calculate margin amounts for all transactions a direct participant submits to the CCP on behalf of others, separately from the margin that is calculated for transactions that the direct participant submits on its own

[198] For example, to the extent that the additional transactions may present different risks on an intraday basis, a U.S. Treasury securities CCA should consider its policies and procedures in light of that risk, especially with respect to policies and procedures designed to meet the requirements of Rules 17Ad–22(e)(6) and (7) (17 CFR 240.17Ad–22(e)(6) and (7)).

[199] *See* 78 U.S.C. 78s; 17 CFR 240.19b–4.

[200] *See* 12 U.S.C. 8465; 17 CFR 240.19b–4.

[201] Specifically, Rule 17Ad–22(e)(6) requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, cover its credit exposure to its participants by establishing a risk-based margin system that, at a minimum and among others: considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; and calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. 17 CFR 240.17Ad–22(e)(6)(i and iii).

[202] *See* FICC PFMI Disclosure Framework at 10; FICC Rule 11, section 4.

[203] In FICC's sponsored member program, both the Sponsoring Member and the Sponsored Member are members of FICC, and FICC has certain obligations to both entities, including a guaranty of settlement to the Sponsored Member. *See generally* FICC Rule 3A; Depository Trust & Clearing Corporation, *Making the U.S. Treasury Market Safer for All Participants: How FICC's Open Access Model Promotes Central Clearing,* at 6 (Oct. 2021), *available at https://www.dtcc.com/-/media/Files/Downloads/WhitePapers/Making-the-Treasury-Market-Safer-for-all-Participants.pdf* (''DTCC October 2021 White Paper'').

[204] Marta Chaffee and Sam-Schulhofer-Wohl, *Is a Treasury Clearing Mandate the Path to Increased Central Clearing, Chicago Fed Insights,* at 2 (June 23, 2021), *available at https://www.chicagofed.org/publications/blogs/chicago-fed-insights/2021/treasury-clearing-mandate* (explaining that this conclusion follows from that fact that ''FICC nets members' trades for their own accounts against trades by the members' customers, so the dealer's and customer's sides of the trade would cancel out in the netting process'') (''Chicago Fed Insights'').

[205] DTCC October 2021 White Paper, *supra* note 203, at 5–6.

behalf. Such policies and procedures must also provide that margin collateralizing customer positions be collected separately from margin collateralizing a direct participant's proprietary positions. The Commission believes that the customer positions that would be separated from a direct participant's proprietary positions generally would arise in the dealer-to-customer market, in which a dealer transacts directly, as a principal, with its customer, as discussed in section II.A.1 *supra.* Finally, the CCP would also be required to have policies and procedures reasonably designed to, as applicable, ensure that any margin held for customers or other indirect participants of a member is held in an account separate from those of the direct participant.

The proposed amendments to Rule 17Ad–22(e)(6)(i) are designed to ensure that central clearing of U.S. Treasury securities transactions between direct participants and indirect participants of a covered clearing agency clearing U.S. Treasury securities would result in the risk management benefits described above in section III.A.3 *supra,* as well as to incentivize additional central clearing in the U.S. Treasury market. Specifically, the proposed amendments to Rule 17Ad–22(e)(6)(i) would require that a U.S. Treasury securities CCA calculate, collect, and hold margin for positions in U.S. Treasury securities transactions of a direct participant in a U.S. Treasury securities CCA separately from those of customers or other indirect participants that rely on the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities. Because the indirect participant's positions are no longer netted against the direct participant's positions prior to being submitted for central clearing, the indirect participant's positions would be subject to the covered clearing agency's risk management procedures, including collection of margin specific to those transactions.[206] This should, in turn, help avoid the risk of a disorderly default in the event of a direct participant default, in that the CCA would be responsible for the central liquidation of the defaulting participant's trades and would be able to have a more holistic view of the market than would be available for competing bilateral efforts to close out transactions with a defaulting entity. Moreover, the proposed amendments to Rule 17Ad–22 (e)(6)(i) should result in dealer-to-customer trades gaining more benefits from central clearing.

FICC, in its sponsored membership program, already calculates, collects, and holds margin amounts for its sponsoring members separately and independently from those members they sponsor. FICC's rules specifically provide for the collection of margin for sponsored member trades on a gross basis, *i.e.,* the total margin amount required for the separate omnibus account for client trades must be equal to the sum of the individual margin amounts that would be due if each customer were margined separately.[207] The proposed amendments to Rule 17Ad–22(e)(6)(i), however, would not require that a CCA's direct participant collect a specified amount of margin from its customers or determine customer margin in a particular manner, such as on a gross basis; the calculation and collection of margin between a CCA direct participant and its customers would be left to other applicable regulations and, to the extent applicable, bilateral negotiation between the member and its customer.

In these respects, the proposed amendments to Rule 17Ad–22(e)(6)(i) would require policies and procedures that closely resemble the calculation, collection, and holding of margin for listed options. Currently, the covered clearing agency that clears and settles listed options transactions holds margin for customer trades separately from the proprietary trades of the submitting participant in an omnibus account.[208] When considering and adopting the Covered Clearing Agency Standards, the Commission noted that customer segregation can be achieved through such an omnibus account structure, where all collateral belonging to all customers of a particular member is commingled and held in a single account segregated from that of the member,[209] which is consistent with the practice at the clearing agency for listed options and the proposed amendments to Rule 17Ad–22(e)(6)(i).

The approach proposed here would also be similar to the requirements applicable to cleared swaps, in that it would require the separation of proprietary and customer funds and securities held at a U.S. Treasury securities CCA.[210] However, it would not require any particular method for how customer funds and securities are segregated, which differs from the requirements applicable to derivatives clearing organizations clearing swaps. Such entities are subject to what has been referred to as a legally segregated, operationally commingled (''LSOC'') approach.[211] Under such an approach, customer collateral may be held in one combined account and commingled, but in the event of a customer default, the collateral of non-defaulting customers would not be available to cover any losses attributable to the defaulting customer (*i.e.,* they would be legally separated from the collateral of the defaulting customer).[212] In other words, the LSOC model mitigates ''fellow customer risk'' arising from the default of a customer within the omnibus account. The Commission previously has declined to require such an approach for covered clearing agencies, preferring to allow each covered clearing agency to determine the method that works best for the products it clears and markets it serves.[213] When discussing that conclusion, the Commission also noted that this type of segregation does not occur at the CCP level under the current market structure for cash securities and listed options, and that customer positions and funds in the cash securities and listed options markets are protected under SIPA, which is not the case for futures and cleared swaps.[214]

By contrast to the rules for margin for futures and cleared swaps, the proposed amendments to Rule 17Ad–22(e)(6)(i) would not require that a CCP clearing and settling transactions in U.S.

[206] The proposed amendments to Rule 17Ad–22(e)(6)(i) would not require that a U.S. Treasury securities CCA collect margin from indirect participants, but rather would ensure that U.S. Treasury securities CCAs determine margin for transactions submitted on behalf of indirect participants separately from those of direct participants.

[207] *See* FICC Rules 1 (definition of Sponsoring Member Omnibus Account) and 3A, section 10, *supra* note 47; DTCC October 2021 White Paper, *supra* note 203, at 6. Although not required under the proposed amendments to Rule 17Ad-22(e)(6)(i), calculation of gross margin for each customer, *i.e.,* the sum of the individual margin amounts that would be due if each customer were margined separately, as FICC does for the Sponsored Service, would be permissible under the proposed amendment.

[208] *See* Options Clearing Corp. Rule 601(c)–(d), *available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf* (''OCC Rules''). This approach is also similar to the approach used for futures customers. *See* 17 CFR 1.22 and Advanced Notice of Proposed Rulemaking, Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies, 75 FR 75162, 75163 (Dec. 2, 2010) (describing the futures model).

[209] *See* CCA Standards Proposing Release, *supra* note 7, 79 FR at 29547; CCA Standards Adopting Release, *supra* note 25, 81 FR at 70832–33.

[210] *See* 7 U.S.C. 6d(f)(2).

[211] 17 CFR 22.15.

[212] *See, e.g.,* Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336, 6339 (Feb. 7, 2012) (describing the LSOC approach and adopting final rules for this approach).

[213] *See* CCA Standards Adopting Release, *supra* note 25, 81 FR at 70832.

[214] *Id.* at 70833 (citing 15 U.S.C. 78eee *et seq.*).

Treasury securities calculate and collect margin for each customer on a gross basis.[215] Instead, the CCP would have the discretion to collect a single netted amount for each clearing member's customer account as a whole, *i.e.,* netting each customer's margin against that of other customers within the overall customer account. This is generally how margin is collected for listed options,[216] where, as noted above, SIPA acts to protect customer securities and funds at a participant broker-dealer.[217] However, in order for a registered broker-dealer to take advantage of the proposed debit in proposed item 15 of 17 CFR 240.15c–3–3a, if adopted, a U.S. Treasury securities CCA must collect margin on a gross basis, as discussed in section III.C *infra.*

2. Facilitating Access to U.S. Treasury Securities CCAs

The Commission understands that the various models currently available to access central clearing in the U.S. Treasury market may not meet the needs of the many different types of market participants who transact in U.S. Treasury securities with the direct participants of a U.S. Treasury Securities CCA. Although some market participants may choose to become a member of a U.S. Treasury securities CCA, this approach likely would not be viable for a broad range of participants in the U.S. Treasury market for legal, operational and other reasons. Currently, there are several methods available to allow market participants to access CCP services through a FICC member.[218] However, based on its supervisory experience, the Commission understands that these models may not meet the regulatory or business needs of all market participants, including indirect participants whose transactions with direct participants would likely be encompassed by rules that FICC would impose, as required by the Membership Proposal if adopted, that its direct participants submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities. Consequently, the Commission believes that the access models used at a U.S. Treasury securities CCA will need to be revisited to help ensure that more transactions by indirect participants (particularly in the dealer-to-customer market) could be submitted to comply with the Membership Proposal, if adopted.

With regard to methods of access, the Commission understands indirect participants may have significantly different preferences with respect to how they access and obtain clearing services from direct participants of U.S. Treasury securities CCAs. For example, certain market participants may tend to prefer to bundle trading and execution services with a single entity that is a U.S. Treasury securities CCA member for regulatory, operational, and other reasons.[219] By contrast, other market participants would prefer to be able to utilize clearing services unbundled from execution services from U.S. Treasury securities CCA members and would prefer that such members operate their clearing services independently from execution services, as appears common in other asset classes.[220] In addition, some market participants have expressed concerns with the way FICC's direct participants conduct their business regarding access for indirect participants, specifically, that FICC direct participants sponsoring indirect members are not willing to submit transactions for such indirect participants to which the direct participant is not a party (*i.e.,* "done away" transactions).[221] These concerns, however, are based on the business decisions of FICC's direct participants rather than the operation of FICC's Rules; although FICC does not restrict its Sponsoring Members' ability to be both a trading counterparty and submitting clearing member for an indirect participant, FICC's Rules allow direct participants in its sponsored membership program to submit "done away" transactions, if they so choose. Accordingly, as currently constituted, FICC's rules permit but do not require that its direct participants accept such transactions.[222]

The Commission is proposing Rule 17Ad–22(e)(18)(iv)(C) to require that a U.S. Treasury securities CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, which policies and procedures the U.S. Treasury securities CCA's board of directors reviews annually. Although this new provision would not prescribe specific methods for market participants to obtain indirect access to a U.S. Treasury securities CCA, it is intended to help ensure that all U.S. Treasury security CCAs review their indirect access models and ensure that they facilitate access to clearance and settlement services in a manner suited to the needs and regulatory requirements of market participants throughout the U.S. Treasury securities market, including indirect participants.

This new proposed requirement would further expand current Rule 17Ad–22(e)(18), which requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, establish objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant indirect participants. Because the Membership Proposal likely would require direct participants to submit additional eligible secondary market transactions for clearing, thereby raising the need for the direct participants to centrally clear transactions with indirect participants that are not currently submitted for clearing, the Commission believes that expanding Rule 17Ad–22(e)(18) to provide additional requirements regarding a U.S. Treasury securities CCA's consideration of whether it has ensured appropriate access for indirect participants should help facilitate adoption and implementation of the Membership Proposal, as it will provide additional or reworked models which direct participants can use to submit their transactions executed on behalf of or with indirect participants for central clearing, and lead to better risk management of the risks posed by indirect participants to a U.S. Treasury securities CCA.

To facilitate compliance with this proposed requirement, the Commission believes that a U.S. Treasury securities CCA generally should conduct an initial

[215] *See* 17 CFR 39.13(g)(8)(A and C) (requiring the collection of initial margin for each customer account equal to the sum of the initial margin accounts that would be required if the individual customer were a direct participant and prohibiting a derivatives clearing organization from netting, or permitting its clearing members to, net positions of different customers against one another).

[216] *See* OCC Rule 810(a)–(c), *supra* note 208.

[217] *See supra* note 210.

[218] *See, e.g.,* FICC Rules 3A, 8, 18, *supra* note 47 (providing for prime brokerage and correspondent clearing and sponsored membership); *see also* October 2021 White Paper, *supra* note 198, at 5–7.

[219] DTCC October 2021 White Paper, *supra* note 203, at 5, 7.

[220] Futures Industry Association Principal Traders Group, *Clearing a Path to a More Resilient Treasury Market,* at 10 (Jul. 2021), *available at https://www.fia.org/sites/default/files/2021-07/FIA-PTG_Paper_Resilient%20Treasury%20Market_FINAL.pdf* ("FIA PTG Whitepaper").

[221] *Id.* at 7–9.

[222] *See* DTCC October White Paper, *supra* note 203, at 6–7; Exchange Act Release No. 85470 (Mar. 29, 2019), *supra* note 126 (approving changes to FICC's Rules to allow Sponsored Members to transact with FICC members that are not their Sponsoring Member).

review of its access models and related policies and procedures. As it conducts this review, in view of the critical services it provides, the U.S. Treasury securities CCA generally should seek to provide access in as flexible a means as possible, consistent with its responsibility to provide sound risk management and comply with other provisions of the Exchange Act, the Covered Clearing Agency Standards, and other applicable regulatory requirements. The Commission believes that the U.S. Treasury securities CCA generally should consider a wide variety of appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. To ensure that it considers a sufficiently broad set of perspectives, the U.S. Treasury securities CCA generally should consult with a wide-range of stakeholders, including indirect participants, as it seeks to comply with proposed rule 17Ad–22(e)(18)(iv)(B).

The Commission believes that a U.S. Treasury securities CCA generally should review any instance in which its policies and procedures treat transactions differently based on the identity of the participant submitting the transaction, the fact that an indirect participant who is a party to the transaction, or the method of execution, or in any other way, and confirm that any variation in the treatment of such transactions is necessary and appropriate to meet the minimum standards regarding, among other things, operations, governance, and risk management identified in the Covered Clearing Agency Standards. The review by a U.S. Treasury securities CCA's board of directors under proposed Rule 17Ad–22(e)(18)(iv)(B) generally should include consideration whether to establish policies and procedures that enable direct members to submit to the U.S. Treasury securities CCA eligible transactions for clearance and settlement that have been executed by two indirect participants of the U.S. Treasury securities CCA, which could potentially help address some of the concerns potential participants raised about the inability to present ''done away'' trades for clearance and settlement described above. Finally, a U.S. Treasury securities CCA generally should consider whether to include in its policies and procedures non-discrimination principles, similar to those the CFTC promulgated to foster the clearance and settlement of swaps,[223] to the extent that they are applicable to the clearance and settlement of U.S. Treasury securities. Taken together, initiatives such as these, along with others identified by a U.S. Treasury securities CCA through consultations with relevant stakeholders—including indirect participants—should help ensure that a U.S. Treasury securities CCA is offering appropriate means to facilitate access to its clearance and settlement services for U.S. Treasury securities. To the extent that a U.S. Treasury securities CCA's initial (or any subsequent) review occasions a change to its rules, such U.S. Treasury securities CCA would need to file such changes for Commission review and approval, as appropriate, under section 19(b) of the Exchange Act and Title VIII of the Dodd-Frank Act.[224]

Further, as noted above, the Commission is proposing to require annual review by the CCA's board of directors of the CCA's written policies and procedures designed to ensure that the CCA has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. The Commission believes that such requirement is important to ensure that such policies regarding access to clearance and settlement services, including for indirect participants, are addressed at the most senior levels of the governance framework of the covered clearing agency, consistent with the importance of such requirements. The review by a U.S. Treasury securities CCA's board of directors under proposed Rule 17Ad–22(e)(18)(iv)(B) generally should include consideration whether the U.S. Treasury securities CCA's written policies and procedures are reasonably designed to ensure appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.

3. Request for Comment

The Commission generally requests comments on all aspects of new proposed Rules 17Ad–22(e)(6)(i) and 17Ad–22(e)(18)(iv)(C). In addition, the Commission requests comments on the following specific issues, with accompanying data and analysis:

- Do commenters agree or disagree with any particular aspects of proposed Rule 17Ad–22(e)(6)(i)? If so, which ones and why? If commenters disagree with any provision of the proposed rule, how should such provision be modified and why?
- Do commenters agree that the transactions in a direct participant's customer account would generally consist of its transactions in the dealer-to-customer market, as a principal to transactions with its customers? Should the Commission further define or distinguish between proprietary and customer positions in the proposed rule text?
- As discussed above, the proposed amendments to Rule 17Ad–22(e)(6)(i) do not require a particular approach to the methodology used for calculating customer margin, that is, whether customer margin should be determined on a gross or net basis, by contrast to the gross margin requirement for customer margin for futures and cleared swaps.[225] Should the Commission consider further amendments to Rule 17Ad–22(e)(6) or other Commission rules to include such a requirement? If so, how would such a requirement interact with SIPA [226] and the Bankruptcy Code [227] in the event of a broker-dealer default?
- Do commenters believe that additional requirements with respect to the collection of margin at the customer level, *i.e.,* further segregation of customer margin within a customer account (such as an LSOC model) would bring particular costs or benefits to the market? How would any such additional requirement interact with SIPA and the Bankruptcy Code in the event of a broker-dealer default?
- More generally, what impact would the proposed amendment to Rule 17Ad–22(e)(6)(i)(A) have on bankruptcy issues arising under SIPA? Would additional SIPA or bankruptcy issues arise in the event of additional margin requirements similar to those for futures and/or cleared swaps?
- Would the proposed amendment to Rule 17Ad–22(e)(6)(i) potentially support (or not support) the expanded use of cross-margining agreements?
- Do commenters believe that the proposed amendment to Rule 17Ad–22(e)(6)(i) would increase (or decrease) the amount of margin required to be collected from direct participants of a U.S. Treasury securities CCA?
- Do commenters agree that the requirement to separately calculate, collect, and hold customer margin would further incentivize central clearing in the U.S. Treasury market?
- Do commenters agree or disagree with any particular aspects of proposed Rule 17Ad–22(e)(18)(iv)(C)? If so, which

[223] *See* 17 CFR 39.12(a)(1)(vi).

[224] *See* 15 U.S.C. 78s(b); 17 CFR 240.19b–4; 12 U.S.C. 5465(e).

[225] *See* 17 CFR 39.13(g).

[226] *See* 15 U.S.C. 78aaa *et seq.*

[227] *See* 11 U.S.C. 1 *et seq.*

ones and why? If commenters disagree with any provision of the proposed rule, how should such provision be modified and why?

- Do commenters agree that proposed Rule 17Ad–22(e)(18)(iv)(C) is sufficient to facilitate access to the clearance and settlement services of a U.S. Treasury securities CCA for both direct and indirect participants?
- Do commenters agree that certain market participants may not be able to satisfy a covered clearing agency's membership criteria? If so, which particular entities, and what are the reasons?
- In addition, do commenters agree that particular legal, operational or other considerations may further preclude many market participants from becoming direct members of a U.S. Treasury securities CCA? If so, which entities, and why? For example, are there particular requirements under the Investment Company Act of 1940 or Investment Advisers Act of 1940 that may preclude particular registered funds or their sponsors from participating as direct clearing members?
- Among market participants that cannot become direct members of a U.S. Treasury securities CCA, are there particular entities that may be further precluded from participating as indirect participants? If so, which entities, and what might be some of the legal, operational or other considerations that may preclude them from becoming indirect participation?
- Are there specific changes to the current indirect participation models that could help facilitate participation by certain market participants? In addition, are there specific changes to particular Commission rules that could facilitate further participation of indirect participants?
- Would a separation between trade execution and clearing services at broker-dealers pose issues for any of the market participants in the market for U.S. Treasury securities?
- Would a separation between trade execution and clearing services at broker-dealers lead to regulatory arbitrage in view of the fact that the Commission generally does not regulate banks that are not otherwise registered with the Commission?
- Should the Commission amend the Covered Clearing Agency standards to require that a U.S. Treasury securities CCA, in turn, require its direct participants to clear transactions executed between indirect participants but submitted to a direct participant for clearing? How effective is such a rule likely to be in view of the restriction in Exchange Act section 17A(b)(3)(E),[228] which prohibits any clearing agency from imposing any schedule of prices, or fixing rates or other fees, for services rendered by its participants?

C. Proposed Amendments to Rule15c3–3a

1. Proposal

The proposed rules discussed above could cause a substantial increase in the margin broker-dealers must post to a U.S. Treasury securities CCA resulting from their customers' cleared U.S. Treasury positions. Currently, Rules 15c3–3 and 15c3–3a do not permit broker-dealers to include a debit in the customer reserve formula equal to the amount of margin required and on deposit at a U.S. Treasury securities CCA. This is because no U.S. Treasury securities CCA has implemented rules and practices designed to segregate the margin and limit it to being used solely to cover obligations of the broker-dealer's customers. Therefore, increases in the amount of margin required to be deposited at a U.S. Treasury securities CCA as a result of the Membership Proposal would result in corresponding increases in the need to use broker-dealers' cash and securities to meet these requirements.

To facilitate implementation of the Membership Proposal, the Commission is proposing to amend Rule 15c3–3a to permit margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in the customer reserve formula, subject to the conditions discussed below. This new debit item would offset credit items in the Rule 15c3–3a formula and, thereby, free up resources that could be used to meet the margin requirements of a U.S. Treasury securities CCA. The new debit item would be reported on a newly created Item 15 of the Rule 15c3–3a reserve formula. The proposed amendments also would set forth a number of conditions that would need to be met to include the debit in the reserve formula. As discussed below, these proposed conditions are designed to permit the inclusion of the debit only under conditions that would provide maximum protection to the broker-dealer's customers. The goal is to facilitate implementation of the Membership Proposal in a way that does not diminish the customer-protection objective of Rules 15c3–3 and 15c3–3a.

The proposed conditions would be set forth in a new Note H to the reserve formula similar to how the conditions for including a debit in the reserve formula with respect to margin required and on deposit at a securities futures clearing agency or DCO are set forth in Note G. The proposed amendments are based, in part, on the conditions in Note G and the requirements in Rules 15c3–3 and 15c3–3b for including a debit with respect to margin required and on deposit at security-based swap clearing agency. The Note G conditions and requirements of Rules 15c3–3 and 15c3–3b similarly are designed to permit the debit under circumstances that provide protection to customers.

Under the proposed amendments, current Item 15 of the Rule 15c3–3a formula would be renumbered Item 16.[229] Proposed Item 15 would identify as a debit in the Rule 15c3–3a formula margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act resulting from the following types of transactions in U.S. Treasury securities in customer accounts that have been cleared, settled, and novated by the clearing agency: (1) purchases and sales of U.S. Treasury securities; and (2) U.S. Treasury securities repurchase and reverse repurchase agreements (together "customer position margin"). As proposed, this debit item would be limited to customer position margin required and on deposit at a clearing agency that clears, settles, and novates transactions in U.S. Treasury securities. Except for the debits identified in current Items 13 and 14 of the Rule 15c3–3a formula, margin required and on deposit at other types of clearing agencies or for other types of securities transactions would not qualify as a debit item under this proposal. Further, this debit item would be limited to customer position margin required and on deposit at the U.S. Treasury securities CCA as a result of U.S. Treasury positions in customer accounts. Margin required and on deposit at the U.S. Treasury securities CCA as result of the broker-dealer's proprietary U.S. Treasury positions could not be included in this debit item. This proposed limitation would effectuate a fundamental aspect of Rule 15c3–3: that customer cash and securities not be used by the broker-dealer to finance its proprietary business activities.[230] Finally, the debit would be limited to customer position margin *required* and on deposit at the

[228] 15 U.S.C. 78q–1(b)(3)(E).

[229] Current Item 15 is where the broker-dealer reflects the amount, if any, that total credits exceed total debits.

[230] As discussed above in section II.B.2., debit items offset credit items thereby reducing the amount of cash or qualified securities that need to be held in the customer reserve account to cover the broker-dealer's cash liabilities to its customers.

U.S. Treasury securities CCA. This would mean that the broker-dealer could not include in this debit item amounts on deposit at the U.S. Treasury securities CCA that exceed the broker-dealer's margin requirement resulting from its customers' cleared U.S. Treasury securities positions. This limitation is designed to prevent the broker-dealer from artificially increasing the amount of the debit item by depositing cash and securities at the U.S. Treasury securities CCA that are not needed to meet a margin requirement resulting from its customers' U.S. Treasury securities positions.

As proposed, Item 15 of the Rule 15c3–3a formula would have a Note H that sets forth a number of conditions that would need to be met to include the amount of customer position margin required and on deposit at the U.S. Treasury securities CCA as a debit. Each of the conditions in Note H to Item 15 would need to be met for a broker-dealer to include a debit equal to the amount of customer position margin on deposit at the U.S. Treasury securities CCA.

The first condition would be set forth in Note H(a), which would provide that the debit item could be included in the Rule 15c3–3a formula to the extent that the customer position margin is in the form of cash or U.S. Treasury securities and is being used to margin U.S. Treasury securities positions of the customers of the broker-dealer that are cleared, settled, and novated at the U.S. Treasury securities CCA. The objective is to limit the assets underlying the debit item to the safest and most liquid instruments, given that the debit item would offset credit items (cash owed to customers).[231] As discussed above, the liquidity of the debit items protects the customers whose cash or securities are used to finance or facilitate customer transactions.

Proposed Note H(b) to Item 15 would set forth three conditions that would need to be met to include the amount of customer position margin required and on deposit at the U.S. Treasury securities CCA as a debit item. The first condition set forth in Note H(b)(1) would provide that the customer position margin must consist of cash owed to the customer of the broker-dealer or U.S. Treasury securities held in custody by the broker-dealer for the customer that was delivered by the broker-dealer to meet to meet a margin requirement resulting from that customer's U.S. Treasury securities positions cleared, settled, and novated at the U.S. Treasury securities CCA and not for any other customer's or the broker-dealer's U.S. Treasury securities positions cleared, settled, and novated at the U.S. Treasury securities CCA.[232] In sum, to meet this condition, the broker-dealer would need to: (1) use customer assets exclusively to meet the customer position margin requirement; (2) use a particular customer's assets exclusively to meet the amount of the customer position margin requirement resulting from that customer's cleared U.S. Treasury securities positions; and (3) have delivered the customer's assets to the U.S. Treasury securities CCA. The objective of the first component of this condition—the need to use customer assets exclusively—is to segregate the customer assets being used to meet the customer position margin requirement from the broker-dealer's proprietary assets. Additional conditions would provide that the U.S. Treasury securities CCA must hold the assets being used to meet the customer position margin requirement in an account of the broker-dealer that is segregated from any other account of the broker-dealer and is identified as being held for the exclusive benefit of the broker-dealer's customers. The first prong of the condition is designed to ensure that only customer assets are held in the account.

The objective of the second component of this condition—the need to use a particular customer's assets exclusively to meet the amount of the customer position margin requirement resulting from that customer's cleared U.S. Treasury securities positions—is to avoid the use of one customer's assets to meet another customer's margin requirement. For example, FICC's Sponsored Member program allows its members to sponsor a person's (*i.e.,* a Sponsored Member's) U.S. Treasury securities transactions for clearance and settlement. FICC interacts solely with the sponsoring member as processing agent for purposes of the day-to-day satisfaction of the Sponsored Member's obligation to or from FICC, including the Sponsored Member's cash and securities settlement obligations. However, FICC calculates a separate margin requirement for each Sponsored Member's trading activity and the sum of each sponsored member's margin calculation is the aggregate margin requirement that must be met by the sponsoring member. Further, this margin is held in an omnibus account that is separate from the account that holds the Sponsoring Member's net margin obligation for non-sponsored securities transactions.[233] In this scenario, the U.S. Treasury securities CCA's margin calculations and resulting requirements can be traced to a specific customer's cleared U.S. Treasury securities positions. Consequently, the broker-dealer would be able to allocate the amount of the U.S. Treasury securities CCA's daily customer position margin requirement attributable to a specific customer. Under this component of the first condition, the broker-dealer would need to deliver cash or U.S. Treasury securities belonging to that specific customer to meet the amount of the U.S. Treasury securities CCA's customer position margin requirement resulting from that customer's cleared U.S. Treasury securities positions. This would mitigate the risk to all the broker-dealer's customers by limiting when their assets can be used to meet the U.S. Treasury securities CCA's customer position margin requirement.

The objective of the third component of the first condition—that the broker-dealer had delivered the customer's assets to the U.S. Treasury securities CCA—is to address the potential that a customer may use more than one broker-dealer to engage in U.S. Treasury securities transactions. In this case, two or more broker-dealers may be subject to customer position margin requirements of the U.S. Treasury securities CCA resulting from the customer's cleared U.S. Treasury securities positions. The intent is to prevent a broker-dealer from including as a debit the amount of customer position margin that another broker-dealer delivered to the U.S. Treasury securities CCA with respect to U.S. Treasury securities positions of a

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[231] *See, e.g.,* 17 CFR 240.15c3–3(e) (limiting the assets that can be deposited into the customer reserve account to cash and qualified securities); 17 CFR 240.15c3–3(a)(6) (defining the term ''qualified security'' to mean a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States).

[232] Cash owed by a broker-dealer to customers is a credit item that is included in Item 1 to the Rule 15c3–1a formula. Thus, cash owed to customers that is used to meet a customer position margin requirement will be accounted for as a credit in Item 1. Further, when a broker-dealer uses customer margin securities to borrow funds or execute a securities loan transaction, the firm must put a credit in the formula. *See* Items 2 and 3 to Rule 15c3–3a. The credit items are designed to require the broker-dealer to reserve sufficient funds to be able to retrieve securities collateralizing the borrowed funds or that have been loaned. There is not a specific Item in the Rule 15c3–3a formula to include the credit arising from the broker-dealer's use of customers' U.S. Treasury securities to meet a customer position margin requirement. Consequently, the Commission is proposing to amend Note B to Item 2 of the Rule 15c3–1a formula to instruct broker-dealers to include as a credit in Item 2 the market value of customers' U.S. Treasury securities on deposit at a U.S. Treasury securities CCA that meets the definition of a ''qualified clearing agency'' in Note H.

[233] *See* note 207 *supra.*

customer of both the broker-dealers. The amount that a given broker-dealer's debit items can offset its credit items should be limited to the amount customer position margin it delivered to the U.S. Treasury securities CCA. Otherwise, the customers of the broker-dealer would be put at risk for transactions effected by another broker-dealer.

Proposed Note H(b)(2) to Item 15 would set forth the second condition for including customer position margin as a debit in the Rule 15c3–3a formula. Under this condition, the customer position margin would need to treated in accordance with rules of the U.S. Treasury securities CCA designed to protect and segregate the customer position margin and the U.S. Treasury securities CCA and broker-dealer would need to be in compliance with those rules (as applicable).

Proposed Note H(b)(2)(i) to Item 15 would provide that the customer position margin is treated in accordance with rules requiring the qualified U.S. Treasury securities CCA to calculate a separate margin amount for each customer of the broker-dealer and the broker-dealer to deliver that amount of margin for each customer on a gross basis. As discussed above, a component of the condition in proposed Note H(b)(1) is that the broker-dealer use a particular customer's assets exclusively to meet the amount of the customer position margin requirement resulting from that customer's cleared U.S. Treasury securities positions. This condition in proposed Note H(b)(2) is designed to facilitate that condition in proposed Note H(b)(1) by requiring that the U.S. Treasury securities CCA has rules to perform separate customer position margin calculations for each customer of the broker-dealer. This would allow the broker-dealer to allocate the amount of the customer position margin requirement attributable to each of its customers. In addition, the condition would provide that the U.S. Treasury securities CCA has rules requiring the broker-dealer to deliver the amount calculated for each customer on a gross basis. This would mean that the risk of one customer's positions could not be offset by the risk of another customer's positions in determining the amount of customer position margin the broker-dealer would need to have on deposit at the U.S. Treasury securities CCA. As a result, the broker-dealer would not be able to deliver assets belonging to one customer to meet the margin requirement of another customer.

Proposed Note H(b)(2)(ii) to Item 15 would provide that the customer position margin is treated in accordance with rules requiring that the U.S. Treasury securities CCA be limited to investing it in U.S. Treasury securities with a maturity of one year or less. As discussed above, proposed Note H(a) would provide that the collateral delivered to the U.S. Treasury securities CCA by the broker-dealer to meet the customer position margin requirement must be in the form of cash or U.S. Treasury securities. The objective is to limit the assets underlying the debit item to the safest and most liquid instruments. This objective would be undermined if the U.S. Treasury securities CCA could invest the cash delivered by the broker-dealer or cash obtained by using the U.S Treasury securities delivered by the broker-dealer in assets other than cash and U.S. Treasury securities. Moreover, while the broker-dealer could deliver customer U.S. Treasury securities with a maturity greater than one year, the U.S. Treasury securities CCA's rule would need to limit it to investing customer position margin in U.S. Treasury securities with a maturity of one year or less. The object is to limit the investments to the safest most liquid instruments.

Proposed Note H(b)(2)(iii) to Item 15 would provide that the customer position margin is treated in accordance with rules designed to address the segregation of the broker-dealer's account at the U.S. Treasury securities CCA that holds the customer position margin and set strict limitations on the U.S. Treasury securities CCA's ability to use the margin. The required rules are modeled on the requirements for a broker-dealer to include a debit with respect to margin delivered to a security-based swap CCA.[234] In particular, the note would provide that the customer position margin is treated in accordance with rules requiring that it must be held in an account of the broker-dealer at the U.S. Treasury securities CCA that is segregated from any other account of the broker-dealer at the U.S. Treasury securities CCA and that is:

- Used exclusively to clear, settle, novate, and margin U.S. Treasury securities transactions of the customers of the broker or dealer;
- Designated ''Special Clearing Account for the Exclusive Benefit of the Customers of [name of broker-dealer]'';
- Subject to a written notice of the U.S. Treasury securities CCA provided to and retained by the broker-dealer that the cash and U.S. Treasury securities in the account are being held by the U.S. Treasury securities CCA for the exclusive benefit of the customers of the broker-dealer in accordance with the regulations of the Commission and are being kept separate from any other accounts maintained by the broker-dealer or any other clearing member at the U.S. Treasury securities CCA; and
- Subject to a written contract between the broker-dealer and the U.S. Treasury securities CCA which provides that the cash and U.S. Treasury securities in the account are not available to cover claims arising from the broker-dealer or any other clearing member defaulting on an obligation to the U.S. Treasury securities CCA or subject to any other right, charge, security interest, lien, or claim of any kind in favor of the U.S. Treasury securities CCA or any person claiming through the U.S. Treasury securities CCA, except a right, charge, security interest, lien, or claim resulting from a cleared U.S. Treasury transaction of a customer of the broker-dealer effected in the account.

The objective is to protect the customer position margin that the broker-dealer deposits with the U.S. Treasury securities CCA to margin its customers' U.S. Treasury security positions by isolating it from any other assets of the broker-dealer at the U.S. Treasury securities CCA and to prevent it from being used to cover any obligation other than an obligation of the broker-dealer's customer resulting from a U.S. Treasury transaction cleared, settled, and novated in the account. Further, the account designation and written notice requirements are designed to alert creditors of the broker-dealer and U.S. Treasury securities CCA that the assets in this account are not available to satisfy any claims they may have against the broker-dealer or the U.S. Treasury securities CCA. The written contract requirement is designed to limit the U.S. Treasury securities CCA's rights to use the customer position margin for any purpose other than an obligation of the broker-dealer's customers. For example, the assets in the account could not be used to cover an obligation of the broker-dealer to the U.S. Treasury securities CCA if the broker-dealer defaults on the obligation. Similarly, the assets in the account could not be used to mutualize the loss across the U.S. Treasury securities CCA's members if a member defaulted and its clearing funds were insufficient to cover the loss.

[234] *See* 17 CFR 240.15c3–3(p)(1)(iii) (defining the term ''qualified clearing agency account''); 17 CFR 240.15c3–3b, Item 15 (permitting a broker-dealer to include a debit in the security-based swap reserve formula equal to the margin required and on deposit in a qualified clearing agency account at a clearing agency). *See also* 84 FR at 43938–42, *supra* note 99.

Proposed Note H(b)(2)(iv) to Item 15 would provide that the customer position margin is treated in accordance with rules designed to address how the U.S. Treasury securities CCA holds the customer position margin. Similar to proposed Note H(b)(2)(iii) to Item 15, the objective would be to isolate the customer position margin and prevent it from being used to satisfy the claims any creditors may have against the U.S. Treasury securities CCA. In particular, the note would provide that the customer position margin is treated in accordance with rules of the U.S. Treasury securities CCA requiring that the U.S. Treasury securities CCA hold the customer position margin itself or at either a U.S. Federal Reserve Bank or a ''bank'' (as defined in section 3(a)(6) of the Exchange Act (15 U.S.C. 78c(a)(6)) that is insured by the Federal Deposit Insurance Corporation. The objective is to have the U.S. Treasury securities CCA hold the customer position margin at a safe financial institution. In addition, the rules would need to provide that the U.S. Treasury securities CCA's account at the U.S. Federal Reserve Bank or bank be:

- Segregated from any other account of the U.S. Treasury securities CCA or any other person at the U.S. Federal Reserve Bank or bank and used exclusively to hold cash and U.S. Treasury securities to meet current margin requirements of the U.S. Treasury securities CCA resulting from positions in U.S. Treasury securities of the customers of the broker-dealer members of the qualified U.S. Treasury securities CCA;
- Subject to a written notice of the U.S. Federal Reserve Bank or bank provided to and retained by the U.S. Treasury securities CCA that the cash and U.S. Treasury securities in the account are being held by the U.S. Federal Reserve Bank or bank pursuant to Rule 15c3–3 and are being kept separate from any other accounts maintained by the U.S. Treasury securities CCA or any other person at the U.S. Federal Reserve Bank or bank; and
- Subject to a written contract between the U.S. Treasury securities CCA and the U.S. Federal Reserve Bank or bank which provides that the cash and U.S. Treasury securities in the account are subject to no right, charge, security interest, lien, or claim of any kind in favor of the U.S. Federal Reserve Bank or bank or any person claiming through the U.S. Federal Reserve Bank or bank.

These conditions with respect to the account designation, written notice, and written contract would be designed to achieve the same objectives as the analogous conditions discussed above with respect to the broker-dealer's account at the U.S. Treasury securities CCA.[235]

Proposed Note H(b)(2)(v) to Item 15 would provide that the customer position margin is treated in accordance with rules of the clearing agency requiring systems, controls, policies, and procedures to return customer position margin to the broker-dealer that is no longer needed to meet a current margin requirement resulting from positions in U.S. Treasury securities of the customers of the broker-dealer no later than the close of the next business day after the day the customer position margin is no longer needed for this purpose. As discussed above, the debit would be limited to customer position margin *required* and on deposit at the U.S. Treasury securities CCA. This would mean that the broker-dealer could not include in this debit item the amount of customer position margin on deposit at the U.S. Treasury securities CCA that exceeds the broker-dealer's margin requirement resulting from its customers' cleared U.S. Treasury securities positions. The objective of this condition is to effectuate the prompt return of customer position margin to the broker-dealer.

Proposed Note H(b)(3) to Item 15 would set forth the third condition for including customer position margin as a debit in the Rule 15c3–3a formula. Under this condition, the Commission would need to have approved rules of the U.S. Treasury securities CCA that meet the conditions of proposed Note H and the Commission would had to have published (and not subsequently withdrawn) a notice that brokers-dealers may include a debit in the customer reserve formula when depositing customer position margin to meet a margin requirement of the U.S. Treasury securities CCA resulting from positions in U.S. Treasury securities of the customers of the broker-dealer. The Commission staff would analyze the U.S. Treasury securities CCA's approved rules and practices regarding the treatment of customer position margin and make a recommendation as to whether they adequately implement the customer protection objectives of the conditions set forth in proposed Note H to Item 15. If satisfied with the staff's recommendation, the Commission would publish a positive notice. The objective is to permit the debit only after the Commission has approved the U.S. Treasury securities CCA's rules pursuant to section 19(b) of the Exchange and published the notice.[236] Any changes to those rules and practices that would undermine these customer protection objectives could result in the Commission withdrawing the notice, at which point the Commission would no longer permit the debit.

Finally, broker-dealers are required to perform a separate reserve computation for their broker-dealer customers and maintain a separate reserve account with respect to that computation.[237] The Rule 15c3–3a computation provides that this separate PAB reserve computation must be performed in accordance with the Rule 15c3–3a computation for the broker-dealer's non-PAB customers, except as provided in Notes to the PAB Computation.[238] Therefore, the proposed amendments discussed above adding a new debit in Item 15 would apply to the PAB reserve computation. Further, the Commission is proposing to amend Note 9 Regarding the PAB Reserve Bank Account Computation—which permits a debit in the PAB reserve computation for clearing deposits required to be maintained at registered clearing agencies—to clarify that the conditions set forth in new Note H with respect to including a debit in the non-PAB customer reserve computation would apply to the PAB reserve computation as well.

2. Request for Comment

The Commission generally requests comments on all aspects of the proposed amendment to Rule 15c3–3a. In addition, the Commission requests comments on the following specific issues, with accompanying data and analysis:

- Do commenters agree or disagree with any particular aspects of the proposed amendment to Rule 15c3–3? If so, which ones and why? If commenters disagree with any provision of the proposed rule amendment, how should such provision be modified and why?
- Rule 15c3–3 defines the term ''excess margin securities'' to mean those securities referred to in paragraph

[235] *See, e.g.,* 17 CFR 240.15c3–3a, Note G(b)(2) to Item 14 (setting forth similar requirements when a securities futures clearing agency holds customer margin at a bank).

[236] *See* 15 U.S.C. 78s.

[237] *See* 17 CFR 240.15c3–3(a)(16) (defining the term ''PAB account'' to mean a proprietary securities account of a broker-dealer (which includes a foreign broker-dealer, or a foreign bank acting as a broker-dealer) other than a delivery-versus-payment account or a receipt-versus-payment account); 17 CFR 240.15c3–3(e) (requiring separate reserve accounts and reserve account computations for PAB accounts).

[238] *See* 17 CFR 240.15c3–3a, Notes 1 through 10 Regarding the PAB Reserve Bank Account Computation.

(a)(4) of Rule 15c3–3 carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer's account or accounts encompassed by paragraph (a)(4) of Rule 15c3–3 which the broker-dealer identifies as not constituting margin securities. With respect to cleared, settled, and novated repurchase and reverse purchase agreements in U.S. Treasury securities, how should this 140 percent test be applied?

- In terms of protecting customer position margin held at the U.S. Treasury securities CCA, should the Commission adopt other clearing models? For example, should the Commission adopt an approach similar to how margin for swaps cleared at a U.S. derivatives clearing organization is treated? If so, explain how such a model would work in a liquidation of the broker-dealer under SIPA.
- Are there any legal or operational issues that particular participants may face as a result of customer position margin held by a U.S. Treasury securities CCA? Do commenters believe there may be the need for other regulatory relief or guidance by the Commission or other regulators to facilitate the holding of such customer margin? Are there any particular entities that should be exempted from the margin requirements due to particular legal, operational or other issues?
- Should the Commission adopt further measures to protect the customer cash and U.S. Treasury securities that are used to meet the customer position margin requirements of the U.S. Treasury securities CCA? For example, should the Commission adopt measures to protect the cash and U.S. Treasury securities in the event of an insolvency of the U.S. Treasury securities CCA? In this regard, should the Commission require that the cash and U.S. Treasury securities be held at a third-party bank in an account that is subject to an agreement between the U.S. Treasury securities CCA, the broker-dealer, and the bank that the assets in the account may only be accessed by the U.S. Treasury securities CCA to cover a loss resulting from a customer of the broker-dealer failing to meet an obligation to the U.S. Treasury securities CCA? Would this approach be workable or practical? Please explain.

D. Compliance Date

The Commission understands that an existing U.S. Treasury securities CCA likely would need time and resources to develop and adopt policies and procedures to implement the standards set forth in this proposal, if adopted, for its business. In addition, as noted above, any changes to a U.S. Treasury securities CCA's rules would require that the CCA file proposed rule changes under section 19(b) of the Exchange Act and/or section 806 of the Dodd-Frank Act, as applicable, for the Commission to review and consider such changes for consistency with the applicable standards. More generally, the Commission recognizes that the changes set forth in this proposal, if adopted, including the likely substantial amount of additional transactions to be submitted for central clearing that are not currently submitted in large volumes (such as the dealer-to-customer market) would represent a significant change in current industry practice that may take time for market participants to navigate.

The Commission is not proposing a specific compliance date at this time, but instead seeks comment regarding what would be an appropriate timeframe.

The Commission generally solicits comment on what an appropriate compliance date would be for each of the proposed rule amendments (Rule 17Ad–22(e)(18), Rule 17Ad–22(e)(6)) if adopted. In addition, the Commission requests comments on the following specific issues, with accompanying data and analysis:

- How long would U.S. Treasury securities CCAs and market participants need to implement the proposal if it is adopted substantially as proposed? What data points would U.S. Treasury securities CCAs and market participants use to assess the timing? Are any specific operational or technological issues raised that should be factored into a proposed compliance date?
- Would staggering the compliance dates for the different rule amendments proposed help facilitate an orderly implementation of the proposal, if adopted? For example, would it be appropriate for the compliance date for paragraphs (ii)(A) and (B) in the definition of an ''eligible secondary market transaction'' to be before the compliance date for paragraphs (ii)(C) and (D) of the same definition, and if so, how much before? More generally, if staggering is appropriate, what would be an appropriate schedule of compliance dates?

IV. Economic Analysis

The Commission is mindful of the economic effects that may result from the proposed amendments, including the benefits, costs, and the effects on efficiency, competition, and capital formation. Exchange Act section 3(f) requires the Commission, when it is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[239] In addition, Exchange Act section 23(a)(2) requires the Commission, when making rules pursuant to the Exchange Act, to consider among other matters the impact that any such rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[240] This section analyzes the expected economic effects of the proposed rules relative to the current baseline, which consists of the current market and regulatory framework in existence today.

In this proposal, the Commission is proposing additional requirements for any U.S. Treasury securities CCA.[241] First, the proposal would require that such CCAs establish written policies and procedures reasonably designed to, as applicable, establish objective, risk-based, and publicly disclosed criteria for participation, which require that the direct participants of such CCA submit for clearance and settlement all eligible secondary market transactions to which they are a counterparty (''Membership Proposal'').[242] In addition, the proposal would require that such CCAs establish written policies and procedures reasonably designed to, as applicable, identify and monitor its direct participants' required submission of transactions for clearing, including, at a minimum, address a failure to submit transactions. The Commission believes that strengthening the membership standards will help reduce contagion risk to U.S. Treasury securities CCAs and bring the benefits of central clearing to more transactions involving U.S. Treasury securities, thereby lowering the risk of disruptions to the U.S. Treasury securities market.[243]

Second, the Commission is proposing additional requirements on how U.S. Treasury securities CCAs calculate, collect, and hold margin posted on behalf of indirect participants (*i.e.,* customers) who rely on the services of a direct participant (*i.e.,* the member of the U.S. Treasury securities CCA) to

[239] *See* 15 U.S.C. 78c(f).

[240] *See* 15 U.S.C. 78w(a)(2).

[241] *See supra* section III.A.

[242] *See supra* section III.A for a description of the Membership Proposal including the definition of ''eligible secondary market transaction.''

[243] *See infra* section IV.B.6.

access the CCA's services.[244] As discussed in more detail below, the Commission believes that such requirements also will improve the risk management practices at U.S. Treasury securities CCAs and incentivize and facilitate additional central clearing in the U.S. Treasury securities market.

Third, the Commission is proposing requirements that a U.S. Treasury securities CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants and that the board of directors reviews these policies and procedures annually.[245] Although the proposed requirements would not prescribe specific methods for market participants to obtain indirect access to a U.S. Treasury securities CCA, it is intended to help ensure that all U.S. Treasury security CCAs review their indirect access models and ensure that they facilitate access to clearance and settlement services in a manner suited to the needs and regulatory requirements of market participants throughout the U.S. Treasury securities market, including indirect participants.

Lastly, the Commission is proposing to amend its rules to permit margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in the customer reserve formula, subject to certain conditions.[246] As discussed further below, the Commission believes that this proposal, in conjunction with the proposal requiring the separation of house and customer margin, will incentivize and facilitate additional central clearing in the U.S. Treasury securities market.

The discussion of the economic effects of the proposed rule begins with a discussion of the risks inherent in the clearance and settlement process and how the use of a CCP can mitigate those risks. This is followed by a baseline of current U.S. Treasury securities market practices. The economic analysis then discusses the likely economic effects of the proposal, as well as its effects on efficiency, competition, and capital formation. The Commission has, where practicable, attempted to quantify the economic effects expected to result from this proposal. In some cases, however, data needed to quantify these economic effects is not currently available or otherwise publicly available. For example, the reporting of data for bilaterally-cleared repo transactions is currently not a regulatory requirement, so counterparty-specific statistics are not available and any aggregate statistics on this market segment may not be comprehensive.[247] Likewise, the reporting of U.S. Treasury securities transactions to FINRA TRACE has been until recently [248] limited to cash transactions in which at least one of the counterparties is a FINRA member, so analyses based on that data will necessarily be incomplete.

In many cases, and as noted below, the Commission is unable to quantify these economic effects and solicits comment, including estimates and data from interested parties, that could help inform the estimates of the economic effects of the proposal.

A. Broad Economic Considerations

Clearance and settlement risk is the risk that a counterparty fails to deliver a security or cash as agreed upon at the time when the security was traded. One method of reducing such risk is to require one or both counterparties to the trade to post collateral.[249] The purpose of posting collateral in financial transactions is to alleviate frictions caused by adverse selection and moral hazard.[250] The amount of collateral needed to support a set of unsettled trades, however, can depend on whether trades are cleared bilaterally or through a CCP. In particular, in cases where market participants have several outstanding buy and sell orders, central clearing reduces the total collateral required to support a given set of trades due to multilateral netting.[251] A simple example illustrates the effect. Suppose there are 3 firms trying to complete three bilateral trades among themselves. Firm A is buying $90 million in U.S. Treasury securities from Firm B, Firm B is buying $80 million in the same U.S. Treasury securities from Firm C, and Firm C is buying $100 million in the same U.S. Treasury securities from Firm A. This would mean that over the settlement cycle, the firms in this example would need to post collateral to cover a total of $270 million in gross obligations to complete these three trades. If these trades were centrally cleared, however, then the *net* obligations would be substantially smaller. In this example, the collateral required would no longer be that required to support $270 million in outstanding obligations, but instead would reduce to $40 million: $20 million for Firm C, and $10 million each for Firms A and B.[252] Central clearing can, in part, replace a trading network made up of a web of bilateral relationships with a simpler hub and spoke model. As each connection is a potential source of failure, a simpler system can imply less risk.

Clearance and settlement through a CCP can also make trades less ''informationally sensitive'' in the sense that the value of the trade does not depend on information about the creditworthiness of the counterparties, thereby reducing adverse selection.[253] This occurs when the trade is novated to the CCP, and the CCP becomes the buyer to every seller and the seller to every buyer. This reduces the need for investors to acquire private information

[244] *See supra* section III.B.1.

[245] *See supra* section III.B.2.

[246] *See supra* section III.C.

[247] Samuel J. Hempel, R. Jay Kahn, Vy Nguyen, & Sharon Y. Ross, *Non-centrally Cleared Bilateral Repo* (Aug 24, 2022), *available at: https://www.financialresearch.gov/the-ofr-blog/2022/08/24/non-centrally-cleared-bilateral-repo/.*

[248] Reporting of additional cash transactions to TRACE, by certain U.S. and foreign banks, began on September 1, 2022 but the recent nature of that change precludes the Commission from doing any analysis on that new reporting universe. *See generally* Federal Reserve System, Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 86 FR 59716 (Oct. 28, 2021), *available at https://www.govinfo.gov/content/pkg/FR-2021-10-28/pdf/2021-23432.pdf; see also* Supporting Statement for the Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements, *available at https://www.federalreserve.gov/reportforms/formsreview/FR%202956%20OMB%20SS.pdf.*

[249] An alternative method of reducing counterparty credit risk used in the securities industry is delivery versus payment (''DVP''). Under DVP, counterparties aim to deliver securities and payment simultaneously, so that the transfer of securities happens if and only if payment has also been made.

[250] For example, if the fulfillment of a contract depends on a counterparty exerting unobservable and costly effort, collateral can be used as a commitment device by putting more of the counterparty's resources at stake in the case of nonfulfillment. *See* Bengt Holmstrom & Jean Tirole, *Financial Intermediation, Loanable Funds, and the Real Sector,* 112 Q. J. Econ. 663 (Aug. 1997); Albert J. Menkveld & Guillaume Vuillemey, *The Economics of Central Clearing,* 13 Ann. Rev. Fin. Econ. 153, 158 (2021).

[251] Darrell Duffie & Haoxiang Zhu, *Does a Central Clearing Counterparty Reduce Counterparty Risk?* 1 Rev. Asset Pricing Stud. 74 (2011), *available at https://academic.oup.com/raps/article-abstract/1/1/74/1528254.* The authors note that this benefit scales with the square root of the number of participants when the trading positions are statistically independent and identically distributed.

[252] This example is from Duffie, *supra* note 186.

[253] *See* Gary Gorton & George Pennacchi, *Financial Intermediaries and Liquidity Creation,* 45 J. Fin. 49 (1990), *available at https://www.jstor.org/stable/2328809. See also* Francesca Carapella & David Mills, *Information Insensitive Securities: the Benefits of Central Counterparties,* Working Paper (2012), *available at https://www.newyorkfed.org/medialibrary/media/research/conference/2012/MP_Workshop/Carapella_Mills_information_insensitive_securities.pdf.*

about the credit risk of their counterparty. By mitigating adverse selection through the substitution of the CCP's counterparty credit risk evaluation for a market participant's own, central clearing through a CCP lowers the cost of trading by market participants and should increase their willingness to trade, thereby improving market liquidity. Reducing the information sensitivity of trades also increases the uniformity of the asset that is traded. In the absence of novation, the U.S. Treasury security is essentially bundled together with counterparty risk. That is, when buying or selling a security, if there is counterparty risk, the pricing depends not only on the security itself but also on the reliability of the counterparty to the trade. It is as if, from an economic perspective, one is ''buying'' both the security and the characteristics of the counterparty. Besides the reduction in adverse selection, eliminating counterparty risk makes the security a more standard product. Standardization itself increases liquidity.[254]

Financial networks that incorporate a CCP can further improve the resilience of financial markets. The Bank for International Settlements stated in 2015 that the shift to central clearing had helped to mitigate the risks that emerged in non-centrally cleared markets before and during the 2007–2009 financial crisis. Further, it had reduced financial institutions' exposure to counterparty credit risk shocks through netting, margining and collateralization.[255]

Another potential benefit of central clearing is that it should reduce the magnitude of, or even prevent, fire sales of assets. This mitigation of fire sale risk is achieved when a member defaults and the CCP manages the liquidation of assets. Central management of the liquidation of assets may mitigate suboptimal outcomes in the face of capital or margin constraints. For example, if investors believe that the counterparty will sell in the case of a missed margin call, other investors may join the selloff, leading to further declines in asset prices. If participants can commit to not sell, then a more efficient equilibrium in which there is no fire sale could be achieved. In this way, the CCP acts as a way to select into the more efficient equilibrium by allow members to credibly pre-commit to the auction in the case of a missed margin call.[256]

Finally, broadening central clearing could lead to a wider group of liquidity providers, which likely would increase the reliability of access to funding during periods of market stress.[257] The reason is that novation of the trade to a central counterparty reduces one of the major reasons for not choosing a counterparty: the risk that counterparty may fail to deliver on its obligations. It also reduces one of the reasons for failing to provide liquidity, namely concerns over the credit risk of counterparties. Therefore, as a result of increased levels of central clearing and the resulting increased centralization of counterparty credit risk evaluation by a CCP and the CCP's application of consistent and transparent risk management,[258] more counterparties —who would also be potential liquidity providers—would be willing to compete to provide liquidity to buy-side investors and to each other. In addition, several academic studies of the 2008 financial crisis emphasize the role of intermediary balance sheet constraints as a cause of financial crises.[259] [260] Moreover, losses experienced by market participants can lead to an increase in risk aversion leading those market participants to exit creating a need for new market participants to replace them in order to provide liquidity.[261] Therefore, either because of increased risk aversion or because some friction implies that the liquidity providers who find themselves warehousing the asset can no longer do so due to trading losses, outside liquidity providers may play an important role in stabilizing the market. In addition, central clearing facilitates anonymized all-to-all trading that would enable the provision of market liquidity by investors.[262] [263]

B. Baseline

1. U.S. Treasury Securities

As discussed in section II.A, U.S. Treasury securities are direct obligations of the U.S. Government issued by the U.S. Department of the Treasury. After issuance in the primary market U.S. Treasury securities trade in an active secondary market.[264] A number of types of market participants intermediate between end users of U.S. Treasury securities. These end users may hold U.S. Treasury securities as a relatively riskless way of saving, as a way of placing a directional bet on interest rates, or as a means of hedging against deflation. U.S. Treasury securities can also function directly as a medium of exchange in some instances, and, as described in more detail below, as collateral for loans.

Market participants refer to the most recently issued U.S. Treasury securities as ''on-the-run,'' with earlier issues

[254] *See* Ben Bernanke, *Clearing and Settlement During the Crash,* 3 Rev. Fin. Stud. 133 (1990), *available at http://www.bu.edu/econ/files/2012/01/Bernanke-RFS.pdf.*

[255] Dietrich Domanski, Leonardo Gambacorta, & Cristina Picillo, *Central Clearing: Trends and Current Issues,* BIS Q. Rev. (Dec. 2015), *available at https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf.*

[256] John Kuong, *Self-fulfilling Fire Sales: Fragility of Collateralized Short-term Debt Markets,* 34(6) Review of Financial Studies, 2910–2948 (2021), *available at https://academic.oup.com/rfs/article/34/6/2910/5918033?login=true.*

[257] G–30 Report, *supra* note 5, at 13.

[258] *See* TMPG White Paper, *supra* note 20, (''[b]ilateral clearing involves varying risk management practices that are less uniform and less transparent to the broader market . . .''). In addition, FICC has been designated by FSOC as a systemically important financial market utility, which brings heightened risk management requirements and additional regulatory supervision by both its primary regulator and the Board of Governors of the Federal Reserve System. *See supra* note 17 and associated text.

[259] *See, e.g.,* Markus K. Brunnermeier & Yuliy Sannikov, *A Macroeconomic Model with a Financial Sector,* 104 Am. Econ. Rev. 379 (Feb. 2014), *available at https://www.aeaweb.org/articles?id=10.1257/aer.104.2.379; See also* Zhiguo He & Arvind Krishnamurthy, *Intermediary Asset Pricing,* 103 Am. Eco. Rev. 732 (Apr. 2013), *available at https://www.aeaweb.org/articles?id=10.1257/aer.103.2.732.*

[260] Balance sheet constraints and the impact of losses on risk aversion both apply to liquidity providers, or rather the ability and willingness of market participants to provide liquidity. This does not apply to the CCP as it does not supply liquidity.

[261] *See, e.g.,* John Y. Campbell & John H. Cochrane, *By Force of Habit: A Consumption-Based Explanation of Aggregate Stock Market Behavior,* 107 J. Pol. Econ. 205 (Apr. 1999), *available at https://www.journals.uchicago.edu/doi/abs/10.1086/250059.*

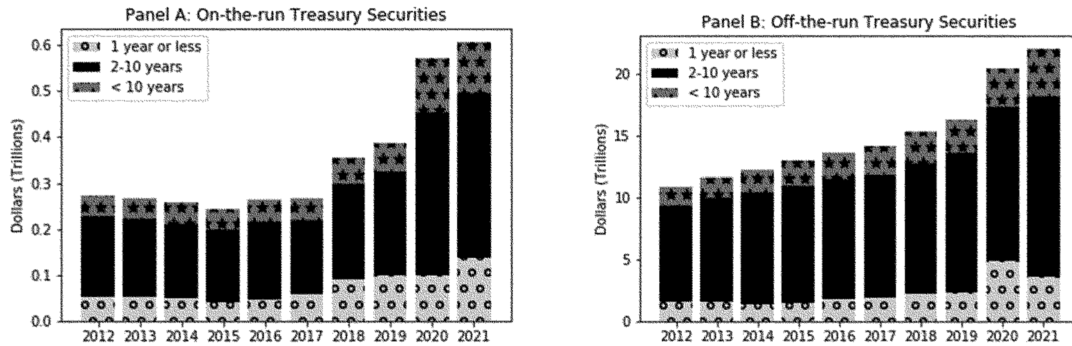
[262] G–30 Report, *supra* note 5, at 13. *See also* Duffie, *supra* note 186, at 4 (''Further, given broad access to a CCP, some Treasury transactions could flow directly from ultimate sellers to ultimate buyers without necessarily impinging on dealer balance sheet space.'').

[263] The market responded to the stress of 2020 through some increase in all-to-all trading. *See* MarketAxess, FIMSAC Slides, at 6 (Oct. 5, 2020), *available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/mcvey-fimsac-slides-100120.pdf.* Additional central clearing may have enabled a greater increase.

[264] There is also an active market for U.S. Treasury securities that trade on a ''when-issued'' (WI) basis. ''Based on Treasury TRACE transactions data, WI trading volume averaged $80 billion per day between July 1, 2019, and June 30, 2020, accounting for 12 percent of the $651 billion traded daily across all Treasury securities.'' Fleming, Shachar, and Van Tassel, *supra* note 38. As discussed in section III.A.2, *supra,* for purposes of this Proposal only the WI market after the auction but before issuance (WI on-the-run issues) is considered part of the secondary market for U.S. Treasury securities. Most of the WI trading in the Fleming, Shachar, and Van Tassel analysis occurred in on-the-run issues. *Id.* (''WI trading that occurs up to and including the auction day (account[s] for about one-third of WI trading) and WI trading that occurs after the auction day (account[s] for about two-thirds of WI trading''). For a discussion of how WI trading functions in the context of central clearing, *see* Kenneth D. Garbade & Jeffrey F. Ingber, The Treasury Auction Process: Objectives, Structure, and Recent Adaptations, 11 Current Issues in Economics and Finance 1 (2005), *available at https://www.newyorkfed.org/medialibrary/media/research/current_issues/ci11-2.html.*

referred to as ''off-the-run''.[265] Figure 1 shows the outstanding value of on-the-run (Panel A) and off-the-run (Panel B) U.S. Treasury securities. On-the-run U.S. Treasury securities have consistently made up approximately 3% of the total value of all marketable U.S. Treasury securities during the 2012–2021 period, but, as Figure 3 shows, account for a disproportionate share of trading volume. Thus, an on-the-run security is generally far more liquid than a similar off-the-run security.

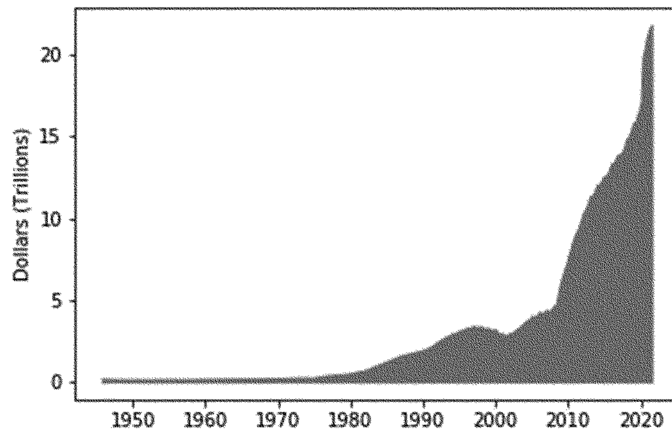
Figure 1: On-the-run and off-the-run U.S. Treasury securities (trillions) [a]



[a] Generated from the Federal Reserve Z1 Financial Accounts of the United States Table L.210 Treasury Securities, Series FL313161205.Q.

As of June 30, 2022, the total amount outstanding of marketable U.S. Treasury securities held by the public was $23.3 trillion.[266] As shown in Figure 2, the volume of marketable U.S. Treasury securities outstanding has increased by approximately $18 trillion since 2000. The total amount of marketable U.S. Treasury securities issued during 2021 was $20.3 trillion.[267]

Figure 2: Value of Marketable U.S. Treasury Securities Outstanding Over Time [a]



[a] Generated from the Federal Reserve Z1 Financial Accounts of the United States Table L.210 Treasury Securities, Series FL313161205.Q.

Trading in the secondary market is reported in Figure 3. According to industry reports, 65% of the $955.2 billion in average daily trading volume of U.S. fixed income securities in 2021 was in U.S. Treasury securities.[268] As is shown in Figure 3, average weekly trading volume was approximately $3 trillion in 2021, with notable peaks in March 2020 and early 2021.[269]

Figure 3: Weekly trading volume in U.S. Treasury securities cash market [a]

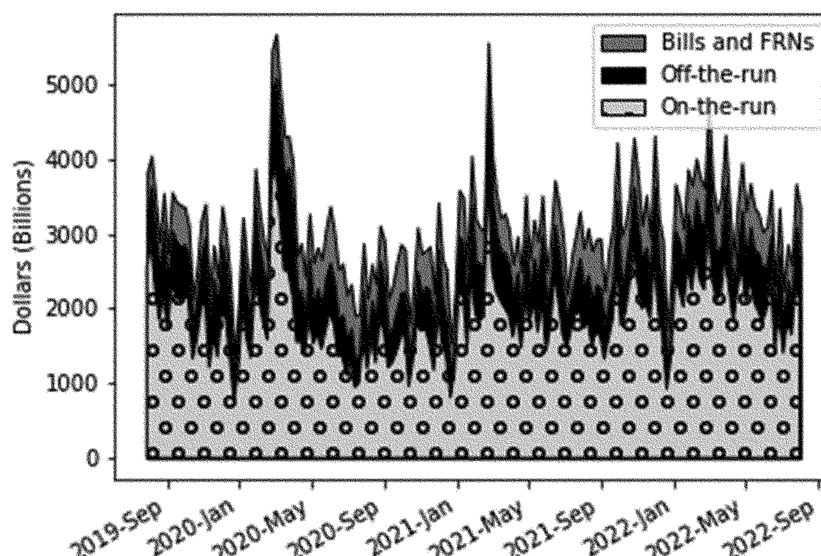
[265] *See supra* note 34.

[266] This includes $3.5T in bills, $13.6T in notes, $3.8T in bonds, 1.8T in TIPs, and 0.6T in floating rate notes. *See* U.S. Treasury Bureau of the Fiscal Service, *Summary of Treasury Securities Outstanding, available at https://fiscaldata.treasury.gov/datasets/monthly-statement-public-debt/summary-of-treasury-securities-outstanding.*

[267] *See* U.S. Treasury Bureau of the Fiscal Service, *Treasury Debt Position and Activity Report,* June 2022, *available at https://www.treasurydirect.gov/govt/reports/pd/pd_debtposactrpt_202206.pdf.*

[268] Another 29 percent was Agency MBS, 4 percent corporate debt, with the remainder in municipal, non-agency mortgage-backed, Federal agency debt and asset-backed securities. *See* Securities Industry and Financial Markets Association (''SIFMA''), *US Fixed Income Securities: Issuance, Trading Volume, Outstanding, available at https://www.sifma.org/resources/research/us-fixed-income-securities-statistics/us-fixed-income-securities-statistics-sifma/*(as of July 8, 2022) (data sourced from N.Y. Fed, FINRA TRACE, and MSRB).

[269] *Id.*



[a] *See* IAWG Report, *supra* note 4, at 14.

2. U.S. Treasury Repurchase Transactions

As described in section II.A.2 *supra,* a U.S. Treasury repurchase transaction generally refers to a transaction in which one market participant sells a U.S. Treasury security to another market participant, along with a commitment to repurchase the security at a specified price on a specified later date. Because one side of the transaction receives cash, and the other side receives securities, to be returned at a later date, the transaction is a close equivalent to a cash loan with securities as collateral. The amount paid for the security serving as collateral may be less than the market price. The difference divided by the market value of the collateral is known as the ''haircut.'' A positive haircut implies that the loan is over-collateralized: the collateral is worth more than the cash that is loaned. A related term is ''initial margin''—the ratio of the purchase price to the market value of the collateral.

General collateral repurchases are an important variation on the above type of transaction, where one participant lends to another against a class, not a specific issue, of U.S. Treasury securities. U.S. Treasury repo for a specific asset is generally a bilateral arrangement, whereas general collateral repurchases are usually arranged with a third agent, known as a triparty agent. In bilateral repo arrangements, the lender has the title of the specific asset in question, and can sell or re-hypothecate it. In triparty repo, which is discussed below, the lender has a more limited use of collateral. However, it is often re-hypothecated within the same triparty system; namely, a lender may use the collateral from the borrower for its own borrowing.

As described in section II.A.2 *supra,* repurchase agreements are generally classified by the term over which they take place, either ''overnight'' or ''term.'' In overnight repurchase agreements, the repurchase of the security takes place the day after the initial purchase, meaning that these agreements serve, essentially, as overnight loans collateralized by U.S. Treasury securities. Term repurchase agreements, conversely, take place over a longer horizon.[270]

U.S. Treasury repo has various economic uses. First, it is a means of secured borrowing and lending, allowing some market participants to, in effect, turn their U.S. Treasury securities into cash positions, and others to temporarily invest cash that is not in use in a way that mitigates exposure to, for example, the counterparty risk of a depository institution. Bilateral repo can allow market participants to effectively price interest rate expectations into bonds, and to arbitrage differences in the market prices of closely related U.S. Treasury securities, because it provides financing for U.S. Treasury security purchases and facilitates short sales.

Repos also play a role in monetary policy. The Federal Reserve operates a reverse repurchase facility in which it receives cash from eligible market participants in exchange for collateral consisting of U.S. Treasury securities. The interest rate on these repurchase agreements is the overnight reverse repurchase offer rate set by the Federal Reserve to aid implementation of monetary policy by firming up the floor for the effective Federal funds rate.[271]

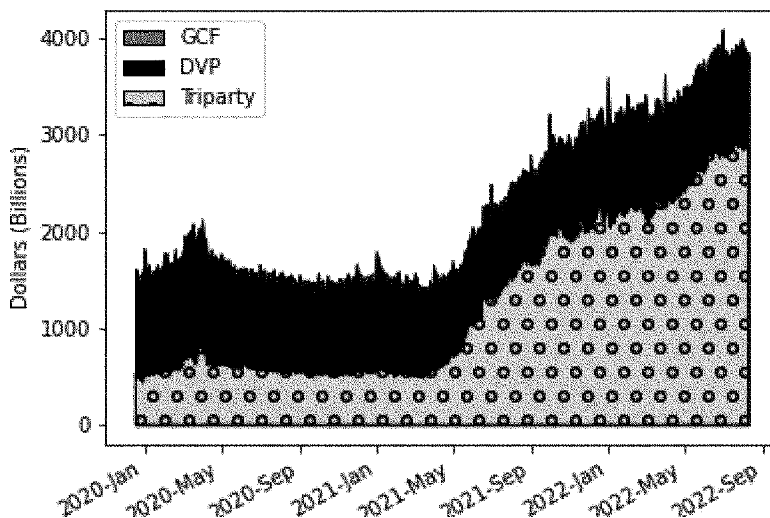
The market for repos is dominated by large sophisticated institutions. The institutions that participate in the market for repos are also those for whom access to central clearing may be the least costly economically. Relatedly, although difficult to quantify precisely, the number of participants is one or more orders of magnitude greater in the cash market as compared with the repo market: tens of thousands as opposed to hundreds. As Figure 4 shows, the U.S. Treasury securities repurchase market is large; throughout 2020 and into 2021, daily transaction volume ranged between $1.5 and $2.5 trillion per day. Since April 2021, average daily volume has been considerably higher—approaching $4 trillion per day—coinciding with the growth in the Federal Reserve's overnight reverse repurchase operations. Figure 4 further splits these categories out into triparty repo and bilateral repo. Despite steadily increasing volumes of centrally cleared repurchase transactions, due in part to the development of services to enable acceptance of more types of repurchase transactions at the covered clearing agency, the Commission understands that the volume of bilateral repurchase transactions that are cleared and settled directly between the two counterparties remains substantial, representing

[270] Overnight repurchase agreements account for 87.5% of daily transaction volume. *See* Figure 5 and the associated discussion for more details. In addition to term repos agreements with fixed maturity dates, there exist term repurchase agreements with embedded options that lead to an uncertain maturity date. For example, ''callable'' repos include an option for the lender to call back debt (*i.e.,* resell securities) at their discretion. ''Open'' repos have no defined term but rather allow either party to close out at the contract at any date after initiation of the agreement.

[271] *See supra* note 164.

approximately half of all bilateral repurchase transactions in 2021.[272]

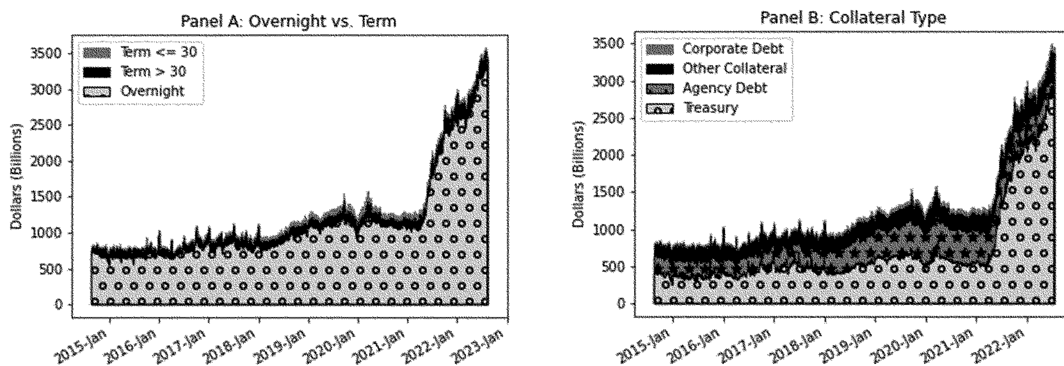
Figure 4: Daily U.S. Treasury Repurchase Transaction Volume [a]



[a] Figure 4 includes only centrally cleared bilateral repurchase as significant gaps persist in the coverage of transaction data in U.S. Treasury repo for non-centrally cleared bilateral repos. Source: Office of Financial Research Short-term Funding Monitor—Data Sets, U.S. Repo Markets Data Release, refreshed daily, *available at https://www.financialresearch.gov/short-term-funding-monitor/datasets/repo/. See also* IAWG Report, *supra* note 4, at 29.

The triparty segment of the U.S. Treasury securities repurchase agreement market is large, with an average of approximately $500 billion of daily trading volume in 2020, and has taken on a substantially larger role since the beginning of 2021, peaking at nearly $3 trillion in transaction volume in the beginning of 2022.[273] Of this, overnight repos is the largest segment, making up 87.5% daily transaction volume, as shown in Figure 5. Although different types of securities can be used as collateral in triparty repos, over half (50.9%) of triparty repo collateral since 2015 are U.S. Treasury securities. That number has grown to 65.5 percent since 2021, as shown in Panel B of Figure 5.[274] The remainder are agency securities, referring to mortgage-backed securities issued by U.S government agencies and government sponsored enterprises, and various other securities including corporate bonds, non-U.S. sovereign debt, equity, municipal debt, and commercial paper.[275]

Figure 5: Triparty Repurchase Agreement Trading Volume, Splits [a]



[a] *https://www.newyorkfed.org/data-and-statistics/data-visualization/tri-party-repo.*

3. Central Clearing in the U.S. Treasury Securities Market

Currently, FICC is the sole provider of clearance and settlement services for U.S. Treasury securities (*see* section I, *supra*). On July 18, 2012, FSOC designated the FICC as a systemically important financial market utility under Title VIII of the U.S. Dodd-Frank Act. FSOC assigned this designation on the basis that a failure or a disruption to FICC could increase the risk of significant liquidity problems spreading among financial institutions or markets and thereby threaten the stability of the financial system in the United States.

Direct membership in FICC generally consists of banks and registered dealers,

[272] *See supra* note 150. *See also* R. Jay Kahn & Luke M. Olson, *Who Participates in Cleared Repo?* (July 8, 2021), *available at https://www.financialresearch.gov/briefs/files/OFRBr_21-01_Repo.pdf.*

[273] *See* Mark E. Paddrik, Carlos A. Ramírez, & Matthew J. McCormick, FEDS Notes: *The Dynamics of the U.S. Overnight Triparty Repo Market,* (Aug. 2, 2021), *available at https://www.federalreserve.gov/econres/notes/feds-notes/the-dynamics-of-the-us-overnight-triparty-repo-market-20210802.htm.*

[274] *See* SIFMA Research, *US Repo Fact Sheet,* at 11 (Jan. 2021), *available at https://www.sifma.org/wp-content/uploads/2020/04/2021-US-Repo-Fact-Sheet.pdf.*

[275] *Id.; see* Paddrik *et al., supra* note 273.

and such members must meet specified membership criteria.[276] In other markets, not all active participants are direct members of the clearing agency. For this reason, it is likely that under the Membership Proposal, some will access clearing indirectly. At FICC, the indirect clearing models are its Sponsored Program and a prime broker/correspondent clearing program.[277] As of May 3, 2022, FICC has 202 direct members.[278]

From a direct participant's perspective, clearing a U.S. Treasury securities transaction at FICC between that participant and its non-participant counterparty (*i.e.,* a dealer-to-client trade) need not result in a separate collection of margin for the customer transaction. Transactions between direct participants are novated by FICC, and, by virtue of multilateral netting, all of a member's positions are netted into a single payment obligation—either to or from the CCP. In contrast, in a dealer-to-client trade, there is no transaction between two direct participants that FICC membership rules would require to be novated to the CCP, and as a result, FICC does not provide any guaranty of settlement or otherwise risk manage this trade.[279] In other words, as one recent publication explained, ''if a dealer were to buy a security from its own customer and submit this transaction to FICC, there would be no effect on the dealer's net position at, obligations to, or guarantees from FICC.'' [280] Indeed, except for its sponsored program, because FICC nets all trades at a dealer before calculating margin, as at present, customer trades with their own dealers generate no margin requirement and are not collateralized at the CCP.

The most frequently used FICC model for accessing the clearing agency indirectly is the sponsored clearing model, which is generally used for repo but not for cash transactions. As of October 2021, there were 27 Sponsoring Members and roughly two thousand Sponsored Members from 20 approved jurisdictions, with daily volumes ranging from $225-$280 billion (and peaking in March 2020 at $564 billion).[281]

Sponsored Members participating in FICC's Sponsored Service are indirect members of FICC, and upon novation of their U.S. Treasury transactions, FICC becomes obligated to such Sponsored Members.[282] FICC requires that its Sponsoring Members provide margin on a gross basis for its Sponsored Member positions.[283] In FICC's correspondent clearing and prime brokerage clearing models, which the Commission understands to be rarely used, the client does not have a legal relationship with FICC.[284] FICC only has CCP obligation to the correspondent clearer or prime broker itself, as applicable, who is a FICC member. In light of this, FICC net margins the activity in the accounts of correspondent clearers and prime brokers.

Certain aspects of FICC's Sponsored Service are worth noting, as they may have an effect on some market participants' willingness to participate in the service. For example, once a trade is novated, FICC makes delivery of cash or securities to the Sponsoring Member as agent for the Sponsored Member.[285] Therefore, market participants may consider the ability of their Sponsoring Member to make delivery to them in situations in which the Sponsoring Member is in default, when determining whether to use the Sponsored Service. In addition, if a Sponsoring Member defaults, FICC continues to guarantee any novated sponsored trades and may determine whether to close out a sponsored trade and/or to permit the Sponsored Member to settle the trade.[286] This may lead a potential sponsored member to decline to enter a sponsoring relationship unless it was willing to trade bilaterally with those sponsoring firms. The Commission understands that some Sponsoring Members also may limit which market participant's trades they are willing to sponsor based on firm type. Sponsored triparty repo is a relatively recent addition.[287] Volumes of sponsored repo fluctuate, but they appear to be substantial as Figure 6 shows.

Figure 6: Sponsored Repo Daily Trading Volume [a]

[276] The Commission believes that not all market participants likely would satisfy a covered clearing agency's stringent membership criteria. *See* 17 CFR 17Ad–22(e)(18); FICC Rule 2A, *supra* note 47. Even among those that do, legal operational or other considerations may preclude many market participants from becoming direct members of a CCP that clears and settles government securities transactions.

[277] *See, e.g.,* FICC Rules, 8, 18, 3A (providing for prime brokerage and correspondent clearing, as well as sponsored membership), *supra* note 47.

[278] *See* FICC Member Directories, *available at https://www.dtcc.com/client-center/ficc-gov-directories.* (This includes all members who make use of Netting, Repurchase Netting, and/or GCF services.).

[279] *See* Chicago Fed Insights, *supra* note 204, at 2 (explaining that this conclusion follows from that fact that ''FICC nets members' trades for their own accounts against trades by the members' customers, so the dealer's and customer's sides of the trade would cancel out in the netting process.'').

[280] *Id.*

[281] *See* DTCC May 2021 White Paper, *supra* note 135, at 6.

[282] FICC–GSD Rule 3A sections 3 (membership) and 7 (novation), *supra* note 47.

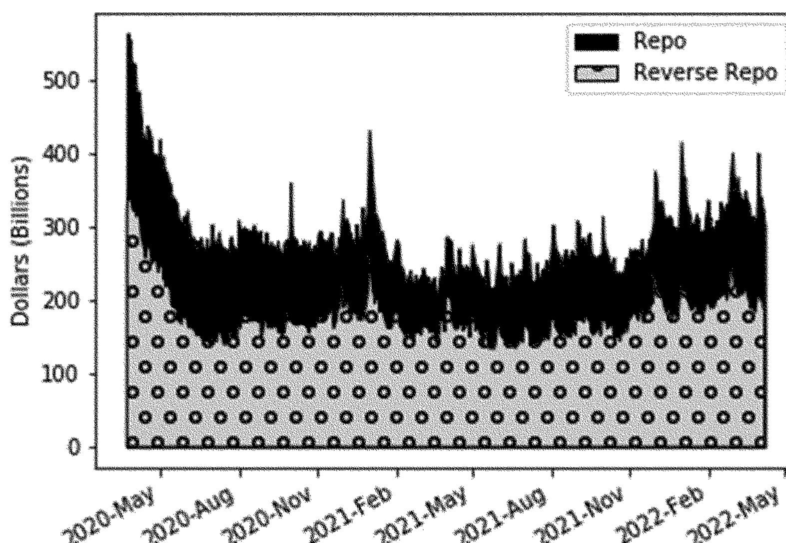
[283] FICC Rule 3A, section 10(c), *supra* note 47. *See also* DTCC October 2021 White Paper, *supra* note 203, at 5–6.

[284] FICC Rule 8, *supra* note 47. *See* DTCC October 2021 White Paper, *supra* note 203, at 5, which reports that $80 billion plus of activity are observed clearing and settling daily through FICC's correspondent clearing and prime broker clearing models.

[285] FICC Rule 3A, sections 8 and 9, *supra* note 47.

[286] FICC Rule 3, section 14(c), *supra* note 47.

[287] See *supra* note 66 and note 67 and referencing text.



[a] Source: FRBNY Repo Operations data, *available at https://www.newyorkfed.org/markets/desk-operations/repo.* Operation results in Figure 6 include all repo and reverse repo conducted, including small value exercises.

In order for a CCP to perform as the guarantor of trades that have been novated to it, the CCP must have resources available to absorb the costs of clearing member non-performance. FICC is required by Commission rule to have policies and procedures reasonably designed to maintain financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure in extreme but plausible market conditions.[288] A CCP's plan to deal with a clearing member default is referred to as its default waterfall. The default waterfall provides an identification of resources that the CCP will use in attempting to recoup losses from clearing member defaults. The FICC waterfall comprises the defaulting clearing member's contribution (*i.e.,* margin, as well as any other resources the member has on deposit such as excess margin, the proceeds from liquidating the member's portfolio, and any amounts available from cross-guaranty agreements), the corporate contribution to the clearing fund, followed by non-defaulting clearing members' margin.[289]

In addition, with respect to liquidity risk, the Commission's rules require FICC to have policies and procedures reasonably designed to meet a ''cover-1'' standard and hold qualifying liquid resources sufficient to complete its settlement obligations in the event of the default of the largest member and its affiliates.[290] For example, if a clearing member has a net long position in a security that has not yet settled, the CCP must have the cash available to complete the purchase. The securities can be subsequently liquidated and any losses that may result would be covered by the resources in the default waterfall. The first liquidity source that FICC would use in the event of a member default is the cash portion of the clearing fund.[291] Second, FICC can pledge securities in the clearing fund as a source of cash, including securities that would have otherwise been delivered to the defaulting member.[292] Should additional liquid resources be required FICC could make use of the Capped Contingent Liquidity Facility (''CCLF'').[293]

The CCLF is a rules-based arrangement in which FICC members are obligated to participate as a condition of their membership. Should FICC declare a CCLF event, each member would be obligated to enter into repurchase agreements with FICC up to a member-specific limit.[294] The CCLF is not prefunded, and it is separate from FICC's margin requirements. Each FICC member is required, by FICC's rules, to attest that its CCLF requirement has been incorporated into its liquidity planning and related operational plans at least annually and in the event of any changes to such Member's CCLF requirement.[295] Thus, the members are obligated to have such resources lined up, which can be costly.[296]

The CCLF provides a mechanism for FICC to enter into repurchase transactions based on the clearing activity of the defaulted participant. Specifically, in the event that FICC declares a CCLF event, FICC's members would be required to hold and fund their deliveries to the defaulting member, up to a predetermined capped dollar amount, by entering into repurchase transactions with FICC until FICC completes the associated closeout.[297] The aggregate size of the

[288] 17 CFT 240.17Ad–22(e)(4)(iii).

[289] FICC Rule 4, sections 6 and 7, *supra* note 47.

[290] Specifically, the Commission's rules require FICC to have policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions, and to hold qualifying liquid resources sufficient to meet that requirement. *See* 17 CFR 240.17Ad–22(e)(7)(i) and (ii).

[291] FICC Rule 4, sections 5 and 6, *supra* note 47.

[292] *Id.*

[293] FICC Rule 22A, section 2a, *supra* note 47.

[294] These repurchase agreements may continue for up to 30 days. *See* FICC Rule 22A, section 2a(a)(L), *supra* note 47.

[295] FICC Rule 22A, section 2a(d), *supra* note 47.

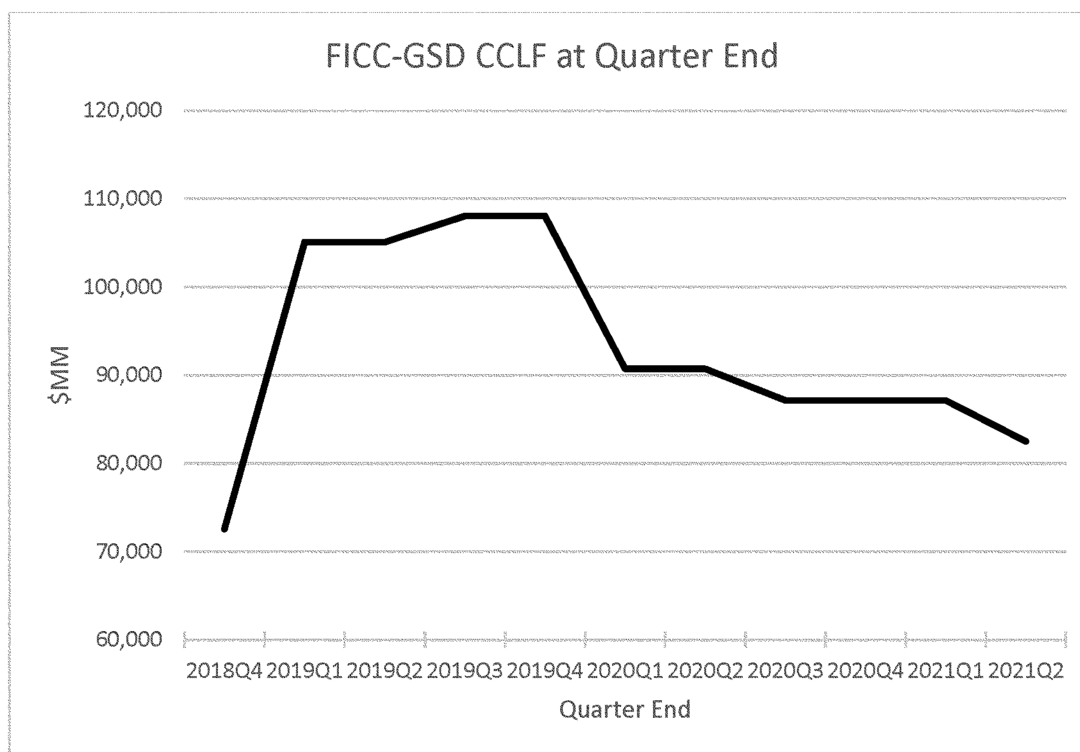
[296] *See* Independent Dealer & Trader Association, *White Paper on the Repo Market Affecting U.S. Treasury and Agency MBS,* at 8 (Dec. 6, 2019), *available at https://static1.squarespace.com/static/5ad0d0abda02bc52f0ad4922/t/5dea7fb6af08dd44e68f48cc/1575649207172/IDTA+-+White+Paper+%2812.6.19%29-c2.pdf* (''In light of the fact that a significant component of a firm's CCLF obligation is based on its overnight liquidity exposures at FICC, middle-market dealers immediately took to reducing their reliance on overnight liquidity. Some middle-market dealers reduced the size of their portfolio and extended liquidity terms in place of overnight funding, adding to both financing and opportunity costs. Others have incorporated liquidity plans for which commitment and administration fees materially added to the cost of doing business.'').

[297] *See generally* FICC Rule 22A, section 2a(b), *supra* note 47. For details on the process, see the Order Approving a Proposed Rule Change to

CCLF is the historical cover-1 liquidity requirement (*i.e.,* the largest liquidity need generated by an Affiliated Family during the preceding six-month period) plus a liquidity buffer (*i.e.,* the greater of 20 percent of the historical cover-1 liquidity requirement or $15 billion).[298]

The first $15 billion of the total amount of the CCLF is shared, on a scaled basis, across all members. Any remaining amount is allocated to members who present liquidity needs greater than $15 billion, using a liquidity tier structure based on frequency of liquidity created across liquidity tiers in $5 billion increments.[299] The size of the CCLF and each member's share is reset every 6 months or as appropriate.[300] Figure 7 provides data on the aggregate amount of the CCLF from 2018 quarter 4 through 2021 quarter 2. The aggregate size of the CCLF was over $80 billion in 2021 quarter 2.

Figure 7: Aggregate CCLF ($MM) at Quarter End [a]



[a] *See* CPMI–IOSCO Quantitative Disclosures—FICC, Disclosure Reference 7.1.6, *available at https://www.dtcc.com/legal/policy-and-compliance.*

4. Clearing and Settlement by U.S. Treasury Securities Market Segment

Data on the extent of central clearing in the U.S. Treasury securities market appears to be lacking. As discussed previously, the Commission believes that approximately half of bilateral repo trades are centrally cleared. The percentage of centrally cleared triparty repo appears to be lower than this, as sponsored triparty clearing is relatively new. For further details of central clearing in repo, see section II.A.2, *supra.*

The state of cash clearing in the U.S. Treasury securities market is discussed in section II.A.1 *supra.* Estimates from the first half of 2017 further suggest that only 13 percent of the cash transactions in the U.S. Treasury securities market are centrally cleared. These estimates suggest that another 19 percent of transactions in this market are subject to so-called hybrid clearing in which one leg of a transaction facilitated by an IDB platform is centrally cleared and the other leg of the transaction is cleared bilaterally.[301]

Below, we discuss the dealer-to-customer market and the ''inter-dealer'' market (on IDBs) separately. Tables 1 and 2 show the volumes in these markets for on-the-run and off-the-run securities.

Until the mid-2000s, most inter-dealer trading occurred between primary dealers who were FICC members and it was centrally cleared.[302] Today, PTFs actively buy and sell large volumes of U.S. Treasury securities on an intraday basis using high-speed and other algorithmic trading strategies.[303] PTFs are not generally FICC members and, as such, their trades are often not centrally cleared. Moreover, PTFs compose a

Implement the Capped Contingency Liquidity Facility in the Government Securities Division Rulebook, Exchange Act Release No. 82090 (Nov. 15, 2017), 82 FR 52457 (Nov. 21, 2017).

[298] FICC Rule 1 (definitions of Aggregate Total Amount and Liquidity Buffer) and 22A, section 2, *supra* note 47.

[299] FICC Rule 22A, section 2a(iii), (iv), and (v), *supra* note 47. *See also* Exchange Act Release No. 82090, *supra* note 297, 82 FR at 55429–30.

[300] FICC Rule 22A, section 2a(b)(ii), (iii), (iv), and (v), *supra* note 47.

[301] *See* IAWG Report, *supra* note 4, at 30; *see also* TMPG White Paper, *supra* note 21, at 12. The figures are estimated using FR 2004 data covering the first half of 2017 and are based on various assumptions: (a) primary dealers account for all dealer activity, (b) 5% of dealers' trading not through an IDB is with another dealer, (c) the shares of dealer and non-dealer activity in the IDB market for coupon securities equal the weighted averages of the shares reported in the Oct. 15 report (that is, 41.5% and 58.5%, respectively), (d) only dealers trade bills, FRNs, and TIPS in the IDB market, and e) the likelihood of dealer and non-dealers trading with one another in the IDB market solely reflects their shares of overall volume.

[302] *See* G–30 Report at 9, *supra* note 5; IAWG Report, *supra* note 4, at 5–6; TMPG White Paper, *supra* note 21, at 6.

[303] *See* Joint Staff Report, *supra* note 4, at 32, 35–36, 39.

substantial portion of trading volume, averaging about 20% of overall U.S. Treasury cash market volume and accounting for around 50–60% of IDB volume in outright purchases and sales of U.S. Treasury securities.[304] Primary dealers, who are FICC members and who transact the 40–50% of IDB volume not accounted for by PTFs, are required by Federal Reserve Bank of New York policy to centrally clear their U.S. Treasury securities primary market cash activity.[305]

As Tables 1 and 2 below show, during the 6-month period ending in September 2021 trading volume of on-the-run U.S. Treasury securities was approximately two and half times that of off-the-run U.S. Treasury securities. Over half (56.9%) of on-the-run U.S. Treasury security trading volume and approximately one quarter (28.5%) of off-the-run U.S. Treasury security trading volume occurred on ATSs (which are also IDBs) and non-ATS IDBs.[306] Of the on-the-run U.S. Treasury security trading volume that occurred on ATS IDBs and non-ATS IDBs, 41.5% were dealer trades, 44.6% were PTF trades and the remainder were customer trades. For off-the-run trading in U.S. Treasury securities, the comparable figures are 72.2% dealer trades, 9.1% PTF trades, and the remainder are customer trades. In contrast to trades that take place on an ATS or a non-ATS IDB, 56.9% of on-the-run U.S. Treasury security transactions and 75.9% of off-the-run U.S. Treasury security transactions are traded bilaterally. The majority of these (86.0% of on-the-run and 89.9% of off-the-run) are dealer-to-customer trades.

TABLE 1—ON-THE-RUN U.S. TREASURY SECURITIES TRADING VOLUME

On-the-Run U.S. Treasury Securities Trading Volume			
	Number of venues	Average weekly volume ($M)	Volume share (%)
ATSs	18	812,480	49.7
Customer trades	11	52,754	3.2
Dealer trades	18	344,781	21.1
PTF trades	11	414,945	25.4
Non-ATS Interdealer Brokers	24	118,067	7.2
Customer trades	19	77,334	4.7
Dealer trades	23	40,252	2.5
PTF trades	9	481	[a] 0.0
Bilateral dealer-to-dealer trades	352	92,051	5.6
Bilateral dealer-to-customer trades	333	604,823	37.0
Bilateral dealer-to-PTF trades	97	7,250	0.4
Total	....	1,634,671	100.0

This table reports trading volume and volume share for ATSs,[b] Non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, bilateral dealer-to-customer, and bilateral dealer-to-PTF transactions for on-the-run U.S. Treasury Securities. On-the-run U.S. Treasury Securities are the most recently issued nominal coupon securities. Nominal coupon securities pay a fixed semi-annual coupon and are currently issued at original maturities of 2, 3, 5, 7, 10, 20, and 30 years. Treasury Bills and Floating Rate Notes are excluded. Volume is the average weekly dollar volume in par value (in millions of dollars) over the 6-month period, from April 1, 2021, to September 30, 2021.[c] Number of Venues is the number of different trading venues in each category and the number of distinct MPIDs for bilateral transactions.[d] Market Share (%) is the measure of the dollar volume as a percent of total dollar volume.[e] The volumes of ATSs and non-ATS interdealer brokers are broken out by Customer trades, Dealer trades, and PTF trades within each group.[f] Data is based on the regulatory version of TRACE for U.S. Treasury Securities from Apr. 1, 2021, to Sept. 30, 2021. Bilateral trades are a catchall classification that may include trades conducted via bilateral negotiation, as well as trades conducted electronically via platforms not registered with FINRA as an ATS.

[a] The percentage to the nearest non-zero is 0.02%.

[b] This analysis is necessarily limited to transactions reported to TRACE, which may not be all transactions in U.S. Treasury securities. Transactions that take place on non-FINRA member ATSs or between two non-FINRA members are not reported to TRACE. Entities in the ATS TRACE category encompass the IDBs described in the preamble of this release. By contrast, the non-ATS IDB category in TRACE encompasses the voice-based or other non-anonymous methods of bringing together buyers and sellers. See supra note 43 and referencing text.

[c] FINRA reports volume as par volume, where par volume is the volume measured by the face value of the bond, in dollars. *See* relevant weekly volume files, *available at https://www.finra.org/filing-reporting/trace/data/trace-treasury-aggregates*.

[d] Dealers are counted using the number of distinct MPIDs.

[e] Total dollar volume (in par value) is calculated as the sum of dollar volume for ATSs, non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, and bilateral dealer-to-customer transactions.

[f] We identify ATS trades and non-ATS interdealer broker trades using MPID. The regulatory version of TRACE for U.S. Treasury securities includes an identifier for customer and interdealer trades. Furthermore, we use MPID for non-FINRA member subscriber counterparties in the regulatory version of TRACE for U.S. Treasury securities to identify PTF trades on ATSs.

TABLE 2—OFF-THE-RUN U.S. TREASURY SECURITIES TRADING VOLUME

Off-the-Run U.S. Treasury Securities Trading Volume			
	Number of venues	Volume	Volume share (%)
ATSs	17	110,945	17.3

[304] *See* James Collin Harkrader & Michael Puglia, *FEDS Notes: Principal Trading Firm Activity in Treasury Cash Markets* (Aug. 2020) (''Harkrader and Puglia FEDS Note''), *available at https://www.federalreserve.gov/econres/notes/feds-notes/principal-trading-firm-activity-in-treasury-cash-markets-20200804.htm.*

[305] *See supra* note 37.

[306] The term ''IDB'' typically refers only to IDBs that are also ATSs. *See supra* note 43 and associated text.

TABLE 2—OFF-THE-RUN U.S. TREASURY SECURITIES TRADING VOLUME—Continued

Off-the-Run U.S. Treasury Securities Trading Volume			
	Number of venues	Volume	Volume share (%)
Customer trades	10	13,304	2.1
Dealer trades	17	83,668	13.0
PTF trades	11	13,973	2.2
Non-ATS Interdealer Brokers	22	43,604	6.8
Customer trades	18	15,092	2.4
Dealer trades	21	28,451	4.4
PTF trades	12	61	[a] 0.0
Bilateral dealer-to-dealer trades	509	47,912	7.5
Bilateral dealer-to-customer trades	333	437,665	68.2
Bilateral dealer-to-PTF trades	114	1,415	0.2
Total	....	641,540	100.0

This table reports trading volume and volume share for ATSs,[b] non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, bilateral dealer-to-customer, and bilateral dealer-to-PTF transactions for off-the-run U.S. Treasury Securities. Off-the-run or "seasoned" U.S. Treasury Securities include TIPS, STRIPS, and nominal coupon securities issues that preceded the current on-the-run nominal coupon securities. Number of Venues is the number of different trading venues in each category and the number of distinct MPIDs for bilateral transactions. Volume is the average weekly dollar volume in par value (in millions of dollars) over the 6-month period, from April 1, 2021, to September 30, 2021. Market Share (%) is the measure of the dollar volume as a percent of the total dollar volume. The volumes of ATSs and nonATS interdealer brokers are broken out by Customer trades, Dealer trades, and PTF trades within each group.[c] Data is based on the regulatory version of TRACE for U.S. Treasury Securities from Apr. 1, 2021, to Sept. 30, 2021. Bilateral trades are a catchall classification that may include trades conducted via bilateral negotiation, as well as trades conducted electronically via platforms not registered with FINRA as an ATS.

[a] The percentage to the nearest non-zero is 0.01%.

[b] The analysis based on TRACE is necessarily limited to transactions reported to TRACE, which may not be all transactions in government securities. Transactions that take place on non-FINRA member ATSs or between two non-FINRA members are not reported to TRACE. The analysis based on TRACE is necessarily limited to transactions reported to TRACE, which may not be all transactions in government securities. Transactions that take place on non-FINRA member ATSs or between two non-FINRA members are not reported to TRACE. Entities in the ATS TRACE category encompass the IDBs described in the preamble of this release. By contrast, the non-ATS IDB category in TRACE encompasses the voice-based or other non-anonymous methods of bringing together buyers and sellers. See supra note 4344 and referencing text.

[c] We identify ATS trades and non-ATS interdealer broker trades using MPID in the regulatory version of TRACE for U.S. Treasury securities. The regulatory version of TRACE for U.S. Treasury securities includes an identifier for customer and interdealer trades. Furthermore, we use MPID for non-FINRA member subscriber counterparties in the regulatory version of TRACE for U.S. Treasury Securities to identify PTF trades on ATSs.

a. Dealer-to-Customer Cash U.S. Treasury Securities Market (Off-IDBs)

i. Bilateral Clearing

In cash U.S. Treasury security transactions that are bilaterally cleared, the process generally begins with participants initiating the trade by an electronic or voice trading platform, and both parties booking the details of the trade in their internal systems and confirming the details of the trade with one another. Once the details are confirmed, each party then sends messages to its clearing or settlement agents to initiate the clearing process. Different types of institutions use different clearing and settlement agents, with buy-side firms typically using custodial banks, dealers using clearing banks, and hedge funds and PTFs using prime brokers. With regard to the posting of margin, the Commission understands that most bilaterally cleared trades go unmargined.[307]

Bilaterally cleared trades make up 87% of total trading in the secondary U.S. Treasury securities market, making them the most prevalent trade type in the market.[308] These trades include at least one party that is not a member of the CCP. The bilateral clearing process comes with risks. After the trade is executed, the principals to the trade face counterparty credit risk, in the event that either party fails to deliver on its obligations.[309]

ii. Central Clearing

There is essentially no central clearing of dealer-to-client trades of U.S. Treasury Securities.[310] Should a trade be centrally cleared, the CCP receives a notice of the executed trade from both parties, and after comparison (*i.e.,* matching of the trade details), the CCP guarantees and novates the contract, where novation refers to the process by which the CCP becomes the counterparty to both the buyer and seller in the original trade. Once the trading day ends and all trades have been reported to the CCP (*i.e.,* end of T+0), the CCP determines its net obligations to each CCP participant for each security and communicates the resulting settlement obligations to the counterparties. The participants then have the obligation to settle their portion of the trade on T+1. Once this information is communicated, the participants send instructions to their settlement agents. In contrast to the bilateral case, central clearing reduces the credit risk that both parties are exposed to throughout the trade. While at execution both CCP members hold the usual counterparty credit risk to one another, this risk is transformed, generally within minutes of trade execution, when the trade details are sent to the CCP and the CCP guarantees and novates the trade. Instead, both parties to the trade now hold centrally cleared credit risk, and the CCP has counterparty risk to both members.

[307] TMPG White Paper, *supra* note 21, at 3 ("Margining has not been a common practice for regularly settling bilaterally cleared transactions . . .").

[308] TMPG White Paper, *supra* note 21, at 12. This figure is estimated from 2017H1 data and includes approximately 19% hybrid clearing. *See supra* section III.A.2.b (IDB Transactions) and *infra* section IV.b.4.b (iii) for discussions of hybrid clearing.

[309] TMPG White Paper, *supra* note 21, at 13.

[310] *See* G–30 Report, *supra* note 5, at 1.

b. Cash U.S. Treasury Trades Through an IDB [311]

Trades through IDBs can go through three different clearing processes, as IDBs act as the principals for the buying and selling entities transacting on the IDB who may or may not be CCP members. When the purchaser and the seller are CCP members, each leg of the trade is centrally cleared. When neither of the parties to the trade is a CCP member, conversely, each leg of the trade is cleared bilaterally. Finally, when one party to the trade is a CCP member and the other is not, the CCP member's trade is centrally cleared, while the other leg of the trade is cleared bilaterally. For clarity, we outline each of these cases separately.

i. Central Clearing

In the case where both the buyer and seller are CCP members, the process is largely the same as the process outlined in section IV.B.4.a.ii. Since all three parties, buyer, seller, and IDB are CCP members, there are just two centrally cleared trades submitted simultaneously, one between the seller and the IDB, and the other between the IDB and the buyer. Both trades are submitted to the CCP, which novates the trades, resulting in 4 separate trades. At the end of T+0, the CCP nets out the IDB's position, and sends the buyer and seller their net obligations on T+1.

The credit risk in this trade is largely the same as in the centrally cleared case without an IDB, though there is now additional counterparty credit risk on T+0 coming from the IDB's involvement in the trade. However, this additional counterparty risk is not present for very long, for two reasons. First, once the trade is submitted for clearing, counterparty risk shifts from bilateral to centrally cleared (that is, from the IDB to the CCP). Second, while the IDB holds centrally cleared credit risk, the position is netted out at the end of T+0.

ii. Bilateral Clearing

The case where the non-CCP member buyer and seller use an IDB is similar to the bilateral clearing case detailed in section IV.B.4.a(i) *supra.*[312] At execution, the trade is placed either by voice or on the IDB's electronic platform. On T+1, the IDB settles both legs of the trade. To settle its trade with the IDB, the seller instructs its settlement agent to send securities against payment to the IDB. This settlement agent then transfers the securities from the seller to the securities account of the buyer's settlement agent. The buyer's settlement agent then credits the securities to the IDB's securities account. To settle its trade with the buyer, the IDB instructs the buyer's settlement agent to transfer securities to the buyer's account, by transferring the securities from the IDB's securities account to the settlement agent's omnibus account. Finally, the clearing agent credits the securities to the buyer's securities account, which is maintained by the clearing agent. Additionally, because the IDB is principal to both parties, it can clear and settle trades on a net basis with respect to each party. This netting occurs throughout the day on T+0 and the net position is settled on T+1.

Credit risk in this scenario is different than in the centrally cleared case discussed in the previous section. Because the IDB stands as principal between the buyer and the seller but does not submit the trades for central clearing, the IDB, buyer, and seller all hold counterparty credit risk for net unsettled positions throughout T+0 and overnight on the net exposures to each party. In addition, unlike the centrally cleared case where the CCP collects margin from its counterparties, the Commission understands that IDBs generally do not collect margin to collateralize this risk.[313] Further, the IDB is now involved in settlement, making it subject to the counterparty credit risk described in section IV.B.4.a(i), *supra.* In particular, the settlement agent for the buyer faces credit extension risk from the IDB, as they deliver cash to the seller's settlement agent prior to the security being transferred. Once the securities are transferred, this risk is extinguished.

Finally, since the trade is not centrally cleared and the IDB stands as principal between the two parties, the IDB has a legal obligation to deliver securities to the buyer, even if the seller fails to deliver or defaults. In practice, an IDB might fail to deliver securities if the seller fails, generating what is known as a matched fail, where there is an expectation that the fail will be cured shortly (to the extent that it is not caused by a creditworthiness or liquidity event on the seller's part). If the seller is impaired or goes into bankruptcy, the IDB will likely source securities for delivery to the buyer, rather than carry an open fail to deliver, due to both its obligation to deliver securities as well as reputational concerns. For the same reasons the IDB will likely source cash if the buyer is impaired or goes into default. Given these obligations, the IDB actively monitors participants and their positions across its various platforms. Nevertheless, unlike a CCP, an IDB does not mutualize risk across all of the participants on its platform. As a result, compared to a CCP that collects margin and mutualizes losses among its members, if a counterparty to a bilaterally cleared trade defaults to the IDB, all else equal there is a greater risk that the IDB would then default to the other counterparty.

iii. Hybrid Clearing

In IDB trades where one counterparty to the trade is a FICC member and the other is a non-FICC member, then a hybrid clearing model is used in which one side of the trade is cleared through FICC, and the other is cleared and settled bilaterally. In these cases, the leg of the trade between the FICC member and the IDB will follow the central clearing example outlined in section IV.B.4.b.i *infra,* as FICC members are generally dealers. Similarly, the leg of the trade between the IDB and the non-FICC member will be bilaterally cleared as described in section IV.B.4.b.ii *supra,* as the non-FICC entities trading on IDBs are generally PTFs and other unregistered market participants.

5. Margin Practices in U.S. Treasury Secondary Markets

As described above, posting of margin is one way to manage the risk of settlement in cash trades. Indeed, for trades that are centrally cleared, the CCP collects margin on an intraday basis, typically twice per day.[314] Varying bespoke arrangements appear to characterize current margining practices in the bilateral, non-centrally cleared cash market.[315] Indeed, a recent publication stated that competitive pressures in the bilaterally settled market for repo transactions has exerted downward pressure on haircuts, sometimes to zero.[316] The reduction of haircuts, which serve as the primary counterparty credit risk mitigant in bilateral repos, could result in greater exposure to potential counterparty default risk in non-centrally cleared repos. Such arrangements (in both cash

[311] *See generally* TMPG White Paper, *supra* note 21.

[312] *See also* TMPG White Paper, *supra* note 21, at 23.

[313] *See* TMPG White Paper, *supra* note 21, at 3.

[314] TMPG White Paper, *supra* note 21, at 3.

[315] *Id.* at 3. Non-centrally cleared cash trades are negotiated and settled bilaterally, and the Commission has little direct insight into the arrangements market participants use to manage their counterparty exposure. The TMPG observes in the White Paper that non-centrally cleared trades are ''. . . not margined in a uniform or transparent manner, thereby creating uncertainty about counterparties' exposure to credit and market risk.'' *Id.*

[316] G–30 Report, *supra* note 5, at 13.

and repo) may not take into account the value of margin in protecting against systemic events, because they are designed to be optimal for the counterparties rather than the larger financial market.

For centrally cleared cash U.S. Treasury transactions, however, FICC rules dictate that margin must be posted based on the net positions of all members with the clearing agency. Positions in securities with longer maturities—for example, 20+ year U.S. Treasury bonds—require more margin to be posted because they are more sensitive to interest rate changes. Required margin is also larger for short positions, and rises with volatility in the U.S. Treasury securities market.[317] For example, during the first quarter of 2020, a period which includes the U.S. Treasury securities market disruption of March 2020, total initial margin required was 9.4% higher than the previous quarter and the average total variation margin paid was 72% higher.[318]

FICC Rules set forth the various components of a member's margin requirements.[319] The largest component is a Value-at-Risk (VaR) charge, which is calculated both intraday and end-of-day and reflects potential price volatility of unsettled positions. FICC typically calculates VaR using ten years of historical data; for securities without the requisite amount of data, FICC instead employs a haircut approach, where the required margin is some percentage of the traded security's value. Other components of FICC's margin requirements include a liquidity adjustment charge, which is levied against members who have large, concentrated positions in particular securities that FICC determines to be difficult to liquidate, and special charges that can be levied in response to changes in aggregate market conditions (such as increases in market-wide volatility).

In the market for bilaterally cleared repo, margin typically comes in the form of overcollateralization. That is, if a lender is providing $100 of cash, the borrower will provide more than $100 of securities as collateral. This extra collateral—which is essentially a form of initial margin—protects the lender by making it more costly for the borrower to default, while also protecting the lender against the risk that short-term volatility erodes the value of the posted collateral. The difference between the cash provided and the value of the collateral is known colloquially as a ''haircut.'' Triparty repo also features overcollateralization, where the haircut is again negotiated bilaterally between the two counterparties.[320] Data from the Federal Reserve Bank of New York show that a 2% haircut is the norm in the Triparty/GCF repo market, though there are occasionally some deviations from the norm.[321] Money market funds also generally require margin of 2%, which is generally the case for other investment companies as well.[322] Outside of money market funds and other investment companies, due to the lack of reporting requirements for bilateral repo, the Commission lacks good insight into margin practices of participants in the market for bilaterally cleared repo. Anecdotally, the Commission understands that—as with the cash market—some participants may not be required to post any margin.[323]

While overcollateralization protects the lender, the bilaterally cleared repo market generally does not feature the same level of protection for the borrower. Indeed, one of the main benefits of the bilateral market to lenders is that it allows them to reuse the collateral. As a result, borrowers are exposed to settlement risk and must manage that risk as they see fit. In the triparty repo market, posted collateral remains in the custody of the clearing bank and cannot be reused by the lender except as collateral in another triparty repurchase agreement, reducing settlement risk for the borrower.

Unlike bilaterally cleared and triparty repo, centrally cleared repo generally does not feature overcollateralization. Instead, the counterparties post cash margin to the CCP twice per day, as they do with trades in the cash market. Borrowers may be required to post more margin than lenders, similar to how in the bilaterally cleared market borrowers post margin through overcollateralization while lenders do not.

6. Disruptions in the U.S. Treasury Securities Market

There have been significant disruptions in the U.S. Treasury securities market in recent years. Although different in their scope and magnitude, these events all generally involved dramatic increases in market price volatility and/or sharp decreases in available liquidity.[324] U.S. Treasury securities are generally not information sensitive in that their payoff is fixed in nominal terms. Moreover, there is little evidence that information on inflation risk or expectations could have driven the volatility observed in these episodes, raising the possibility that the volatility originated in a buy-sell imbalance, as opposed to fundamental factors. While a market failure could be the origin of price volatility, the forward-looking nature of markets can compound liquidity-driven price movements. The fear of being unable to exit a position can lead to a ''rush to the exits,'' leading to yet greater price swings. Because U.S. Treasury securities are standardized, they generally benefit from a deep, ready market for transactions. Investors count on the ability to move between cash and U.S. Treasury securities seamlessly.[325] This makes events that reduce liquidity in these markets especially striking and destabilizing to the overall market.

a. COVID–19 Shock of March 2020

The market for U.S. Treasury securities experienced significant disruptions in March 2020, characterized by a spike in volume, whose origins may have been multiple but included high levels of selling by foreign banks and by hedge funds.[326] For example, hedge funds, one of the principal sellers of U.S Treasury futures, hedge their short futures position by

[317] *See* FICC Rule 4, section 1b, *supra* note 47. FICC's margin requirements are discussed in more detail below. A key component of the margin requirement is a Value-at-Risk charge, where the calculated margin requirement is based in part on the historical volatility of the traded security. Securities that are more sensitive to interest rates should have higher VaR, all else equal.

[318] *See CPMI IOSCO Quantitative Disclosure Results for 2020Q1 and 2019Q4,* items 6.1.1 and 6.6.1, *available at https://www.dtcc.com/legal/policy-and-compliance.*

[319] FICC Rule 4, section 1b, *supra* note 47.

[320] Although triparty repo transactions are settled through a clearing bank, the terms of the transactions are bilaterally negotiated. Although haircuts vary by collateral type, the variance of haircuts is small for U.S. Treasury repo compared to other collateral types. *See* Paddrik, *et al., supra* note 273.

[321] For data on the median, 10th, and 90th percentiles of overcollateralization in Triparty repo, see *https://www.newyorkfed.org/data-and-statistics/data-visualization/tri-party-repo.* The median level of overcollateralization has been 2% for the entire period from May 2010 through June 2022. The 10th and 90th percentiles are also typically 2%, although the 10th percentile has occasionally fallen to as low as zero—notably, in the summer of 2010 and again briefly in September 2012—while the 90th percentile has occasionally spiked to as high as 5%—specifically in January 2017 and again in April of the same year.

[322] *See* MMF Primer, *supra* note 57.

[323] *See* G–30 Report, *supra* note 5, at 13 (noting that minimum margin requirements ''. . . would stop competitive pressures from driving haircuts down (sometimes to zero), which reportedly has been the case in recent years.'').

[324] *See* IAWG Report, *supra* note 4, for further discussion of these and other disruptions.

[325] U.S. Treasury securities are often used as substitutes for cash. There is anecdotal evidence that during March 2020, some market participants refused U.S. Treasury securities collateral in favor of cash.

[326] *See* U.S. Credit Markets Interconnectedness and the Effects of the COVID–19 Economic Shock (Oct. 2020) at 3.

establishing a long position in the cash market, creating a ''cash-futures basis trade.'' The cash position of this trade is often highly levered, using the repo market for financing. In March, as the U.S. Treasury securities market came under stress and as repo rates increased in some segments of the repo market, the economics of the cash-futures basis trade worsened and various funds found it necessary to unwind at least a portion of their positions. This unwinding of positions resulted in more outright sales of U.S. Treasury securities in the cash market, adding further stress through a feedback loop.[327]

During this period, bid-ask spreads increased by a factor of 5, and market depth on inter-dealer brokers decreased by a factor of 10. The price of 30-year U.S. Treasury securities fell by 10% in one two-day period. Arbitrage relations appeared to break down throughout the market.[328] This may, as discussed above, have led to the winding down of the cash-futures basis trade, for example, adding to further stress.[329] There also appeared to be large-scale selling from foreign investors, including official institutions, to address their domestic currency and liquidity needs.[330]

Duffie and Liang and Parkinson, among others, have tied these patterns to underlying U.S. Treasury securities market structure, in which intermediation capacity may be reduced relative to the size of the market and ultimate buyers and sellers may have difficulty locating each other. These authors discuss ways in which central clearing could have reduced these problems, mitigating the large price swings due to illiquidity in the market just when it was most needed.[331] One view of central clearing is that it may facilitate all-to-all trading, thus helping ultimate buyers and sellers find each other.[332] More buyers and sellers of U.S. Treasury securities could potentially act as additional sources of liquidity in a market with central clearing.

[327] *Id.* at 4. In addition, a similar dynamic was observed in the risk parity trades, where hedge funds lever up (through the repo markets) lower volatility fixed-income positions (*e.g.,* government bonds) to create a risk-equalized portfolio across asset classes. *See id.*

[328] Duffie, *supra* note 186.

[329] *See supra* note 150.

[330] *See* Colin R. Weiss, *Foreign Demand for U.S. Treasury Securities during the Pandemic* (Feds Notes, Jan. 28, 2022), *available at https://www.federalreserve.gov/econres/notes/feds-notes/foreign-demand-for-us-treasury-securities-during-the-pandemic-20220128.htm.*

[331] Duffie, *supra* note 186; Liang & Parkinson, *supra* note 32.

[332] *See* Duffie *supra* note 186.

b. September 2019 Repo Market Disruptions

The repo market experienced a substantial disruption starting September 16, 2019 when overnight repo rates began to rise, and on September 17, 2019 when the rise in repo rates accelerated dramatically. During the episode, the Secured Overnight Financing Rate (SOFR)—a measure of the average cost of overnight repo borrowing—spiked by 300 basis points to over 5% in the course of 2 days. There was also a wide dispersion around this average; some trades occurred at rates as high as 9%. On top of this, the spread between the 1st and 99th percentile rates increased substantially from its average earlier in 2019 of approximately 25 basis points to approximately 675 basis points during the disruption. The disruption spilled over into the other markets, with the Effective Federal Funds Rate (EFFR) rising above the Federal Reserve target by 5 basis points.

The disruption occurred amidst two events: first, a large withdrawal of reserves from the banking system to service corporate tax payments due September 16; and second, the settlement of U.S. Treasury securities auctions. Altogether, the tax payments led approximately $120 billion to flow away from bank reserves, bringing them down to their lowest level in 5 years.[333] Moreover, the auction settlement raised the number of U.S. Treasury securities outstanding, which was accompanied by an increased demand for cash to fund purchases of these securities. The need for cash reserves played a role in what appears to be an unwillingness of banks to lend to one another at very high rates. Less tangibly, market expectations could have played a role; it is possible that the spike in rates could have been interpreted as a signal for a future need of cash reserves, leading banks to conserve cash regardless of what appeared to be strong economic incentives to do otherwise.

While the need for the banking system to replace reserves with cash may be part of the explanation, in a well-operating market high rates for overnight borrowing collateralized by U.S. Treasury securities would have attracted other market participants. Ultimately, as in March 2020, the Federal Reserve injected reserves into the system—the economic equivalent of lending to banks. The overnight repo

[333] *See* Sriya Anbil *et al., What Happened in Money Markets in September 2019?* (Feb. 27, 2020), *available at https://www.federalreserve.gov/econres/notes/feds-notes/what-happened-in-money-markets-in-september-2019-20200227.htm.*

operations totaled $75 billion on September 17, 2019. Besides directly providing cash, this perhaps signaled the Fed's willingness and ability to lend as needed to restore rates to levels that would be dictated in the absence of market frictions. In such a setting, a potential benefit of enhanced clearing for U.S. Treasury repo and cash is its ability to reduce those market frictions directly, without official sector intervention.

c. October 2014 Flash Rally

In March 2020 U.S. Treasury securities' prices fell, whereas in September 2019 the rate for lending increased. Both events were associated in an increase in the cost of borrowing. The events of October 15, 2014, were different in form: in this instance, yields on U.S. Treasury bonds fell quickly and dramatically, leading to large increases in prices, without any clear explanation. The intraday range for the 10-year bond was 37 basis points, one of the largest on record, and far outside the typical historical distribution.[334] October 15, 2014, featured the release of somewhat weaker-than-expected U.S. retail sales data at 8:30 a.m. ET. While the data appeared to prompt the initial decline in interest rates, the reaction was far larger than would have been expected given the modest surprise in the data. Suggestive of some connection is that the dollar amount of standing quotes in the central limit order books on cash and futures trading platforms—a measure of the quantity of liquidity that is commonly referred to as ''market depth''—fell dramatically in the hour before the event window.

A sudden rise in price does not at first appear as potentially disruptive as a decline. However, it appears that levered market participants had taken short positions in anticipation of an increase in yields. Any further increase in price would have forced these participants to cover their positions. Indeed, hedge funds became net buyers of U.S. Treasury securities on the morning of October 15, 2014. The decline in liquidity may have led to a further concern of an inability to exit positions. In particular, although the share of trading volume attributed to PTFs on October 15 does not stand out as unusual relative to the prior period,[335] PTFs significantly reduced the dollar amounts of standing quotes in central limit order books,[336] leading to greater pressure on the system. This withdrawal of liquidity appears to have

[334] *See generally* Joint Staff Report, *supra* note 4.

[335] *See* Joint Staff Report, *supra* note 4, at 21.

[336] *See* IAWG Report, *supra* note 4, at 18.

been motivated by an attempt to manage risk. Lastly, though broker-dealers increased their trading volume, they provided less liquidity to the order books by widening their spreads and in some cases withdrawing for brief periods from the offer side of the book.[337]

This disruption showed that market liquidity provision had become more short-term in nature, some liquidity providers were backed by less capital, and liquidity was more vulnerable to shocks as a result of the change in the composition of liquidity providers. In addition, electronic trading permitted rapid increases in orders that removed liquidity. These vulnerabilities are similar to ones observed during the March 2020 events.[338] As in the previously described episodes, the price swings illustrate the apparent difficulty for outside capital at accessing the market. Improved market functioning could have allowed economic incentives to help stabilize the system: end-users of U.S. Treasury securities could have reacted to the unusually high prices by selling. However, such participants would have needed access to pricing and to the ability to trade.

7. Affected Persons

a. Covered Clearing Agencies for U.S. Treasury Securities: FICC

Although the Membership Proposal would apply to all U.S. Treasury securities CCAs, FICC's Government Securities Division, as noted previously, is the sole provider of clearance and settlement services for U.S. Treasury securities. FICC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (DTCC); DTCC is a private corporation whose common shares are owned by fee-paying participants in DTCC's clearing agency subsidiaries, including FICC.[339] In 2021 and 2020, FICC's total clearing revenue was approximately $310 and $297.3 million, respectively, and its net income was approximately $13.4 and 18.1 million, respectively.[340]

The G–30 Report estimated that ''roughly 20 percent of commitments to settle U.S. Treasury security trades are cleared through FICC.'' [341] Although various analyses have noted the increased volume of secondary market U.S. Treasury transactions that are not centrally cleared,[342] the dollar value of transactions FICC clears remains substantial. In 2021, FICC's GSD processed $1.419 quadrillion in U.S. Government securities.[343] In March 2020, clearing dollar volume in U.S. Treasury securities at FICC rose ''to over $6 trillion daily, an almost 43 percent increase over the usual daily average of $4.2 trillion cleared [at that time].'' [344]

There are differences between the degree of central clearing in the cash and the repo markets. Based on 2017 data, the TMPG estimated that 13 percent of cash U.S. Treasury securities transactions are centrally cleared; 68 percent are bilaterally cleared; and 19 percent involve hybrid clearing, in which only one leg of a transaction on an IDB platform is centrally cleared.[345] A Federal Reserve staff analysis of primary dealer repo and reverse repo transactions during the first half of 2022 found ''that approximately 20 percent of all repo and 30 percent of reverse repo is centrally cleared via FICC.'' [346] Measured by dollar volume, repos, according to DTCC, are the largest component of the government fixed-income market.[347] In mid-July 2021, according to Finadium and based on DTCC data, FICC processed $1.15 trillion in repo, or roughly 25 percent of the $4.4 trillion U.S. repo market at that time.[348] For all of 2021, DTCC reported that FICC processed $251 trillion through its GCF Repo Service.[349]

b. Direct Participants at U.S. Treasury Securities CCAs: FICC Netting Members

If adopted, the Membership Proposal would directly affect market participants that are direct participants in a U.S. Treasury securities CCA, which currently means only direct participants at FICC's GSD. FICC direct participants are also referred to as FICC Netting Members. As previously discussed, FICC Netting Members are the only FICC members eligible to become a counterparty to FICC to a U.S. Treasury securities transaction, including repo and reverse repo trades. As of May 3, 2022, FICC's GSD had 202 Netting Members of which 187 were participants in FICC's repo netting service.[350] FICC Netting Members generally consist of bank-affiliated dealers and registered broker-dealers. These dealers include all 25 financial institutions currently designated by the Federal Reserve Bank of New York (N.Y. Fed) as ''primary dealers.'' [351] In 2021, the average daily trading dollar value in U.S. Treasury securities by primary dealers was $624.1 billion.[352] The relative significance of dealer trading in the cash market for U.S. Treasury securities can is shown in Figure 8.

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[337] *See id.*

[338] *See id.*

[339] *See generally* Notice of No Objection to Advance Notices, Exchange Act Rel. No. 74142 (Jan. 27, 2015), 80 FR 5188 (Jan. 30, 2015) (not objecting to a proposal that DTCC's new common share ownership formula will be based solely on fees paid to its subsidiary clearing agencies).

[340] FICC, Financial Statements as of and for the Years Ended Dec. 31, 2021 and 2020, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/financials/2021/FICC-Annual-Financial-Statements-2021-and-2020.pdf*

[341] G–30 Report, *supra* note 5, at 11.

[342] *See, e.g.,* IAWG Report, *supra* note 4, at 5–6 (citing TMPG White Paper); 2017 Treasury Report, *supra* note 16, at 81; Joint Staff Report, *supra* note 4, at 36–37.

[343] Performance Dashboard, DTCC 2021 Annual Report, at 56, *available at https://www.dtcc.com/~/media/files/downloads/about/annual-reports/DTCC-2021-Annual-Report.* FICC's GSD also process U.S. Government securities that are not U.S. Treasury securities but the dollar amount processed of such securities is believed to be nominal by comparison to that of U.S. Treasury securities.

[344] DTCC May 2021 White Paper, *supra* note 135, at 3.

[345] *See* IAWG Report, *supra* note 4, at 30; *see also* TMPG White Paper, *supra* note 21, at 12.

[346] Sebastian Infante, *et al.,* supra note 119 (''Form FR2004 data only cover activities of primary dealers. Therefore, any estimate based on that data is likely to underestimate the total size of the repo market. Discussions with market participants suggest that the nonprimary dealer's market share is smaller than that attributed to the primary dealers, but growing.''). The authors also show that all cleared bilateral repo and reverse repo have U.S. Treasury securities and TIPS as collateral (the authors' Figure 4); Viktoria Baklanova, Adam Copeland, and Rebecca McCaughrin, Reference Guide to U.S. Repo and Securities Lending Markets, N.Y. Fed. Staff Report No. 740, at 11 (rev. Dec. 2015) *available at: https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr740.pdf.*

[347] DTCC, *A Guide to Clearance and Settlement, Chapter 8: Settling Debt Instruments, available at: https://www.dtcc.com/clearance-settlement-guide/#/chapterEight.*

[348] Finadium, *Building Out Industry Data for New Industry Leads,* at 9 (2021), *available at: https://finadium.com/wp-content/pdfs/finadium-dtcc-building-out-repo-data.pdf.*

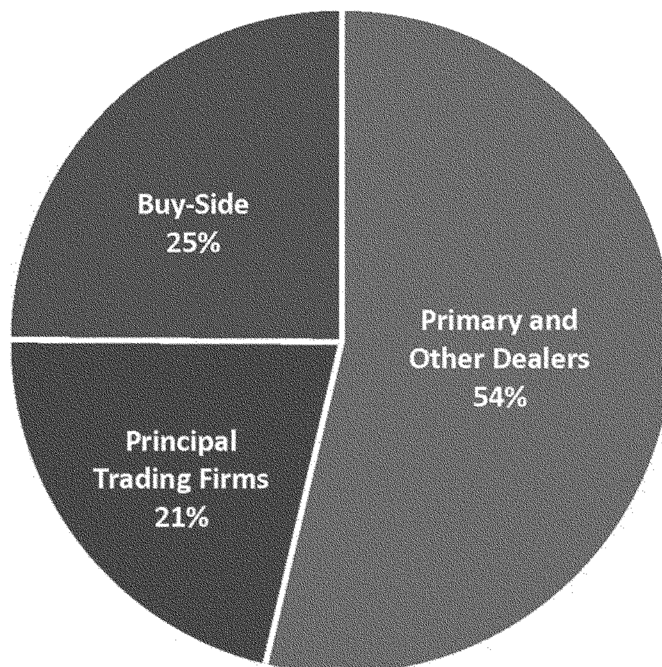
[349] DTCC 2021 Annual Report, *supra* note 343, at 56.

[350] FICC GSD Member Directory, *available at: https://www.dtcc.com/-/media/Files/Downloads/client-center/FICC/Mem-GOV-by-name.xlsx.* 104 Netting Members participated in FICC's GCF service.

[351] Primary dealers are counterparties to the N.Y. Fed in its implementation of monetary policy and expected to participate meaningfully in all U.S. Treasury securities auctions for new issuances of U.S. Treasury securities. *https://home.treasury.gov/policy-issues/financing-the-government/quarterly-refunding/primary-dealers.* A current list of primary dealers is available at: *https://www.newyorkfed.org/markets/primarydealers.*

[352] SIFMA, *2022 Capital Markets Fact Book,* at 56 (July 2022) *available at https://www.sifma.org/wp-content/uploads/2022/07/CM-Fact-Book-2022-SIFMA.pdf* (SIMFA's term primary dealers refers to N.Y. Fed prime brokers). *Id.* The dollar value of trading in U.S. Treasury securities by primary dealers has a combined average annual growth rate of 1.9 percent for the ten year period ending in 2021.

Figure 8 Share of U.S. Treasury Securities Cash Market Activity for All Securities By Participant Type



Source: FINRA TRACE. This figure plots shares of trading volume by participant type for the entire U.S. Treasury securities cash market from April 1, 2019 to December 31, 2019. Figure from Harkrader and Puglia FEDS Note, *supra* note 305. Note: "Buy-side share is assumed to capture institutions such as hedge funds and investment firms but may also include other financial institutions such as banks." *Id.*

As previously discussed, the total notional transactions in the repo market is larger than that of the cash U.S. Treasury securities market. In 2021, aggregate daily primary dealer outstanding total repo positions were $4.3 trillion consisting of $2.5 trillion in repo (75% of which is collateralized by U.S. Treasury securities) and $1.8 trillion in reverse repo (89% of which is collateralized by U.S. Treasury securities).[353] As of December 31, 2021, the repo market as a whole was valued at approximately $5.8 trillion.[354] Although a large portion of this activity is cleared by FICC, a large portion is also not centrally cleared. For 2021, DTCC reported that "FICC matches, nets, settles and risk manages repo transactions valued at more than $3T daily." [355] During the first half of 2022, Federal Reserve staff estimated that a "large fraction of primary dealers' repo (38 percent) and reverse repo (60 percent) activity is in the uncleared bilateral segment." [356] *See* Figure 9. Although these statistics include all collateral types, for the subset of the repo market that includes a primary dealer on one side, the Commission has more detailed data. As Figures 10 and 11 show, the vast majority of uncleared bilateral and tri-party primary dealer repo and reverse repo collateral consists of U.S. Treasury securities (including TIPS). The largest remaining components of repo (approximately 40 percent) and reverse repo activity (approximately 8 percent) are not centrally cleared but settle on the triparty platform. This is labeled "Tri-Party (excluding GCF)" in Figure 9, and the degree to which Treasury collateral is used in these transactions is displayed in Figure 11. The final and by far the smallest component of repo and reverse repo activity (amounting to about 2% of activity) is triparty repo using FICC's Sponsored GC service.[357]

Figure 9 Repo Clearing 2021–2022

[353] SIFMA Research, *US Repo Markets: A Chart Book, at 6, 7, and 8* (Feb. 2022), *available at* SIFMA-Research-US-Repo-Markets-Chart-Book-2022.pdf. Because these are figures for primary dealer repo and reverse repo, they need not be equal. In the aggregate, however, repo must equal reverse repo.

[354] The Financial Accounts of the United States, L.207, line 1 (Federal Funds and Security Repurchase Agreements) *available at https://www.federalreserve.gov/releases/z1/20220310/html/l207.htm.*

[355] DTCC 2021 Annual Report, *supra* note 343, at 32.

[356] 2022 Fed Note, *supra* note 346.

[357] *Id.*

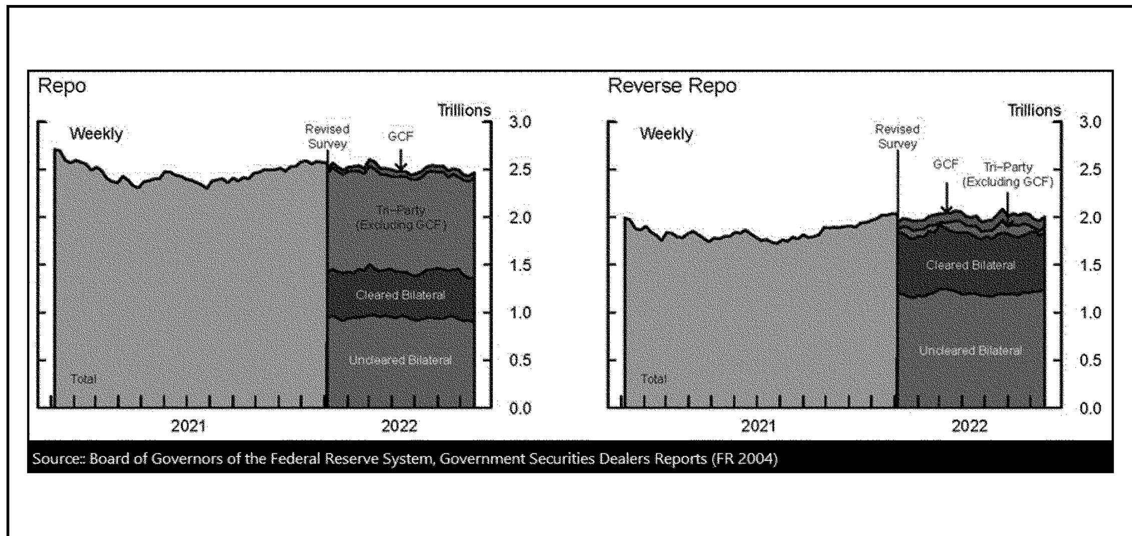
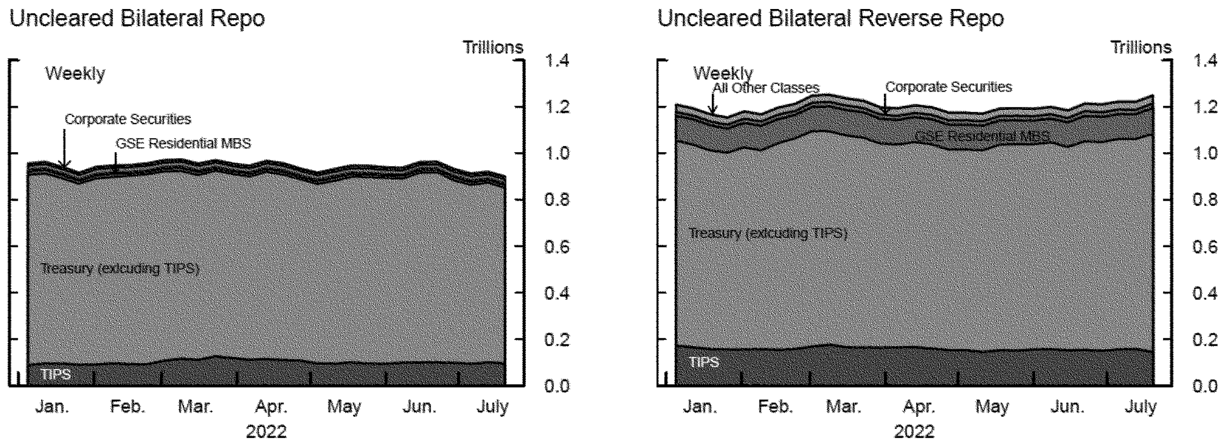
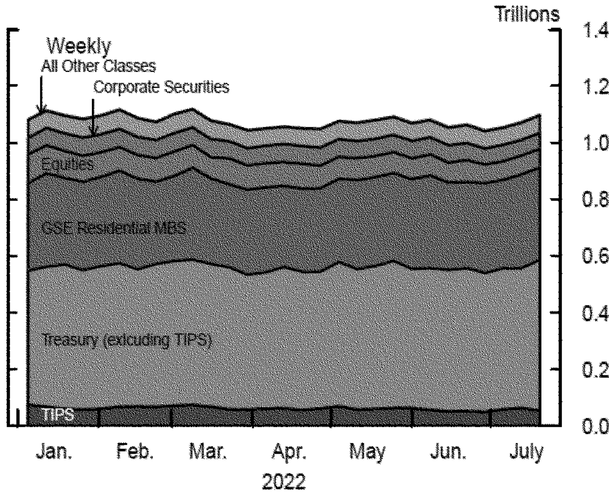


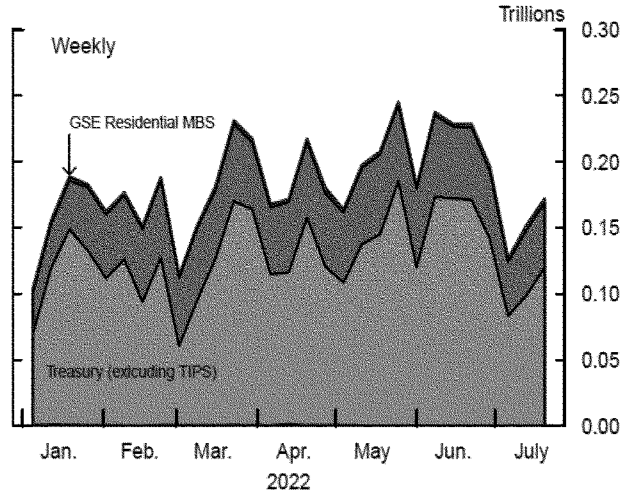
Figure 10 Uncleared Bilateral Repo and Reverse Repo Collateral 2022



Source: Board of Governors of the Federal Reserve System, Government Securities Dealers Reports (FR 2004)

Figure 11 Tri-party Repo and Reverse Repo Collateral 2022





Source: Board of Governors of the Federal Reserve System, Government Securities Dealers Reports (FR 2004)

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c. Interdealer Brokers (IDBs)

Interdealer brokers [358] and the trading platforms they operate play a significant role in the markets for U.S. Treasury securities. As previously discussed, an IDB will generally provide a trading facility for multiple buyers and sellers for U.S. Treasury securities to enter orders at specified prices and sizes and have these orders displayed anonymously to all users. When a trade is executed, the IDB then books two trades, with the IDB functioning as the principal to each respective counterparty, thereby protecting the anonymity of each party, but taking on credit risk from each of them. Although there is no legal requirement for an IDB to be a FICC direct participant/Netting Member, the Commission believes most IDBs are FICC Netting Members.[359] In any event, under FICC's existing rules, if an IDB's customer in a U.S. Treasury security transaction is not a FICC member, the IDB's transaction with that customer need not be centrally cleared and may be bilaterally cleared. As discussed above in section II.A.1, each transaction at an IDB is split into two pieces: a leg between the buyer and the IDB and a leg between the IDB and the seller. If the buyer or seller is a dealer, the respective leg is centrally cleared. Transaction legs involving PTFs are generally cleared and settled bilaterally.

TMPG estimates that ''roughly three-quarters of IDB trades clear bilaterally.'' [360] To help visualize the significance of the role played by IDBs in the centrally cleared market, and given existing data limitations, Table 3, adapted from a table prepared by the TMPG in 2019, presents five clearing and settlement case types that cover the vast majority of secondary market cash trades. The table uses Federal Reserve data collected from primary dealers in the first half of 2017 to estimate the daily volume (dollar and share percentage) attributable to each clearing and settlement case type.

TABLE 3—ESTIMATED SECONDARY CASH MARKET PRIMARY DEALER DAILY TRADING DOLLAR (BILLIONS) AND PERCENTAGE VOLUME BY CLEARING AND SETTLEMENT TYPE

Clearing and settlement type	$ Volume billions	Non-IDB share	IDB share	Overall percentage (%)
Bilateral clearing, no IDB	$289	95%		54.3
Central clearing, no IDB	15	5%		2.9
Central clearing, with IDB	52		22.9%	9.8
Bilateral clearing, with IDB	73		31.9%	13.6
Bilateral/central clearing, with IDB	103		45.3%	19.4
Totals	$531	$304 (57.2%)	$228 (42.8%)	100

Source: TMPG White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities (2019), adapted from a table at p. 12.

Table 3 Notes: Figures are estimated using the Federal Reserves' Form FR2004 data for the first half of 2017 and are based on the following assumptions: (a) primary dealers account for all dealer activity, (b) 5% of dealers' trading not through an IDB is with another dealer, (c) the shares of dealer and non-dealer activity in the IDB market for coupon securities equal the weighted averages of the shares reported in the October 15 report (that is, 41.5% and 58.5%, respectively), (d) only dealers trade bills, FRNs, and TIPS in the IDB market, and (e) the likelihood of dealer and non-dealers trading with one another in the IDB market solely reflects their shares of overall volume. The table presents estimates because precise information is not available on the size of the market or on how activity breaks down by the method of clearing and settlement.

[358] As noted previously, IDB is not used to encompass platforms that provide voice-based or other non-anonymous methods of bringing together buyers and sellers of U.S. Treasury securities. IDB instead refers to electronic platforms providing anonymous methods of bringing together buyers and sellers.

[359] *See generally* TMPG White Paper, *supra* note 21. The TMPG White Paper assumes throughout that IDBs are CCP direct members (*e.g.,* ''More specifically, the IDB platforms themselves and a number of platform participants continue to clear and settle through the CCP.'' TMPG White Paper at 2.)

[360] TMPG White Paper, *supra* note 21, at 2.

d. Other Market Participants

i. FICC Sponsored Members

As discussed previously, some institutional participants that are not FICC Netting Members/FICC direct participants are able to centrally clear repos through FICC's Sponsored Service.[361] The Sponsored Service allows eligible direct participants (Sponsoring Members) to (i) sponsor their clients into a limited form of FICC membership (Sponsored Members) and then (ii) submit certain eligible client securities transactions for central clearing. If adopted, the Membership Proposal could affect Sponsored Members. FICC interacts solely with the Sponsoring Member/direct participant as agent. Sponsoring Members guarantee to FICC the payment and performance obligations of its Sponsored Members.[362] Following FICC's expansion in 2021 of its Sponsored Service to allow Sponsored Members to clear triparty repos through the program,[363] there are now approximately 30 Sponsoring Members and approximately 1,900 Sponsored Members [364] with access to central clearing. During the 12 month period ending on August 9, 2022, the total dollar value of Sponsored Members' daily repo and reverse repo activity ranged from a high of $415.8 billion on December 31, 2021 to a low of $230.2 billion on October 21, 2021.[365]

Among the various types of financial firms that are Sponsored Members are (i) over 1,400 funds, including a number of hedge funds, many money market funds, other mutual funds, and a smaller number of ETFs; [366] (ii) banks, including a small number of national, regional Federal Home Loan Banks, and international banks; and (iii) other asset managers including a few insurance companies.[367]

ii. Other Market Participants That Are Not FICC Sponsored Members

In addition to Sponsored Members, various types of direct and indirect market participants hold significant amounts of U.S. Treasury securities and repo, and potentially purchase and sell U.S. Treasury securities in the secondary cash and repo markets. To the extent that these persons engage in secondary market transactions, we expect their trading may be affected by increased central clearing resulting from the adoption of the Proposal. The most prominent examples are:

1. Hedge Funds, Family Offices, and Separately Managed Accounts

Hedge funds are active participants in the secondary market for U.S. Treasury securities and their trading activities have been shown to be a cause of price movements in the U.S. Treasury securities market.[368] Hedge funds can use U.S. Treasury securities, for example, in order to borrow cash to take leveraged positions in other markets, or to execute complex trading strategies. As of December 31, 2021 approximately 25 percent of qualifying hedge funds reporting on Form PF [369] reported U.S. Treasury securities holdings totaling $1.76 trillion in notional exposure in the cash market and $2.25 trillion in notional exposure to repos.[370] For Large Hedge Fund Advisers (LHFA) [371] reporting on Form PF for the same period, monthly turnover in U.S. Treasury securities was $3.4 trillion.

Family offices are entities established by families to manage family wealth.[372] Family offices tend to exhibit behavior and have objectives that are similar to those of hedge funds including the use of leverage, aggressive investment strategies, and holding illiquid assets. A recent survey of family offices undertaken by RBC [373] found that of 385 participating family offices around the world, almost half (46%) are based in North America. Average family office AUM for North American families was $1 billion.

Similarly, Separately Managed Accounts (SMAs) are also portfolios of assets managed by an investment adviser, usually targeted towards wealthy individual investors. Because of the end investor's risk tolerance, SMAs can also pursue aggressive, leveraged strategies.

[361] FICC's Sponsored Member program also allows the submission of cash transactions; however, as previously noted, the service is generally used only for U.S. Treasury repo transactions at this time.

[362] *See* FICC's GSD Rule 3A, *supra* note 47. Sponsored Members have to be Securities Act Rule 144A ''qualified institutional buyers,'' or otherwise meet the financial standards necessary to be a ''qualified institutional buyer.'' *See id.,* Rule 3A, section 3(a).

[363] *See* Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change to Expand Sponsoring Member Eligibility in the Government Securities Division Rulebook and Make Other Changes, Exchange Act Release No. 85470 (Mar. 29, 2019), *supra* note 126.

[364] *See FICC Membership Directories* (''FICC Membership''), *available at https://www.dtcc.com/client-center/ficc-gov-directories.* As of Dec. 31, 2021, DTCC reported that FICC had 30 sponsoring members and over 1,800 sponsored members. DTCC 2021 Annual Report, *supra* note 343, at 19.

[365] This information was available from DTCC on the 1 year version of the FICC Sponsored Activity chart as of Aug. 12, 2022, *available at: https://www.dtcc.com/charts/membership.*

[366] For various persons, direct participation in FICC may not be an alternative to the Sponsored Membership program. For example, ''[a] subset of market participants, such as certain money market funds, face legal obstacles to joining FICC because they are prohibited from mutualizing losses from other clearing members in the way that FICC rules currently require.'' Chicago Fed Insights, *supra* note 204.

[367] FICC Membership, *supra* note 364.

[368] Ron Alquist & Ram Yamarthy, *Hedge Funds and Treasury Market Price Impact: Evidence from Direct Exposures,* OFR Working Paper 22–05 (Aug. 23, 2022) (''find[ing] economically significant and consistent evidence that changes in aggregate hedge fund [Treasury] exposures are related to Treasury yield changes [and] . . . that particular strategy groups and lower-levered hedge funds display a larger estimated price impact on Treasuries.''), *available at https://www.financialresearch.gov/working-papers/files/OFRwp-22-05-hedge-funds-and-treasury-market-price-impact.pdf.*

[369] For an explanation of qualifying hedge funds, see *supra* note 148. Although the Proposal would cover any hedge fund, smaller funds holdings are not reflected in these statistics because of Form PF's minimum $150 million reporting threshold. An adviser must file Form PF if (1) it is registered (or required to register) with the Commission as an investment adviser, including if it also is registered (or required to register) with CFTC as a commodity pool operator or commodity trading adviser, (2) it manages one or more private funds, and (3) the adviser and its related persons, collectively had at least $150 million in private fund assets under management as of the last day of its most recently completed fiscal year. *See* Form PF General Instruction No. 1, *available at https://www.sec.gov/files/formpf.pdf.*

[370] Division of Investment Management Analytics Office, Private Funds Statistics Fourth Calendar Quarter 2021, Table 46 at 39 (July 22, 2022), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2021-q4.pdf.*

[371] Large hedge fund advisers reporting on Form PF ''have at least $1.5 billion in hedge fund assets under management.'' *See Id.* at 61.

[372] ''Historically, most family offices have not been registered as investment advisers under the Advisers Act because of the 'private adviser exemption' provided under the Advisers Act to firms that advice fewer than fifteen clients and meet certain other conditions.'' SEC Staff, Family Office: A Small Entity Compliance Guide, *available at https://www.sec.gov/rules/final/2011/ia-3220-secg.htm.*

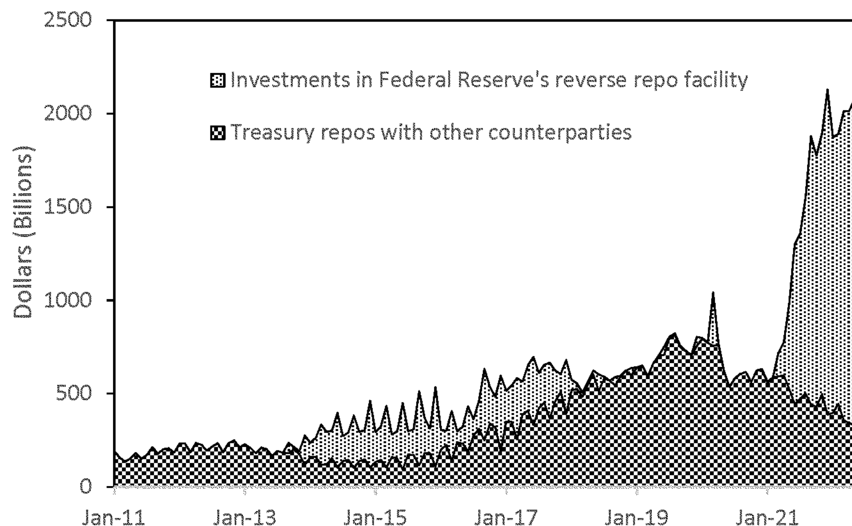
[373] Campden Wealth and The Royal Bank of Canada, *The North America Family Office Report* (2021), *available at: https://www.rbcwealthmanagement.com/_assets/documents/cmp/the-north-america-family-office-report-2021-final-ua.pdf.*

2. Registered Investment Companies (RICs) Including Money Market Funds, Other Mutual Funds, and ETFs

RICs, mainly money market funds, mutual funds, and ETFs, are large holders of U.S. Treasury securities.[374] At the end of the first quarter of 2022, money market funds held $1.8 trillion of U.S. Treasury securities ($1.2 trillion in T-Bills and $603.9 billion in other U.S. Treasury securities).[375] Mutual funds held an additional $1.5 trillion of other U.S. Treasury securities ($34.1 billion of T-Bills and $1.5 trillion of other U.S. Treasury securities) while exchange-traded funds held an additional $334.1 billion in U.S. Treasury securities.[376] The degree to which these entities would be affected depends on the extent to which their trading is likely to take place in the secondary market.[377]

RICs are also active participants in the repo market with money market funds being active cash investors. According to data filed with the Commission, money market funds investments in U.S. Treasury repo, both bilateral and triparty, amounted to approximately $2.3 trillion in June 2022. Moreover, as shown in Figure 12, money market fund U.S. Treasury repo volume has grown from approximately $200 billion monthly in 2011 with the vast majority of the most recent year's growth attributed to investments in the Federal Reserve's repo facility.[378]

Figure 12: Money Market Fund Monthly Repo Volume (01/2011–06/2022)



Source: SEC Form N-MFP

For RICs, holdings of U.S. Treasury securities play an important role in managing liquidity risk stemming from potential redemptions. Given their highly liquid nature, U.S. Treasury securities can be used to raise cash to meet redemptions. For example, a survey conducted by an industry group showed that in the first quarter of 2020 RICs had net sales of $128 billion in Treasury and agency bonds, mainly to meet redemption requests at the onset of the Covid-19 pandemic.[379]

In addition to reliance on Treasury securities as sources of liquidity, RICs use Treasury securities as collateral for borrowing in the repo market as another source of liquidity. Also, RICs accept Treasury securities as collateral in their securities lending programs established to an additional source of income for the fund shareholders.

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[374] Investment companies are the third largest holder of U.S. Treasury securities holding just under $3.6 trillion. MMFs in the Treasury Market, *supra* note 128, at 3 (citing to Financial Accounts of the United States as of Mar. 2022). The other large (over 5 percent) holders are: ''other'' holders (including hedge funds) 30 percent, the Federal Reserve (23 percent), pension funds (14 percent), and U.S. banks and state and local governments (each holding 6 percent). *See id.* at 2 (figure 5).

[375] Federal Reserve Statistical Release, Z.1 Financial Accounts of the U.S, Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, at 119 (L210 Treasury Securities—lines 42–49) (''Financial Accounts of the U.S.''), *available at: https://www.federalreserve.gov/releases/z1/20220609/z1.pdf.*

[376] *Id.* at 119 (L210 Treasury Securities—lines 45–47 and 49).

[377] For example, an analysis of money market fund portfolios' turnover of U.S. Treasury securities by the Commission staff indicates only limited secondary market trading activity. Recently published estimates based on monthly filings of Form N–MFP suggest that, on average, money market funds hold around 70 percent of U.S. Treasury securities to the next month with around 6 percent of U.S. Treasury securities holdings disposed of before maturity. The remaining approximately 23 percent of holdings mature during the month. MMFs in the Treasury Market, *supra* note 128, at 3. These estimates suggest that the proposal's effect on money market fund cash market transactions in U.S. Treasury securities will be very limited relative the proposal's effects on money market funds' repo activities which could be more significant.

[378] *Id.* at 4. The Commission understands the credit rating agencies consider concentration of counterparty credit risk as one factor in determining their rating of money market funds which may drive money market funds to seek diversification of counterparties for the repo transactions.

[379] *See* Shelly Antoniewicz & Sean Collins, *Setting the Record Straight on Bond Mutual Funds' Sales of Treasuries,* Investment Company Institute Viewpoints (Feb. 24, 2022), *available at https://www.ici.org/viewpoints/22-view-bondfund-survey-2.*

3. Principal Trading Firms (PTFs)

The role and importance of PTFs providing liquidity in the U.S. Treasury securities market have been the subject of a number of analyses and reports in recent years.[380] For example, using FINRA's Regulatory TRACE data in connection with a recent rulemaking proposal, we identified 174 market participants who were active in the U.S. Treasury securities market in July 2021 and that were not members of FINRA.[381] We ''found that these participants accounted for approximately 19 percent of the aggregate U.S. Treasury security trading volume [], with PTFs representing the highest volumes of trading among these participants.'' [382] We explained that in our analysis

PTFs had by far the highest volumes among identified non-FINRA member participants in the U.S. Treasury market, and the largest PTFs had trading volumes that were roughly comparable to the volumes of the largest dealers. A Federal Reserve staff analysis found that PTFs were particularly active in the interdealer segment of the U.S. Treasury market in 2019, accounting for 61 percent of the volume on [electronic] interdealer broker platforms . . . .[383]

Based on this Federal Reserve study and assuming that all PTFs are not FICC members and that PTF trading on IDB electronic platforms during the final three quarters 2019 was a reasonable proxy for the average daily current volume of such trading today by PTFs, the Membership Proposal would subject as much as approximately $116.51 billion per day in PTF trades on electronic/automated IDBs to central clearing.[384]

4. State and Local Governments

State and local governments are significant holders of U.S. Treasury securities. As of March 2022, state and local governments held approximately $1.5 trillion in U.S. Treasury securities [385] as part of their budgetary and short-term investment duties.

5. Private Pensions Funds and Insurance Companies.

Insurance companies and pension funds also have significant positions in U.S. Treasury securities. As of March 2022, private pension funds and insurance companies are large holders of U.S. Treasury securities, holding $5.6 trillion and $374.8 billion respectively.[386]

e. Triparty Agent: Bank of New York Mellon [387]

Although triparty repo transactions are bilaterally negotiated, they are settled through BNY Mellon, which currently plays a central role in the triparty repo market as the sole triparty agent.[388] Besides providing collateral valuation, margining, and management services, BNY Mellon also provides back-office support to both parties by settling transactions on its books and confirming that the terms of the repo are met. Additionally, the clearing bank acts as custodian for the securities held as collateral and allocates collateral to trades at the close of the business day. As discussed previously, FICC recently introduced the Sponsored GC Service that extends FICC's GCF repo service to allow for the clearing of triparty repo.[389]

An expansion of central clearing under the Membership Proposal could affect BNY Mellon's triparty business. It is, however, unclear whether increased central clearing would increase or decrease the amount of repo traded that makes use of triparty agent's services previously described.

f. Custodian Banks/Fedwire Securities Service (FSS)

Currently, custodian banks handle much of the trading activity for long-only buy-side clients in the U.S. Treasury securities cash and repo markets. When an asset buyer and seller engage bilaterally as principals in a collateralized securities transaction, a repo for example, a custodian bank will often provide various services to support the transaction. Custodian services include transaction settlement verification, verifying the amount of the relevant credit exposure, calculating required initial and variation margin, and making margin calls. In a tri-party repo transaction that isn't centrally cleared, a custodian perform a clearing function by settling the transaction on its own books without a corresponding transfer of securities on the books of a central securities depository.[390]

FSS, operated by the Federal Reserve Bank system, provides issuance, maintenance, transfer and settlement services for all marketable U.S. Treasury securities to its 3,800 participants.[391] For example, FSS offers the ability to transfer securities and funds to settle secondary-market trades, to facilitate the pledging of collateral used to secure

[380] *See, e.g.,* G–30 Report, *supra* note 5, at 1; Joint Staff Report, *supra* note 4, at 3–4, 36, 55 (''PTFs now account for more than half of the trading activity in the futures and electronically brokered interdealer cash markets.''); Harkrader and Puglia FEDS Note, *supra* note 304; Doug Brain, *et al.,* FEDS Notes, ''Unlocking the Treasury Market Through TRACE'' (Sept. 28, 2018), *available at https://www.federalreserve.gov/econres/notes/feds-notes/unlocking-the-treasury-market-through-trace-20180928.htm. See also* Ryan and Toomey Blog Part III, *supra* note 31 (While in the interdealer cash market, U.S. Treasury securities are often cleared and settled through FICC, ''dealer trades with principal trading firms (''PTFs'')—a very large share of this market—are generally cleared bilaterally because most PTFs are not members of the FICC.''). *See also* IAWG Report, *supra* note 4, at 21 (''on February 25, 2021, a large shift in investor sentiment triggered very high trading volumes [] that temporarily overwhelmed the intermediation capacity of the Treasury market. . . . . Some market participants observed that the stresses on February 25, 2021, were exacerbated by lack of elasticity in liquidity supply resulting from activity limits that IDB platforms impose on some firms, especially PTFs that do not participate in central clearing.'').

[381] Further Definition of ''As a Part of a Regular Business'' in the Definition of Dealer and Government Securities Dealer, Exchange Act Rel. No. 94524 (Mar. 28, 2022), 87 FR 23054, 23072, and 23080 (Apr. 18, 2022) (''Because regulatory TRACE data pertaining to Treasury securities reported by certain ATSs contains the identity of non-FINRA member trading parties, we are able to analyze PTFs' importance in the U.S. Treasury market during July 2021 and summarize the number and type of market participants by monthly trading volume . . . .''). ''Although FINRA membership is not synonymous with dealer registration status, the Commission believes that many of the market participants who are not FINRA members are also likely not registered as government securities dealers.'' *Id.* at 23072 n. 167.

[382] *Id.* at 23072.

[383] *Id.* at 23080. Harkrader and Puglia FEDS Note, *supra* note 304. *See also* FEDS Notes, Unlocking the Treasury Market Through TRACE (Sept. 28, 2018). Harkrader and Puglia used FINRA TRACE data on the trading volume shares of different participant types on IDB platforms for nominal coupon securities from April 1, 2019 to December 31, 2019. They identified $191 billion of average daily dollar volume on electronic/automated IDB platforms during the period. They also noted data limitations, which they estimated amounted to ''a very small fraction of total activity.'' *Id.*

[384] Harkrader and Puglia FEDS Note, *supra* note 304, at table 1 (61% of $191 billion = $116.51 billion).

[385] Financial Accounts of the U.S., *supra* note 375 (Line 19).

[386] *Id.* (Lines 29, 32, and 35).

[387] Paddrik, *et al., supra* note 273 (''The Federal Reserve Board, through the Federal Reserve Bank of New York (FRBNY), supervises triparty custodian banks and, on a mandatory basis pursuant to its supervisory authority, collects transaction-level data at the daily frequency.'').

[388] J.P. Morgan Chase previously served as a custodian in the triparty space but largely exited the market in 2019. *Id.* at 2–3.

[389] *See supra* note 66 and accompanying discussion.

[390] *The Clearing House, The Custody Services of Banks* (July 2016) *available at: https://www.davispolk.com/sites/default/files/20160728_tch_white_paper_the_custody_services_of_banks.pdf*

[391] *See Fedwire Securities Service brochure* (''FSS brochure''), *available at: https://www.frbservices.org/binaries/content/assets/crsocms/financial-services/securities/securities-product-sheet.pdf.* The Federal Reserve Banks offer highly competitive transaction, per-issue and monthly maintenance prices. Account maintenance fees are waived for accounts holding only U.S. Treasury securities and for certain accounts used to pledge securities to the U.S. Treasury and Federal Reserve Banks. Service fees are available at FRBservices.org. Fees for services are set by the Federal Reserve Banks. A 2022 fee schedule is *available at: https://www.frbservices.org/resources/fees/securities-2022*

obligations, and to facilitate repo transactions.[392]

C. Analysis of Benefits, Costs, and Impact on Efficiency, Competition, and Capital Formation

1. Benefits

The proposed amendments would likely yield benefits associated with increased levels of central clearing in the secondary market for U.S. Treasury securities. The Commission previously has stated that registered clearing agencies that provide CCP services both reduce trading costs and help increase the safety and efficiency of securities trading.[393] These benefits could be particularly significant in times of market stress, as CCPs would mitigate the potential for a single market participant's failure to destabilize other market participants, destabilize the financial system more broadly, and/or reduce the effects of misinformation and rumors.[394] A CCP also would address concerns about counterparty risk by substituting the creditworthiness and liquidity of the CCP for the creditworthiness and liquidity of counterparties.[395] Further, the Commission has recognized that ''the centralization of clearance and settlement activities at covered clearing agencies allows market participants to reduce costs, increase operational efficiency, and manage risks more effectively.'' [396] However, the Commission has also recognized that this centralization of activity at clearing agencies makes risk management at such entities a critical function.[397]

Bilateral clearing arrangements do not allow for multilateral netting of obligations, which reduce end-of-day settlement obligations.[398] Larger gross settlement obligations, which increase with leverage, increase operational risks and subsequently the possibility of settlement fails. Central clearing of transactions nets down gross exposures across participants, which reduces firms' exposures while positions are open, and reduces the magnitude of cash and securities flows required at settlement.[399] These reductions, particularly in cash and securities flow ''would reduce liquidity risks associated with those settlements and counterparty credit risks associated with failures to deliver on the contractual settlement date,'' not only for CCP members but for the CCP itself.[400]

It has been suggested that wider central clearing could have lowered dealers' daily settlement obligations in the cash market by up to 60 percent in the run-up to and aftermath of the March 2020 U.S. Treasury securities market disruption and reduced settlement obligations by up to 70 percent during the disruption itself.[401] The reduction in exposure is not limited to the cash market; it has been estimated that the introduction of central clearing for dealer-to-client repos would have reduced dealer exposures from U.S. Treasury repos by over 80% (from $66.5 billion to $12.8 billion) in 2015.[402]

The benefits of multilateral netting flowing from central clearing can improve market safety by lowering exposure to settlement failures.[403] Multilateral netting can also reduce the regulatory capital required to support a given level of intermediation activity [404] and could also enhance capacity to make markets during normal times and stress events because existing bank capital and leverage requirements recognize the risk-reducing effects of multilateral netting of trades that CCP clearing accomplishes.[405] By reducing the level or margin required to support a given total level of trading activity, central clearing may reduce total risk to the system. Financial crises are sometimes precipitated by margin calls following a period of increased volatility. If a market participant holds offsetting positions, then margin calls that might occur could be avoided. Because financial markets are forward-looking, reducing the anticipation of margin calls on other market participants can avoid costly ''bank-run'' type dynamics.[406]

Some benefits associated with capital reductions are particularly relevant for overnight and term repo. In the case of financing activity in U.S. Treasury securities market—U.S. Treasury repo—the entire notional value of the position has to be recorded on a dealer's balance sheet as soon as the start leg of the repo settles, and unless the dealer faces off against the exact same legal counterparty with respect to an offsetting financing trade of the same tenor, the dealer will not be able to net such balance sheet impact against any other position. The grossing up of the dealer's balance sheet in this manner can have implications with respect to the amount of capital the dealer is required to reserve against such activity. When transactions are cleared through a CCP, dealers can offset their centrally cleared repo positions of the same tenor, and thereby free up their capital to increase funding capacity to the market.[407] According to research that Finadium conducted among repo dealers, netting can compress High Quality Liquid Asset (HQLA) bilateral trading books by 60% to 80%.[408]

Cash and repo trades cleared and settled outside of a CCP may not be subject to the same level of uniform and transparent risk management associated with central clearing.[409] By contrast, FICC is subject to the Commission's risk management requirements addressing financial, operational, and legal risk management, which include, among other things, margin requirements commensurate with the risks and particular attributes of each relevant product, portfolio, and market.[410] As the Commission believes that this proposal will incentivize and facilitate additional central clearing in the U.S. Treasury

[392] FSS brochure, *supra* note 391.

[393] *See supra* note 7.

[394] *See supra* note 8.

[395] *Id.*

[396] *See supra* note 10.

[397] *Id.*

[398] See section IV.A.1, *supra* for a discussion of central clearing and the mitigation of clearance and settlement risks.

[399] *See* IAWG Report, *supra* note 4, at 30.

[400] *See* G–30 Report, *supra* note 5, at 13, *supra* note 5; *see also* PIFS Paper, *supra* note 120, at 28–31.

[401] *Id. See also* Michael Fleming & Frank Keane, *Netting Efficiencies of Marketwide Central Clearing* (Staff Report No. Staff Report No. 964), *FEDERAL RESERVE BANK OF NEW YORK* (Apr. 2021), *available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr964.pdf.*

[402] PIFS Paper, *supra* note 120, at 29 (citing OFFICE OF FINANCIAL RESEARCH, Benefits and Risks of Central Clearing in the Repo Market, 5–6 (Mar. 9, 2017), *available at https://www.financialresearch.gov/briefs/files/OFRBr_2017_04_CCP-for-Repos.pdf*).

[403] Duffie, *supra* note 186, at 15.

[404] *See* section IV.A.2, *supra* for an example of how multilateral netting can reduce margin required to support a given level of trading activity.

[405] *See* IAWG Report, *supra* note 4, at 30; Liang & Parkinson, *supra* note 32, at 9; Duffie, *supra* note 186, at 16–17. It is important to note that this netting may offset any potentially higher liquidity charges faced by major participants from clearing at the CCP. *See* Duffie, *supra* note 186, at 17 (''To the contrary, the netting of most purchases against sales at a CCP would lower the overall liquidity requirements of dealers, assuming that dealers continue to intermediate the market effectively.'').

[406] See Menkveld and Vuillemey, 2021, *Annual Review of Financial Economics.*

[407] The positive impact on dealer's ability to increase funding capacity will be offset, in part, by the direct and indirect costs of central clearing. *See id.* and section C.2 *infra.*

[408] Finadium LLC, Netting Rules for Repo, Securities Lending and Prime Brokerage (Sept. 2014). Assets are considered to be HQLA if they can be easily and immediately converted into cash at little or no loss of value. The test of whether liquid assets are of ''high quality'' is that, by way of sale or repo, their liquidity-generating capacity is assumed to remain intact even in period of severe idiosyncratic and market stress. *See https://www.bis.org/basel_framework/chapter/LCR/30.htm?tldate=20191231&inforce=20191215.*

[409] *See* TMPG Repo White Paper, *supra* note 118, at 1. *See also* section IV.B.5, *supra.*

[410] G–30 Report, *supra* note 5, at 13; 17 CFR 240.17Ad–22(e)(6).

securities market, risk management should improve. To offset the risks it faces as a central counterparty, the CCP requires its members to post margin, and the CCP actively monitors the positions its members hold. Moreover, in the event that the posted margin is not enough to cover losses from default, the CCP has a loss-sharing procedure that mutualizes loss among its members.

By lowering counterparty risk, central clearing also allows for the ''unbundling'' of counterparty risk from other characteristics of the asset that is being traded. This unbundling makes the financial market for Treasury securities more competitive.[411]

The Commission also believes that this proposal would help avoid a potential disorderly default by a member of any U.S. Treasury securities CCA. Defaults in bilaterally settled transactions are likely to be disorganized and subject to variable default management techniques, often subject to bilaterally negotiated contracts with little uniformity. Independent management of bilateral credit risk creates uncertainty about the levels of exposure across market participants and may make runs more likely; any loss stemming from closing out the position of a defaulting counterparty is a loss to the non-defaulting counterparty and hence a reduction in its capital in many scenarios.[412]

Increased use of central clearing should enhance regulatory visibility in the critically important U.S. Treasury securities market. Specifically, 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, which should help avoid significant risk to the CCP and to the system as a whole.[413]

As discussed further below, the Commission is unable to quantify certain economic benefits and solicits comment, including estimates and data from interested parties, that could help inform the estimates of the economic effects of the proposal.

a. U.S. Treasury Securities CCA Membership Requirements

The Commission is proposing to amend Rule 17Ad–22(e)(18) to require any covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities to establish written policies and procedures reasonably designed to, as applicable, require that direct participants of a covered clearing agency submit all eligible secondary market U.S. Treasury securities transactions in which they enter for clearing at a covered clearing agency.[414] As previously explained in section III.A.2 *supra,* an eligible secondary market transaction in U.S. Treasury securities would be defined to include: (1) repurchase agreements and reverse repurchase agreements in which one of the counterparties is a direct participant; (2) any purchases and sales entered into by a direct participant that is an interdealer broker, meaning if the direct participant of the covered clearing agency brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions; (3) any purchases and sales of U.S. Treasury securities between a direct participant and a counterparty that is either a registered broker-dealer, government securities dealer, or government securities broker; a hedge fund;[415] or an account at a registered broker-dealer, government securities dealer, or government securities broker where such account may borrow an amount in excess of one-half of the net value of the account or may have gross notional exposure of the transactions in the account that is more than twice the net value of the account.[416] However, any transaction (both cash transactions and repos) where the counterparty to the direct participant of the CCA is a central bank, sovereign entity, international financial institution, or a natural person would be excluded from the definition of an eligible secondary market transaction.

The proposed amendment to Rule 17Ad–22(e)(18) would increase the fraction of secondary market U.S. Treasury securities transactions required to be submitted for clearing at a covered clearing agency. The Commission believes that this would result in achieving the benefits associated with an increased level of central clearing discussed in section IV.C.1 *supra.*

i. Scope of the Membership Proposal

A significant share of both cash and repo transactions in U.S. Treasury securities, including those of direct participants in a covered clearing agency, are not currently centrally cleared.[417] The Commission believes that covered clearing agency members not centrally clearing cash or repo transactions in U.S. Treasury securities creates contagion risk to CCAs clearing and settling such transactions, as well as to the market as a whole and that this contagion risk can be ameliorated by centrally clearing such transactions.

Currently, FICC, the only U.S. Treasury securities CCA, requires its direct participants to submit for central clearing their cash and repo transactions in U.S. Treasury securities with other members.[418] However, FICC's rules do not require its direct participants, such as IDBs, to submit either cash or repo transactions[419] with persons who are not FICC members for central clearing.

The expanded scope of the Membership Proposal would reduce instances of ''hybrid'' clearing, where FICC lacks visibility on the bilaterally cleared component of a trade. As previously mentioned in section II.A.1 *supra,* trades cleared and settled outside of a CCP may not be subject to the same level of risk management associated with central clearing, which includes requirements for margin determined by a publicly disclosed method that applies objectively and uniformly to all members of the CCP, loss mutualization, and liquidity risk management.[420] The Membership Proposal would not only result in the consistent and transparent application of risk management

[411] ''One of the conditions for a perfectly competitive market is that [market participants] are happy to [buy or sell] from any of the many [sellers or buyers] of the [asset]. No [buyer or seller] of the [asset] has any particular advantage . . .'' David M. Kreps, ''A Course in Microeconomic Theory'' Princeton University Press (1990), at 264 (describing the conditions of a perfectly competitive market.) When the transaction is novated to the CCP, market participants substitute the default risk of the CCP for that of the original counterparty.

[412] *See* TMPG White Paper, *supra* note 21, at 32.

[413] Duffie, *supra* note 186, at 15; DTCC October 2021 White Paper, *supra* note 203, at 1; IAWG Report, *supra* note 4.

[414] *See supra* section III.A.

[415] For the purpose of the proposed rule, a hedge fund is defined as any private fund (other than a securitized asset fund): (a) with respect to which one or more investment advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses); (b) that may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration). This definition of a hedge fund is consistent with the Commission's definition of a hedge fund in Form PF. *See* section III.A.2.b (Other Cash Transactions), *supra.*

[416] *See* section III.A.2.b (Other Cash Transactions), *supra.*

[417] *See* DTCC May 2021 White Paper, *supra* note 135, at 5; IAWG Report, *supra* note 4, at 6.

[418] *See* note 101 *supra.*

[419] With regard to Sponsored GC Repos, *see* note 102.

[420] IAWG Report, *supra* note 4, at 30; G–30 Report, *supra* note 5.

requirements to trades that are now bilaterally cleared but would also increase the CCA's awareness of those trades, which it now lacks.[421]

ii. Application of the Membership Proposal to Repo Transactions

The Commission proposes to require that all direct participants of a U.S. Treasury securities CCA submit for clearing all eligible secondary market transactions that are repurchase agreements or reverse repurchase agreements. As discussed in section IV.B.5, *supra* risk management practices in the bilateral clearance and settlement of repos are not uniform across market participants and are less transparent than analogous practices under central clearing.[422]

The benefits of central clearing—including the benefits of netting—increase with the fraction of total volume of similar transactions submitting for clearing at a CCP. Significant gaps persist in the current coverage of transaction data in U.S. Treasury repo.[423] Nonetheless, the Commission understands that, among bilaterally settled repo, approximately half was centrally cleared as of 2021.[424] Centrally cleared triparty repo is a relatively new service, and the proportion may be smaller. Thus, despite the volume of centrally cleared repo transactions as seen in Figure 10 above, and the development of services to encompass more types of repo transactions at FICC, the Commission understands the volume of repo not currently centrally cleared to be substantial. The requirement that all U.S. Treasury CCA members submit all eligible repurchase agreements for central clearing should increase the fraction of total volume of such transactions submitted for central clearing realizing the benefits described above in section IV.C.1 *supra.* In addition, because repo participants are generally large, sophisticated market players, the requirement for repo transactions will cover a set of market participants that already have built most of the necessary processes and infrastructure to comply with the rule.

iii. Application of the Membership Proposal to Purchases and Sales of U.S. Treasury Securities

As discussed above, 68 percent of cash market transactions in U.S. Treasury securities are not centrally cleared, and another 19 percent of such transactions are subject to so-called hybrid clearing.[425] The Commission has identified certain categories of purchases and sales of U.S. Treasury securities that it believes should be part of the Membership Proposal, *i.e.,* for which U.S. Treasury securities CCAs would be obligated to impose membership rules to require clearing of such transactions. The benefits of including these categories are described below.

As with repurchase transactions, the general benefits of central clearing discussed in section IV.A, *supra* become greater as the fraction of total transaction volume that is centrally cleared increases. In other words, there are positive externalities associated with broader central clearing. However, unlike in the repo market, the Commission is not proposing that all cash market transactions completed with a FICC member be centrally cleared.[426]

The Commission understands the set of participants in U.S. Treasury securities cash markets to be far broader and more heterogeneous than in the repo markets. The cash market has many participants that trade in relatively small amounts, whereas the market for repo is dominated by larger, more sophisticated institutions. Although difficult to quantify precisely, the number of participants is one or more orders of magnitude greater in the cash market as compared with the repo market. Because the benefits increase with the number and size of transactions, whereas the costs have a large fixed component, extending the clearing mandate to institutions that are market participants in repo markets and a subset of the institutions that are participants in cash markets may capture a large fraction of market activity while also capturing the most active market participants who may already have some ability to connect with the clearing agency and experience with central clearing.

a. IDB Transactions

The Commission proposes that all purchases and sales of U.S. Treasury securities entered into by a direct participant of a U.S. Treasury securities CCA and any counterparty, if the direct participant of the CCA brings together multiple buyers and sellers using a trading facility (such as a limit order book) and serves as a counterparty to both the purchaser and seller in two separate transactions executed on its platform, be subject to the Membership Proposal. This requirement would encompass the transactions of those entities serving as IDBs in the U.S. Treasury securities market, in that it would cover entities that are standing in the middle of transactions between two counterparties that execute a trade on the IDB's platform.[427]

If adopted, the proposal will result in more central clearing of IDB trades. FICC Member IDBs do not take directional positions on the securities that trade on the IDB's platform. Consequently, a requirement that FICC member IDBs clear all of their trades will give FICC better insight into the risk position of its clearing members though the elimination of the hybrid clearing transactions mentioned above.

In contrast to other FICC members, FICC members that are also IDBs will be required to clear all of their cash trades (and repo, as described above). As described in the TMPG White Paper and in the recent G–30 report,[428] IDBs act as central nodes in the system, in effect serving as clearing agencies without the regulatory structure of clearing agency. Furthermore, the netting benefits to IDBs, as described in section IV.c.1 *supra* are likely to be particularly high, because each transaction on an IDB is matched by a transaction on the other side. IDBs are sophisticated institutions that have experience managing the central clearing of trades as they already centrally clear all trades with other FICC members.

[421] *See supra* note 258.

[422] TMPG Repo White Paper, *supra* note 123, at 1.

[423] IAWG Report, *supra* note 4, at 29.

[424] *Id.* (''Non-centrally cleared bilateral repo represents a significant portion of the Treasury market, roughly equal in size to centrally cleared repo.'') (citing a 2015 pilot program by the U.S. Treasury Department); *see also* TMPG Repo White Paper, *supra* note 118, at 1; Katy Burne, ''*Future Proofing the Treasury Market,*'' BNY Mellon Aerial View, supra note 118, at 7 (noting that 63% of repo transactions remain non-centrally cleared according to Office of Financial Research data as of Sept. 10, 2021).

[425] *See supra* note 21.

[426] The G–30 report recommends an approach to clearing all of repo, and some cash trades. *See generally* G–30 Report, *supra* note 5.

[427] *See supra* section II.A.1 for further discussion of IDBs and their role in the cash market for U.S. Treasury securities.

[428] *See generally* G–30 Report, *supra* note 5.

The configuration of counterparty risk presented by hybrid clearing allows FICC to manage the risks arising from the IDB–FICC member trade, but FICC cannot manage the risks arising from the IDB's offsetting trade with its non-FICC member counterparty and the potential counterparty credit risk and settlement risk arising to the IDB from that trade.[429] Thus, the IDB is not able to net all of its positions for clearing at FICC, and the IDB's positions appear to FICC to be directional, which impacts the amount of margin that FICC collects for the visible leg of the ''hybrid'' transaction. This lack of visibility can increase risk during stress events, when margin requirements usually increase. Thus, FICC is indirectly exposed to the IDB's non-centrally cleared leg of the hybrid clearing transaction, but it lacks the information to understand and manage its indirect exposure to this transaction. As a result, in the event that the non-FICC counterparty were to default to the IDB, causing stress to the IDB, that stress to the IDB could be transmitted to the CCP and potentially to the system as a whole.[430] In particular, if the IDB's non-FICC counterparty fails to settle a transaction that is subject to hybrid clearing, such an IDB may not be able to settle the corresponding transaction that has been cleared with FICC, which could lead the IDB to default. As part of its existing default management procedures, FICC could seek to mutualize its losses from the IDB's default, which could in turn transmit stress to the market as a whole.

The Commission has previously stated that membership requirements help to guard against defaults of any CCP member, as well to protect the CCP and the financial system as a whole from the risk that one member's default could cause others to default, potentially including the CCP itself.[431] Further, contagion stemming from a CCP member default could be problematic for the system as a whole, even if the health of the CCP is not implicated. This is so because the default could cause others to back away from participating in the market. This risk of decreased market participation could be particularly acute if the defaulting participant were an IDB, whose withdrawal from the market could jeopardize other market participants' ability to access the market for on-the-run U.S. Treasury securities.[432] And because IDBs facilitate a significant proportion of trading in on-the-run U.S. Treasury securities, that is, they form central nodes, such a withdrawal could have significant consequences for the market as a whole.[433] The Membership Proposal would therefore help mitigate this risk by mandating that a U.S. Treasury securities CCA ensure its IDB members clear both sides of their transactions, thereby eliminating the various facets of potential contagion risk posed by so-called hybrid clearing.

b. Other Cash Transactions

The Commission has identified additional categories of cash transactions of U.S. Treasury securities to include in the membership requirements for a U.S Treasury securities CCA that it believes will provide the benefits of increased central clearing of U.S. Treasury securities transactions described above.

First, the Commission is proposing that the definition of an eligible secondary market transaction includes those cash purchase and sale transactions in which the counterparty of the direct participant is a registered broker-dealer, government securities broker, or dealer.[434] These entities, by definition, are engaged in the business of effecting transactions in securities for the account of others (for brokers) or for their own accounts (for dealers). Thus, these entities already are participating in securities markets and have identified mechanisms to clear and settle their transactions.[435] More generally, many registered brokers and dealers are familiar with transacting through introducing brokers who pass their transactions to clearing brokers for clearing and settlement.

Second, the Commission proposes that transactions between a direct participant and hedge funds be included in the Membership Proposal. This aspect of the proposal would employ a definition of a hedge fund consistent with that in Form PF.[436]

The proposed requirement seeks to reach funds that are leveraged and that may use trading strategies that involve derivatives, complex structured products, short selling, high turnover, and/or concentrated investments, which may, in turn, present more potential risk to a U.S. Treasury securities CCA through a form of the contagion risk discussed above. When discussing a proposal using a similar standard to define a hedge fund, the Commission recognized that strategies employed by hedge funds, in particular high levels of leverage ''can increase the likelihood that the fund will experience stress or fail, and amplify the effects on financial markets.'' [437] The Commission also stated that ''significant hedge fund failures (whether caused by their investment positions or use of leverage or both) could result in material losses at the financial institutions that lend to them if collateral securing this lending is inadequate. These losses could have systemic implications if they require these financial institutions to scale back their lending efforts or other financing activities generally. The simultaneous failure of several similarly positioned hedge funds could create contagion through the financial markets if the failing funds liquidate their investment positions in parallel at fire-sale prices, thereby depressing the mark-to-market valuations of securities that may be widely held by other financial institutions and investors.'' [438] Through the central clearing of transactions effected by funds and other leveraged accounts, the Commission expects to mitigate the risks attendant to a simultaneous failure of hedge funds or other similar market participants, thus reducing contagion.

Third, the Commission proposes to include within the definition of an eligible secondary market transaction subject to the Membership Proposal any purchase and sale transaction between a direct participant of a U.S. Treasury securities CCA and an account at a registered broker-dealer, government securities dealer, or government securities broker that either may borrow an amount in excess of one-half of the net value of the account or may have gross notional exposure of the transactions in the account that is more than twice the net value of the account.[439] As discussed above, the Commission believes that the inclusion of transactions with such accounts should allow the proposal to encompass transactions between direct participants of a U.S. Treasury securities CCA and a

[429] *See, e.g.,* TMPG White Paper, *supra* note 21, at 22 (noting that in a hybrid clearing arrangement, an ''IDB's rights and obligations towards the CCP are not offset and therefore the IDB is not in a net zero settlement position with respect to the CCP at settlement date.'').

[430] *See* DTCC May 2021 White Paper, *supra* note 135, at 5.

[431] See supra note 7.

[432] TMPG White Paper, *supra* note 21, at 32.

[433] *See id.*

[434] 15 U.S.C. 78o(a) and 78o–5(a) (requirement to register) and 78c(4), (5), (43), and (44) (definitions).

[435] *See supra* note 218 and referencing text describing several methods available to allow market participants to access CCP services through a FICC member.

[436] *See supra* section III.A.2.b (Other Cash Transactions) for a discussion of the definition of hedge fund in the proposed rule and its consistency with that in Form PF Glossary of Terms. *See also* note 143.

[437] *See supra* note 145.

[438] *Id.* at 21.

[439] *See supra* section III.A.2.b (Other Cash Transactions).

prime brokerage account, which, based on the Commission's supervisory knowledge, may hold assets of private funds and separately managed accounts and that may use leverage that poses a risk to U.S. Treasury securities CCA and the broader financial system similar to that of hedge funds as described above. Covering such accounts would also allow for inclusion of, for example, accounts used by family offices or separately managed accounts that may use strategies more similar to those of a hedge fund.

c. Exclusions From the Membership Proposal

The Commission is proposing to exclude certain otherwise eligible secondary market transactions in U.S. Treasury securities from the Membership Proposal. Recognizing the importance of U.S. Treasury securities not only to the financing of the United States government, but also their central role in the formulation and execution of monetary policy and other governmental functions, the Commission is proposing to exclude from the Membership Proposal any otherwise eligible secondary market transaction in U.S. Treasury securities between a direct participant of a U.S. Treasury securities CCA and a central bank.[440] For similar reasons, the Commission is also proposing to exclude from the Membership Proposal otherwise eligible secondary market transactions in U.S. Treasury securities between a direct participant of a U.S. Treasury securities CCA and a sovereign entity or an international financial institution.[441]

Although the Commission believes that the benefits of central clearing are generally increasing in the fraction of total volume that is centrally cleared, it also believes that the Federal Reserve System should be free to choose the clearance and settlement mechanisms that are most appropriate to effectuating its policy objectives.[442] Further, the Commission believes that the exclusion should extend to foreign central banks, sovereign entities and international financial institutions for reasons of international comity.[443] In light of ongoing expectations that Federal Reserve Banks and agencies of the Federal government would not be subject to foreign regulatory requirements in their transactions in the sovereign debt of other nations, the Commission believes principles of international comity counsel in favor of exempting foreign central banks, sovereign authorities, and international institutions.

The Commission also proposes to exclude transactions between U.S. Treasury CCA members and natural persons from the Membership Proposal. The Commission believes that natural persons generally transact in small volumes and would not present much, if any, contagion risk to a U.S. Treasury securities CCA and therefore, the benefits discussed above are unlikely to be important for these transactions.

iv. Policies and Procedures Regarding Direct Participants' Transactions

The Commission is proposing Rule 17Ad–22(e)(18)(iv)(B) that would require that a U.S. Treasury securities CCA establish written policies and procedures to identify and monitor its direct participants' required submission of transactions for clearing, including, at a minimum, addressing a direct participant's failure to submit transactions. The Commission believes that such a requirement should help ensure that a U.S. Treasury securities CCA adopts policies and procedures directed at understanding whether and how its participants comply with the policies that will be adopted as part of the Membership Proposal requiring the submission of specified eligible secondary market transactions for clearing. Without such policies and procedures, it would be difficult for the CCA to assess if the direct participants are complying with the Membership Proposal.

b. Other Changes to Covered Clearing Agency Standards

The Commission believes that certain additional changes to its Covered Clearing Agency Standards that would apply only to U.S. Treasury securities CCAs are warranted to facilitate additional clearing. Such changes should help ensure that the U.S. Treasury securities CCA can continue to manage the risks arising from more transactions from additional indirect participants and to facilitate the increased use of central clearing and the accompanying benefits. These changes, by making central clearing more efficient for market participants, also create incentives for greater use of central clearing.

i. Netting and Margin Practices for House and Customer Accounts

The Commission is proposing amendments to Rule 17Ad–22(e)(6)(i) to require a U.S. Treasury securities CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, calculate, collect, and hold margin amounts from a direct participant for its proprietary U.S. Treasury securities positions, separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities. Such changes should allow a U.S. Treasury securities CCA to better understand the source of potential risk arising from the U.S. Treasury securities transactions it clears and potentially further incentivize central clearing.

In practice, at FICC, clearing a U.S. Treasury securities transaction between a direct participant and its customer, *i.e.,* a dealer to client trade, would not result in separate collection of margin for the customer transaction. Except for transactions submitted under the FICC sponsored member program,[444] FICC margins the transactions in the direct participant's (*i.e.,* the dealer's) account on a net basis, allowing any of the trades for the participant's own accounts to net against trades by the participant's customers.[445]

Under the proposed amendments to Rule 17Ad–22(e)(6)(i), a U.S. Treasury securities CCA would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, calculate margin amounts for all transactions that a direct participant submits to the CCP on behalf of others, separately from the margin that is calculated for transactions that the direct participant submits on its own behalf. Such policies and procedures must also provide that margin collateralizing customer positions be collected separately from margin collateralizing a direct participant's proprietary positions. Finally, the CCP would also be required to have policies and procedures reasonably designed to,

[440] *See supra* section III.A.2.c.i for a discussion of the proposed definition of a central bank for the purposes of the rule.

[441] *See supra* section III.A.2.c.i for a discussion of the proposed definition of sovereign entity and international financial institution. *See also supra* note 160.

[442] *See supra* section III.A.2.c.i for a discussion of the activities of Federal Reserve Bank of New York's open market operations conducted at the direction of the Federal Open Market Committee. *See also* section IV.B.2, *supra.*

[443] *See id.* for a discussion of the Commission's belief in the principles of international comity.

[444] *See supra* note 203.

[445] DTCC October 2021 White Paper, *supra* note 203, at 5–6.

as applicable, ensure that any margin held for customers or other indirect participants of a member is held in an account separate from those of the direct participant.

Because the proposed amendments to Rule 17Ad–22(e)(6)(i) would require separating positions in U.S. Treasury securities transactions of a direct participant in a U.S. Treasury securities CCA from those of customers or other indirect participants, the indirect participants' positions, including those submitted outside of the sponsored member program, will no longer be netted against the direct participant's positions. The indirect participants' positions will be subject to the covered clearing agency's risk management procedures, including collection of margin specific to those transactions. These changes should allow a U.S. Treasury securities CCA to better understand the source of potential risk arising from the U.S. Treasury securities transactions it clears. In addition, these changes should help avoid the risk of a disorderly default in the event of a direct participant default, in that FICC would be responsible for the central liquidation of the defaulting participant's trades without directly impacting the trades of the participant's customers or the margin posted for those trades.

Moreover, the proposed amendments to Rule 17Ad–22(e)(6)(i) should result in dealer-to-customer trades gaining more benefits from central clearing. Because margin for a direct participant's (*i.e.,* a dealer's) trades would be calculated, collected, and held separately and independently from those of an indirect participant, such as a customer, the direct participant's trades with the indirect participant can be netted against the direct participant's position vis-à-vis other dealers, which is not currently the case.[446]

Holding margin amounts from a direct participant of a U.S Treasury securities CCA separately and independently from those of an indirect participant may reduce incentives for indirect participants to trade excessively in times of high volatility.[447] Such incentives exist because the customers of a broker-dealer do not always bear the full cost of settlement risk for their trades. Broker-dealers incur costs in managing settlement risk with CCPs. Broker-dealers can recover the average cost of risk management from their customers. However, if a particular trade has above-average settlement risk, such as when market prices are unusually volatile, it is difficult for broker-dealers to pass along these higher costs to their customers because fees typically depend on factors other than those such as market volatility that impact settlement risk. Holding margin of indirect participants separately from direct participants should reduce any such incentives to trade more than they otherwise would if they bore the full cost of settlement risk for their trades.

ii. Facilitating Access to U.S. Treasury Securities CCAs

The various access models currently available to access central clearing in the U.S. Treasury securities market may not meet the needs of the many different types of market participants who transact in U.S. Treasury securities with the direct members of a U.S. Treasury Securities CCA. The proposed additional provision to Rule 17Ad–22(e)(18)(iv)(C) requires a U.S. Treasury securities CCA to establish, implement, maintain, and enforce certain written policies and procedures regarding access to clearance and settlement services, which, while not prescribing specific methods of access, is intended to ensure that all U.S. Treasury security CCAs have appropriate means to facilitate access to clearance and settlement services in a manner suited to the needs of market participants, including indirect participants.

Some market participants have commented on the current practice of tying clearing services to trading under the sponsored clearing model.[448] Under this model, the decision to clear the trades of an indirect participant appears to be contingent on that indirect participant trading with the direct participant sponsoring the indirect member.[449] If the indirect participant is a competitor of the sponsoring direct participant and the direct participant has discretion on which trades to clear, the indirect participant may have difficulty accessing clearing. The proposed rule would require the U.S. Treasury securities CCA to ensure appropriate means to facilitate access; for some current indirect participants this may imply direct membership (with a potential change in membership criteria); [450] alternatively, requiring something similar to a ''done-away'' clearing model may be another means of facilitating clearing.

Other considerations relate to the services available through the sponsored clearing model. For example, buy-side participants, currently engage in both triparty and bilateral repo, across multiple tenors, and on either side (lending or borrowing) of the transaction. At present, it appears that FICC direct members may be able to decline to submit a trade for central clearing at their discretion.[451] Thus some indirect participants who are unable to enter into a similar transaction using a different FICC direct member who is willing to submit the trade for central clearing would not be able to access central clearing under the current practice. The proposed rule would require FICC to create new policies and procedures to facilitate access to clearing for these participants.

In addition, the proposal would require the CCA's written policies and procedures be annually reviewed by the CCA's board of directors to ensure that the CCA has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. This review should help ensure that such policies regarding access to clearance and settlement services, including for indirect participants, are addressed at the most senior levels of the governance framework. The annual review ensures that such policies and procedures be reviewed periodically and potentially updated to address any changes in market conditions.

c. Proposed Amendments to Rules 15c3–3 and 15c3–3a

The proposed rules discussed above could cause a substantial increase in the margin broker-dealers must post to a U.S. Treasury securities CCA resulting from their customers' cleared U.S. Treasury securities positions. Currently, Rules 15c3–3 and 15c3–3a do not permit broker-dealers to include a debit in the customer reserve formula equal to the amount of margin required and on deposit at a U.S. Treasury securities CCA. This is because no U.S. Treasury securities CCA has implemented rules and practices designed to segregate customer margin and limit it to being used solely to cover obligations of the broker-dealer's customers. Therefore, increases in the amount of margin required to be deposited at a U.S. Treasury securities CCA as a result of the Membership Proposal would result

[446] Chicago Fed Insights, *supra* note 204, at 3.

[447] See Sam Schulhofer-Wohl, *Externalities in securities clearing and settlement: Should securities CCPs clear trades for everyone?* (Fed. Res. Bank Chi. Working Paper No. 2021–02, 2021).

[448] *See* FIA–PTG Whitepaper, *supra* note 220.

[449] *See id.* at 7.

[450] Accessing clearing through another party may lower costs, but market participants have commented that there may still be residual exposure should that counterparty default after the CCA has performed on its obligations.

[451] *See supra* section IV.B.3.

in corresponding increases in the need to use broker-dealers' cash and securities to meet these requirements.

The proposed amendment to Rule 15c3–3a would permit, under certain conditions, margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in the customer reserve formula. This new debit item would offset credit items in the Rule 15c3–3a formula and, thereby, free up resources that could be used to meet the margin requirements of a U.S. Treasury securities CCA. The proposed amendment would allow a customer's broker to use customer funds to meet margin requirements at the CCP generated by the customer's trades, lowering the cost of providing clearing services.

As discussed further below, we expect these changes to allow more efficient use of margin for cleared trades relative to the baseline. This change, alone, could create incentives for greater use of central clearing, and thus could promote the benefits described in previous sections.

2. Costs

The Commission has, where practicable, attempted to quantify the economic effects it expects may result from this proposal. In some cases, however, data needed to quantify these economic effects are not currently available or depends on the particular changes made to the U.S. Treasury securities CCA policies and procedures. As noted below, the Commission is unable to quantify certain economic effects and solicits comment, including estimates and data from interested parties, which could help inform the estimates of the economic effects of the proposal.

a. Costs to FICC of the Membership Proposal

The Commission believes that the direct costs of this proposal to the U.S. Treasury securities CCA, which are mostly in the form of new policies and procedures, are likely to be modest. This is because all but one of these proposals require the CCA to make certain changes to its policies and procedures. The other proposal amends Rule 15c3–3a to permit margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in the customer reserve formula for broker-dealers, subject to the conditions discussed above.

Proposed Rule 17Ad–22(e)(18)(iv) would require a U.S. Treasury securities CCA to establish, implement, maintain, and enforce written policies and procedures, as discussed above.[452] Because policies and procedures regarding the clearing of all eligible secondary market transactions entered into by a direct participant in a U.S. Treasury securities CCA are not currently required under existing Rule 17Ad–22, the Commission believes that the proposed Rule 17Ad–22(e)(18)(iv) may require a covered clearing agency to make substantial changes to its policies and procedures. The proposed rule amendment contains similar provisions to existing FICC rules, but would also impose additional requirements that do not appear in existing Rule 17Ad–22.[453] As a result, the Commission believes that a U.S. Treasury securities CCA would incur burdens of reviewing and updating existing policies and procedures in order to comply with the provisions of proposed Rule 17Ad–22(e)(18)(iv) and, in some cases, may need to create new policies and procedures.

The Commission preliminarily estimates that U.S. Treasury securities CCAs would incur an aggregate one-time cost of approximately $207,000 to create new policies and procedures.[454] [455] The proposed rule would also require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. The Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(18)(iv) would impose an aggregate ongoing cost on covered clearing agencies of approximately $61,000 per year.[456]

i. Costs Attendant to an Increase in CCLF

This proposal will likely result in a significant increase in the volume of U.S. Treasury securities transactions submitted to clearing. As pointed out by the G–30 report, FICC differs qualitatively from other CCPs in that counterparty credit risks are relatively small but liquidity risks in the event of member defaults could be extraordinarily large.[457] This is because net long positions generate liquidity obligations for FICC because, in the event of a member default, FICC would have to deliver cash in order to complete settlement of such positions with non-defaulting parties. Increased clearing volume of cash and repo transactions as a result of the proposed rule could increase FICC's credit and liquidity exposure to its largest members including those members acting as sponsors of non-members. FICC is obligated by Commission rule to maintain liquidity resources to enable it to complete settlement in the event of a clearing member default of a Member.[458] These resources include the CCLF in which Members will be required to hold and fund their deliveries to an insolvent clearing member up to a predetermined cap by entering into repo transactions with FICC until it completes the associated close-out. This facility allows clearing members to effectively manage their potential financing requirements with predetermined caps.[459]

As reported in the CPMI–IOSCO disclosure by FICC for Q2 of 2021, the combined liquidity commitment by clearing members to the FICC's Capped Contingent Liquidity Facility (CCLF) was $82.5 billion for all repos and cash trades of U.S. Treasury and Agency securities. Since the inception of the CCLF in 2018, the CCLF has ranged in

[452] See supra section III.A.4 for a discussion of the requirement that a U.S. Treasury securities CCA establish written policies and procedures reasonably designed to, as applicable, identify and monitor its direct participants' required submission of transactions for clearing, including, at a minimum, addressing a direct participant's failure to submit transactions. See supra section III.B.2 for a discussion of the requirement that U.S. Treasury securities CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, which policies and procedures the U.S. Treasury securities CCA's board of directors reviews annually.

[453] See supra note 34 and accompanying text (discussing current FICC rules).

[454] To monetize the internal costs, the Commission staff used data from SIFMA publications, modified by Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. See SIFMA, Management and Professional Earnings in the Security Industry—2013 (Oct. 7, 2013); SIFMA, Office Salaries in the Securities Industry—2013 (Oct. 7, 2013). These figures have been adjusted for inflation using data published by the Bureau of Labor Statistics.

[455] This figure was calculated as follows: Assistant General Counsel for 40 hours (at $518 per hour) + Compliance Attorney for 80 hours (at $406 per hour) + Computer Operations Manager for 20 hours (at $490 per hour) + Senior Risk Management Specialist for 40 hours (at $397 per hour) + Business Risk Analyst for 80 hours (at $305 per hour) = $103,280 × 2 respondent clearing agencies = $206,560. *See infra* section V.A.

[456] This figure was calculated as follows: Compliance Attorney for 25 hours (at $518 per hour) + Business Risk Analyst for 40 hours (at $305 per hour + Senior Risk Management Specialist for 20 hours (at $397 per hour) = $30,290 × 2 respondent clearing agencies = $60,580. *See infra* section V.A.

[457] G–30 Report, *supra* note 5, at 14.

[458] *See supra* section IV.B.3.

[459] FICC Disclosure Framework 2021 at 88, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/FICC_Disclosure_Framework.pdf.*

size from $82.5B to $108B.[460] Commitments by bank-affiliated dealers to the CCLF count against regulatory liquidity requirements, including the Liquidity Coverage Ratio (LCR).[461] The Commission understands that dealers affiliated with banks may satisfy their CCLF obligations using a guarantee from that affiliated bank but dealers not affiliated with banks may incur costs to obtain commitments to meet CCLF liquidity requirements.

ii. Costs of the Membership Proposal in Terms of Increased Margining for Existing FICC Members

As discussed above, the Commission recognizes that the proposal could cause an increase in the margin clearing members must post to a U.S. Treasury securities CCA resulting from the additional transactions that will be submitted for clearing as a result of the proposal. Although various SRO margin rules provide for the collection of margin for certain transactions in U.S. Treasury securities, the Commission understands that transactions between dealers and institutional customers are subject to a variable ''good-faith'' margin standard, which the Commission understands—based on its supervisory experience—can often result in fewer financial resources collected for margin exposures than those that would be collected if a CCP margin model, like the one used at FICC, were used.[462] Mitigating the potential for higher margin requirements for transactions submitted for clearing at a U.S. Treasury securities CCA is the benefit of netting that results from additional centrally cleared transactions.[463] As described in section IV.C.1 *supra,* this mitigant is likely to be especially significant in the case of IDB members. Also, substantially mitigating the costs for clearing members is the ability to rehypothecate customer margin, as described in section IV.C.2.d *infra.*

b. Costs to Non-FICC Members as a Result of the Membership Proposal

The Membership Proposal would require that all repo transactions with a direct participant be centrally cleared and that certain cash transactions with a direct participant to be centrally cleared. These costs will depend on the policies and procedures developed by the CCA, as discussed in sections IV.C.2.a *infra* and IV.C.2.d *supra.*

As stated above, the Commission believes that these proposed amendments will increase central clearing in the U.S Treasury securities market. Transactions that are not currently submitted for central clearing but would be under the current proposed amendments would be subject to certain transaction, position, and other fees as determined by the U.S. Treasury securities CCA.[464]

Market participants who enter into eligible secondary market transactions with members of U.S. Treasury securities CCAs who do not have access to clearing may incur costs related to establishing the required relationships with a clearing member in order to submit the eligible transactions for clearing. These market participants may also incur additional costs related to the submission and management of collateral. It is possible that such market participants may seek alternative counterparties that are not U.S. Treasury securities CCA members in order to avoid incurring these costs.

As discussed in the baseline, the majority of repo and cash transactions in the dealer-to-customer segment are not centrally cleared. This differentiates the U.S. Treasury securities market from the markets for swaps and for futures. There is currently some clearing of customer repo; the majority of this clearing is ''done-with''—the clearing broker and the counterparty are one and the same. However, in the swaps and futures markets, and in the equities market, clearing is ''done-away''—meaning that the clearing broker may be other than the trading counterparty. Market participants have identified costs with the done-with model. Market participants in the secondary market for U.S Treasury securities that would be required to be centrally cleared could incur direct costs for arranging legal agreements with every potential counterparty. Depending on the customer there may be a large number of such arrangements.

There are indirect costs arising when a trading counterparty is a competitor. In this case, clearing risks leakage of information. Moreover, the pricing and offering of clearing services may be determined by forces other than the costs and benefits of the clearing relationship itself, such as the degree of competition between the counterparties. Other economic arrangements facilitating customer clearing are possible and may develop, as in other markets.[465] One such arrangement is direct CCA membership. However, for smaller entities, CCA membership may not be economically viable, and for some entities, legal requirements may prevent outright membership. Another possibility is seeking out counterparties other than CCA members. The ''done away'' structure of clearing has worked effectively in other markets, and, if it were to develop, would significantly mitigate these costs.

Some participants may not currently post collateral for cash clearing and may be now required to do so, depending on the form the clearing relationship takes. There may be costs associated with the transfer of collateral. An institutional investor self-managing its account would instruct its custodian to post collateral with the CCA on the execution date, and post a transaction in its internal accounting system showing the movement of collateral. The day after trade execution, the investor would oversee the return of collateral from FICC, with an attendant mark of a transaction on the investor's internal accounting system. Similar steps would occur for an institutional investor trading through an investment adviser, though in this case the adviser might instruct the custodian and mark the transaction, depending on whether the adviser has custody. The institutional investor might also pay a wire fee associated with the transfer of collateral.

Besides the costs of developing new contracts with counterparties to support central clearing, there will also be a cost to non-CCA members associated with margin, to the extent that more margin is required than in a bilateral agreement and to the extent that the margin was not simply included in the price quoted for the trade. This cost of margining is analogous to that borne by CCA members and is discussed further above.

As a result of the proposed rule, a potential cost to money market fund participants that would face FICC as a counterparty is that the funds' credit ratings could be affected if FICC becomes a substantially large counterparty of these participants, which could be interpreted by credit models and ratings methodologies as a heightened concentration risk factor. As concentration risk in a CCP is typically not viewed in the same way as concentration risk with a bilateral trading party, credit rating agencies may quickly adapt their methods to

[460] *See supra* section IV.B.3.

[461] LCR is calculated as the ratio of High-Quality Liquid Assets (HQLA) divided by estimated total net cash outflow during a 30-day stress period. Because commitments by bank-affiliated dealers to the CCLF would increase the denominator of the ratio, a bank-affiliated dealer would have to increase HQLA to reach a required level of LCR.

[462] *See supra* note 106.

[463] *See supra* section IV.C.1 for a discussion of the benefits of multilateral netting expected to result from higher volumes of centrally cleared transactions.

[464] The fee structure for FICC is described in its rulebook. *See* FICC Rules, *supra* note 47, at 307.

[465] *See* FIA–PTG Whitepaper, *supra* note 220 (for a description of different client clearing models).

distinguish the CCA from a conventional counterparty.

The Commission also recognizes the risks associated with increased centralization of clearance and settlement activities. In particular, the Commission has previously noted that ''[w]hile providing benefits to market participants, the concentration of these activities at a covered clearing agency implicitly exposes market participants to the risks faced by covered clearing agencies themselves, making risk management at covered clearing agencies a key element of systemic risk mitigation.'' [466]

As discussed previously, currently only FICC provides CCP services for U.S. Treasury securities transactions, including outright cash transactions and repos.[467] Were FICC unable to provide its CCP services for any reason then this could have a broad and severe impact on the overall U.S. economy. The FSOC recognized this when it designated FICC as a systemically important financial market utility in 2012,[468] which subjects it to heightened risk management requirements and additional regulatory supervision, by both its primary regulator and the Federal Reserve Board of Governors.[469]

c. Other Changes to Covered Clearing Agency Standards

i. Netting and Margin Practices for House and Customer Accounts

The proposed amendments to Rule 17Ad–22(e)(6)(i) require a U.S. Treasury securities CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, calculate, collect, and hold margin amounts from a direct participant for its proprietary U.S. Treasury securities positions, separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities.[470] The proposed rule amendment contains similar provisions to existing FICC rules, specifically with respect to its Sponsored Member program, but would also impose additional requirements that do not appear in existing Rule 17Ad–22. As a result, the Commission believes that a U.S. Treasury securities CCA would incur burdens of reviewing and updating existing policies and procedures in order to comply with the proposed amendments to Rule 17Ad–22(e)(6) and, in some cases, may need to create new policies and procedures.[471]

The Commission preliminarily estimates that U.S. Treasury securities CCAs would incur an aggregate one-time cost of approximately $106,850 to create new policies and procedures.[472] The proposed rule would also require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. The Commission preliminarily estimates that the ongoing activities required by proposed amendments to Rule 17Ad–22(e)(6) would impose an aggregate ongoing cost on covered clearing agencies of approximately $60,580 per year.[473]

ii. Facilitating Access to U.S. Treasury Securities CCAs

The proposed Rule 17Ad–22(e)(18)(iv)(C) would require a U.S. Treasury securities CCA to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, which policies and procedures the U.S. Treasury securities CCA's board of directors reviews annually.

The proposed rule would require a U.S. Treasury securities CCA to establish, implement, maintain, and enforce written policies and procedures. The Commission believes that a respondent U.S. Treasury securities CCA would incur burdens of reviewing and updating existing policies and procedures and would need to create new policies and procedures in order to comply with the provisions of proposed Rule 17Ad–22(e)(18)(iv)(C). These costs are included in the costs of creating new policies and procedures associated with Rule 17Ad–22(e) discussed above.[474]

d. Proposed Amendments to Rules 15c3–3 and 15c3–3a

The proposed amendment to Rule 15c3–3a would permit, under certain conditions, margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in the customer reserve formula. This new debit item would offset credit items in the Rule 15c3–3a formula and, thereby, free up resources that could be used to meet the margin requirements of a U.S. Treasury securities CCA. The proposed amendment would allow a customer's broker to use customer funds to meet margin requirements at the CCP generated by the customer's trades, lowering the cost of providing clearing services. Broker-dealers may incur costs from updating procedures and systems to be able to use customer funds to meet customer margin requirements. However, the proposed rule does not require that the broker-dealer does so.

3. Effect on Efficiency, Competition, and Capital Formation

a. Efficiency

i. Price Transparency

As mentioned in section II.A.1 *supra,* the majority of trading in on-the-run U.S. Treasury securities in the interdealer market occurs on electronic platforms operated by IDBs that bring together buyers and sellers anonymously using order books or other trading facilities supported by advanced electronic trading technology. These platforms are usually run independently in the sense that there is no centralized market for price discovery or even a ''single virtual market with multiple points of entry''.[475] As a result, pre-

[466] *See supra* note 11.

[467] *See supra* section I.C.

[468] *See* note 17 *supra.*

[469] *Id.* at 119. As the Commission has previously stated, ''Congress recognized in the Clearing Supervision Act that the operation of multilateral payment, clearing or settlement activities may reduce risks for clearing participants and the broader financial system, while at the same time creating new risks that require multilateral payment, clearing or settlement activities to be well-designed and operated in a safe and sound manner. The Clearing Supervision Act is designed, in part, to provide a regulatory framework to help deal with such risk management issues, which is generally consistent with the Exchange Act requirement that clearing agencies be organized in a manner so as to facilitate prompt and accurate clearance and settlement, safeguard securities and funds and protect investors.'' Clearing Agency Standards Proposing Release, *supra* note 7, 76 FR at 14474; *see also* 12 U.S.C. 5462(9), 5463(a)(2).

[470] *See supra* section III.B.1.

[471] *See supra* note 62 and accompanying text (discussing existing FICC rules for sponsored member program).

[472] This figure was calculated as follows: Assistant General Counsel for 20 hours (at $518 per hour) + Compliance Attorney for 40 hours (at $406 per hour) + Computer Operations Manager for 12 hours (at $490 per hour) + Senior Programmer for 20 hours (at $368 per hour) + Senior Risk Management Specialist for 25 hours (at $397 per hour) + Senior Business Analyst for 12 hours (at $305 per hour) = $53,425 × 2 respondent clearing agencies = $106,850. *See infra* section V.B.

[473] This figure was calculated as follows: Compliance Attorney for 25 hours (at $406 per hour) + Business Risk Analyst for 40 hours (at $305 per hour) + Senior Risk Management Specialist for 20 hours (at $397 per hour) = $30,290 × 2 respondent clearing agencies = $60,580. *See infra* section V.B.

[474] *See supra* section IV.C.2.

[475] Mauren O'Hara and Mao Ye, ''*Is Market Fragmentation Harming Market Quality,*'' 100 J. Fin. Econ. 459 (2011), *available at https://doi.org/10.1016/j.jfineco.2011.02.006.*

trade transparency is suboptimal: quotations and prices coming from and going to an IDB may be distributed unevenly to market participants who have a relationship with that IDB. Efficiency, which measures the degree to which prices can quickly respond to relevant information, is impaired because of this market fragmentation; some areas of the market may not reflect information passed on by prices in other sectors. Central clearing can promote price discovery in several ways: first, the clearing agency itself becomes a source of data; [476] and second, the accessibility of central clearing could promote all-to-all trading as previously mentioned in section III.A.3 *supra,* which would reduce the obstacles to information flow that come from fragmentation.[477]

ii. Operational and Balance Sheet Efficiency

Greater use of central clearing could also increase the operational efficiency of trading U.S. Treasury securities. Central clearing replaces a complex web of bilateral clearing relationships with a single relationship to the CCP. In that sense, the complex network of relationships that a market participant may have for bilaterally clearing U.S. Treasury securities would shrink, with attendant reductions in paperwork, administrative costs, and operational risk.

Central clearing also enhances balance sheet efficiency, allowing firms to put capital to more productive uses. The proposed amendment to Rule 15c3–3a would permit, under certain conditions, margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in the customer reserve formula. This new debit item would offset credit items in the Rule 15c3–3a formula and, thereby, free up resources that could be used to meet the margin requirements of a U.S. Treasury securities CCA. The proposed amendment would allow a customer's broker to use customer funds to meet margin requirements at the CCP generated by the customer's trades, lowering the cost of providing clearing services. Though these lower costs may or may not be fully passed on to end clients, in a competitive environment the Commission expects that at least some of these savings will pass-through to customers.

b. Competition

With respect to the market for execution of U.S. Treasury securities by broker-dealers, increased central clearing can enhance the ability of smaller participants to compete with incumbent dealers.[478] Similarly, decreased counterparty credit risk—and potentially lower costs for intermediation—could result in narrower spreads, thereby enhancing market quality.[479] While estimating this quantitatively is difficult, research has demonstrated lower costs associated with central clearing in other settings.[480] Moreover, increased accessibility of central clearing in U.S. Treasury securities markets could support all-to-all trading, which would further improve competitive pricing, market structure and resiliency.[481]

The U.S. Treasury securities intermediation business is also capital-intensive, due to strict regulatory requirements around capital and the sheer size of the U.S. Treasury securities markets. These requirements represent a barrier to entry to new participants. The proposed amendments to Rule 15c3–3a, which would permit margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in the customer reserve formula, in addition to the natural capital efficiencies of margin offsetting provided by clearing, would provide some capital relief for smaller broker-dealers. This may enable them to better compete in this market or enter the market altogether.

With respect to the market for U.S. Treasury securities clearing services, currently there is a single provider of central clearing. The proposed amendments would likely engender indirect costs associated with increased levels of central clearing in the secondary market for U.S. Treasury securities. Generally, the economic characteristics of a financial market infrastructure (''FMI''), including clearing agencies, include specialization, economies of scale, barriers to entry, and a limited number of competitors.[482] [483] The Commission noted in its proposal of rules applicable to covered clearing agencies that such characteristics, coupled with the particulars of an FMI's legal mandate could result in market power, leading to lower levels of service, higher prices, and under-investment in risk management systems.[484] Market power may also affect the allocation of benefits and costs flowing from these proposed rules, namely the extent to which these benefits and costs are passed through by FICC to participants.[485] The centralization of clearing activities for a particular class of transaction in a single clearing agency may also result in a reduction in its incentives to innovate and to invest in the development of appropriate risk management practices on an ongoing basis.

Finally, the scope of the rule does not preclude members of FICC from strategically renouncing membership if they assess that the benefits of maintaining their ability to trade without centrally clearing their trades exceed their costs of surrendering their membership with the CCA. If this scenario materializes for a number of FICC members, then there will be costs to the overall market. Those costs could be the product of a smaller number of clearing members competing in the market for clearing services. Costs could also manifest themselves as increased risk from non-centrally cleared transactions and a reduction in the margin, operational and capital efficiencies related to central clearing. Further, if the number of clearing members falls, then the exposure of FICC to its largest clearing member could increase resulting in additional increases in the required size of the CCLF.

c. Capital Formation

The proposed rule may encourage private-sector capital formation. U.S. Treasury securities form a benchmark

[476] FIA–PTG Whitepaper, *supra* note 220.

[477] *See supra* note 190.

[478] *See* G–30 Report, *supra* note 5, at 13.

[479] *See id.*

[480] *See* Y.C. Loon and Z.K. Zhong, *The Impact of Central Clearing on Counterparty Risk, Liquidity, and Trading: Evidence from the Credit Default Swap Market,* 112(1) JOURNAL OF FINANCIAL ECONOMICS 91–115 (Apr. 2014).

[481] *See* IAWG Report, *supra* note 4, at 30; Duffie, *supra* note 186, at 16; G–30 Report, *supra* note 5, at 13.

[482] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions (''CPSS–IOSCO''), Principles for Financial Market Infrastructures (Apr. 16, 2012), *available at http://www.bis.org/publ/cpss101a.pdf* (''PFMI Report'').

[483] *See generally* Nadia Linciano, Giovanni Siciliano & Gianfranco Trovatore, *The Clearing and Settlement Industry: Structure Competition and Regulatory Issues* (Italian Secs. & Exch. Comm'n Research Paper 58, May 2005), *available at http://www.ssrn.com/abstract=777508* (concluding in part that the core services offered by the clearance and settlement industry tend toward natural monopolies because the industry can be characterized as a network industry, where consumers buy systems rather than single goods, consumption externalities exist, costs lock-in consumers once they choose a system, and production improves with economies of scale).

[484] *See* CCA Standards Proposing Release, *supra* note 7.

[485] For a discussion of cost pass-through, including when there lacks competition, see for example, UK Competition and Markets Authority, Cost pass-through: theory, measurement and policy implications (June 17, 2014), *available at https://www.gov.uk/government/publications/cost-pass-through-theory-measurement-and-policy-implications.*

for fixed income and even equity rates of return, and the proposed rule could lower the cost of capital for private-sector issuers.[486] If the yield required by investors to hold U.S. Treasury securities reflects, in part, the risks associated with the buying and selling of U.S. Treasury securities, and increased central clearing of these transactions lowers those risks, then the proposed rule may put downward pressure on required yields.

Research has shown that investors value both the safety and liquidity of U.S. Treasury securities. Because prices in the primary market both reflect and are driven by prices in the secondary market, liquidity could be one of the factors translating into lower rates of borrowing costs for US taxpayers.[487]

D. Reasonable Alternatives

1. Require U.S. Treasury Securities CCAs to Have Policies and Procedures Requiring Only IDB Clearing Members to Submit U.S. Treasury Securities Trades With Non-Members for Central Clearing

One alternative would be to narrow the scope of the Membership Proposal as it pertains to cash transactions in the secondary market for U.S. Treasury securities. The narrower definition of eligible secondary market transaction contemplated in this alternative would include (1) a repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities, in which one of the counterparties is a direct participant; or (2) a purchase or sale between a direct participant and any counterparty, if the direct participant of the covered clearing agency (A) brings together multiple buyers and sellers using a trading facility (such as a limit order book) and (B) is a counterparty to both the buyer and seller in two separate transactions.[488] This alternative differs from the proposal above by omitting from the definition of eligible transactions those cash transactions between a direct participant and a registered broker-dealer, government securities broker, government securities dealer, hedge fund, or account at a registered broker-dealer, government securities dealer, or government securities broker where such account may borrow an amount in excess of one-half of its net assets or may have gross notional exposure in excess of twice its net assets.[489]

As discussed in section IV.C.1.a *supra,* the benefits arising from cash clearing for IDB members are particularly high. Hybrid clearing creates unique issues for FICC because FICC is able to manage the risks arising from the IDB–FICC member trade, but it lacks any knowledge of the IDB's offsetting trade with its other counterparty and the potential exposure arising to the IDB from that trade, leaving the IDB, from FICC's perspective, as apparently having a directional exposure despite the non-centrally cleared trade that would leave the IDB flat.[490] This lack of knowledge could prevent FICC from ''accurately identifying, measuring and managing its direct and indirect counterparty risk exposure and can affect its decision-making,'' [491] which in turn potentially increases the likelihood that a default of an IDB member could in turn harm the CCP or the system as a whole. As noted above, the Commission has previously stated that membership requirements help to guard against defaults of any CCP member, as well to protect the CCP and the financial system as a whole from the risk that one member's default could cause others to default, potentially including the CCP itself. Further, contagion stemming from a CCP member default could be problematic for the system as a whole, even if the health of the CCP is not implicated. The default could cause others to back away from participating in the market, particularly if the defaulting participant was an IDB, whose withdrawal from the market could jeopardize other market participants' ability to access the market for U.S. Treasury securities.[492]

This alternative would, with a more limited scope, move a large portion of secondary market transactions in U.S. Treasury securities that are not currently centrally cleared into central clearing.[493] The degree of central clearing would still allow for a partial picture of concentrated positions to the clearing agency. That said, there would be a limited benefit in terms of operational and balance sheet efficiency, and the benefits other than those specifically related to the IDB would be greatly reduced. Specifically, the reduced scope of this alternative would not capture types of participants that are usually leveraged such as hedge funds.

As discussed above, funds that are leveraged present potential risk to a U.S. Treasury securities CCA.[494] As a result of not including transactions with hedge funds and levered accounts, the Commission believes that benefits of the rule with respect to financial stability, margin offsetting and visibility of risk would be curtailed.

This alternative could also include within the definition of eligible secondary market transactions a purchase or sale between a direct participant and a registered broker-dealer, government securities broker, or government securities dealer. Including these transactions within the scope of eligible transactions would increase the benefits discussed above associated with an increased proportion of transactions being centrally cleared.[495] However, as discussed above, the costs associated with including these transactions within the scope of eligible transactions may be less than those transactions not included by this alternative.[496]

2. Require U.S. Treasury Securities CCAs To Have Policies and Procedures Requiring the Submission of All Repurchase Agreements With No Change to Requirements for the Submission of Cash Transactions

The Commission could exclude the cash U.S. Treasury securities market from the proposed rule and instead only require covered clearing agencies have policies and procedures reasonably designed to require that direct participants of the covered clearing agency submit for central clearing all transactions in U.S. Treasury repo transactions into which it enters.

[486] Standard textbook treatments of finance use the U.S. Treasury rate of return as a benchmark in computing the cost of capital for private companies. The link between interest rates of government debt and corporate debt is a long-standing feature of the financial landscape. *See, e.g.,* Benjamin Friedman, *Implications of Government Deficits for Interest Rates, Equity Returns, and Corporate Financing,* Fin. Corp. Cap. Form. (1986). *See also* Philippon, *The Bond Market's Q,* Q.J. Econ. (Aug. 2009) (noting a link between the level of interest rates and investment).

[487] *See* Arvind Krishnamurthy & Annette Vissing-Jorgensen, *The Aggregate Demand for Treasury Debt,* 120 J. Pol. Econ. (Apr. 2012).

[488] Such direct participants are referred to in this section and the alternatives below as ''IDBs''. *See supra* section III.A.2.b (IDB Transactions).

[489] *See supra* section III.A.2.b for a discussion of cash transactions included in the definition of eligible transactions.

[490] *See* TMPG White Paper, *supra* note 20 at 22 (noting that in a hybrid clearing arrangement, an ''IDB's rights and obligations vis-a-vis the CCP are not offset and therefore the IDB is not in a net zero settlement position with respect to the CCP at settlement date.'').

[491] *See* TMPG White Paper, *supra* note 21, at 27.

[492] *See* TMPG White Paper, *supra* note 21, at 32.

[493] *See id.*

[494] *See supra* section IV.C.1.III(b). *See also* note 145.

[495] *See supra* section IV.A for a discussion of the benefits associated with increased central clearing.

[496] *See supra* section IV.C.1.a.III(b) for a discussion of the familiarity of many registered brokers with methods of central clearing of U.S. Treasury securities transactions. *See also* section IV.C.2.b for a discussion of the costs to non-FICC members, including the entities included within this alternative, of the Membership proposal.

The Commission understands that there is a likely benefit of additional balance sheet capacity that flow from clearing repo transactions in U.S. Treasury securities that might not occur with the clearing of cash transactions. Multilateral netting can reduce the amount of balance sheet required for intermediation of repo and could enhance dealer capacity to make markets during normal times and stress events, because existing bank capital and leverage requirements recognize the risk-reducing effects of multilateral netting of trades that CCP clearing accomplishes.[497]

The upfront costs of adjusting to the rule would be lower under this alternative than under the current proposal, as a result of a smaller sample of participants and activities in scope and also the current level of interconnectedness among those participants. As previously mentioned, the number of participants in the U.S. Treasury repo market is significantly smaller than the number of participants in the cash market and is composed of sophisticated investors who have already incurred the costs of building the ability to novate transactions to the CCP. Infrastructure for Sponsored Clearing already exists, so that processing changes should be less than in other more comprehensive alternatives and costs would be concentrated on the implementation of similar agreements at a larger scale.

Nevertheless, excluding the cash U.S. Treasury securities market from the rule proposal would omit the largest sector of the U.S. Treasury market, both in terms of activity and number of participants. This alternative would yield smaller benefits in the areas of financial stability, risk visibility, margin offset efficiencies, and capital requirement reductions. The Commission believes that, given the scale-intensive nature of clearing, there are economies of scale that can only be realized when a larger number of financial market participants clear their U.S. Treasury securities cash trades. Moreover, certain leveraged and opportunistic market participants that are net contributors of risk to the U.S. Treasury security market, such as hedge funds and leveraged accounts in broker-dealers, would be exempt from the clearing requirement under this alternative.

3. Include All Cash Transactions Within the Scope of the Membership Proposal With Exceptions for Central Banks, Sovereign Entities, International Financial Institutions, and Natural Persons

The Commission could require covered clearing agencies to have policies and procedures reasonably designed to require that direct participants of the covered clearing agency submit for central clearing all cash and repo transactions in U.S. Treasury securities into which they enter, except for natural persons, central banks, sovereign entities and international finance institutions. This policy option would include cash transactions between direct participants of a U.S. Treasury securities CCA and any counterparty (including those included in the Membership Proposal) except for those that fall within one of the aforementioned exceptions.

This alternative would capture more of the potential benefits and positive externalities that result from increased central clearing, more closely resembling the assumptions and estimated benefits of Fleming and Keane's calculations[498] on clearing benefits. By virtue of requiring all repo and most cash transactions to be centrally cleared, the alternative goes the furthest in solving the underlying collective action problem whereby some participants may find it optimal to not participate in central clearing, reducing the benefits that may accrue to the market as a whole.

As discussed above, the benefits of clearing are scale-dependent, so that a more comprehensive clearing directive would result in larger positive externalities (*e.g.,* lower contagion risk, less financial network complexity) and larger economies of scale (*e.g.*, larger margin offsets) for the U.S. Treasury securities market. Another benefit of this alternative would be an enhanced ability of FICC (and, by extension, regulatory agencies) to observe the dynamics and manage the risks in the U.S. Treasury securities markets.

Nevertheless, there are compelling reasons for the exclusions that the proposal makes for a specific sample of marker participants. Buy-side participants in the U.S. Treasury securities markets that do not take on any leverage, or take less than one-half their assets in leverage, such as the majority of bond mutual funds, typically have lower daily turnover. As a result of their lower turnover and subsequent lower volume, they typically do not have the existing infrastructure to readily connect to the CCP, making their up-front costs significantly higher than for other participants. This implies that the costs of including these participants in the Membership Proposal are likely higher than those of participants included in the proposal and the benefits smaller.

4. Require U.S. Treasury Securities CCAs To Change CCA Access Provisions and Netting and Margin Practices for House and Customer Accounts and Rule 15c3–3

The Commission could, as an alternative to the selected policy choice, only amend Rules 15c3–3, 17Ad–22(e)(6)(i), and 17Ad–22(e)(18)(iv)(C). This alternative would not include implementing changes related to the Membership Proposal, as set forth in Proposed Rule 17Ad–22(e)(18)(iv)(A) and (B).

This alternative would require a U.S. Treasury securities CCA to establish, implement, maintain and enforce certain written policies and procedures that would be reasonably designed to, as applicable, calculate, collect, and hold margin amounts from a direct participant for its proprietary U.S. Treasury securities positions separately and independently from margin that would be held for an indirect participant. Specifically, the requirement to separately and independently hold an indirect participant's margin would apply to margin calculated by and collected from a direct participant in connection with its U.S. Treasury securities transactions with an indirect participant that relies on the direct participant's services to access the covered clearing agency's payment, clearing, or settlement facilities.

The alternative would also include changes to 17Ad–22(e)(18)(iv)(C), directing FICC to, as more fully described above, have policies and procedures, to be annually reviewed by its board of directors, to have appropriate means to facilitate access to clearing all eligible secondary market transactions in U.S. Treasury securities. This alternative would also include changes to Rule 15c3–3a, to permit margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in the customer reserve formula, subject to the conditions discussed below. This new debit item would offset credit items in the Rule 15c3–3a formula and, thereby, free up

[497] *See* IAWG Report at 30, *supra* note 4; Liang & Parkinson, *supra* note 32, at 9; Duffie, *supra* note 186, at 16–17.

[498] Michael Fleming & Frank Keane, Staff Report No. 964: *Netting Efficiencies of Marketwide Central Clearing, Federal Reserve Bank of New York* (Apr. 2021), *available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr964.pdf.*

resources that could be used to meet the margin requirements of a U.S. Treasury securities CCA. The new debit item would be reported on a newly created Item 15 of the Rule 15c3–3a reserve formula.

As discussed in section IV.C.2.b, *supra,* the proposed amendments to Rule 17Ad–22(e)(6)(i) should produce benefits for dealer-to-customer trades. Because margin for a direct participant's (*i.e.,* a dealer's) trades that have been novated to the CCP would be calculated, collected, and held separately and independently from those of an indirect participant, such as a customer, the direct participant's trades with the indirect participant that have been novated to the CCP would be able to be netted against the direct participant's position with other dealers. Such netting is not currently available. In summary, the Commission expects changes in the customer reserve formula and expanded margin offset possibilities to allow more efficient use of margin for cleared trades relative to current market practice.

Nonetheless, the Commission believes that this alternative is not preferable to the proposal. Although this alternative may result in additional central clearing of U.S Treasury security trades by reducing some of the impediments to central clearing, the benefits are likely to be less in the absence of the membership proposal. As previously explained, the benefits of clearing are proportional to the number of participants submitting their trades to the CCP: the higher the number of participants, the greater the benefits of central clearing. Absent a coordinated effort that induces participants to incur short-term, private costs in order to obtain a larger, longer-term collective benefit, which the Membership Proposal provides, the Commission believes that the number of participants that will voluntarily make the necessary changes to clear their transactions would be lower under this alternative.

E. Request for Comment

The Commission requests comment on all aspects of this initial economic analysis, including the potential benefits and costs, including all effects on efficiency, competition, and capital formation; and reasonable alternatives to the proposal. We request and encourage any interested person to submit comments regarding the proposal, our analysis of the potential effects of the proposal, and other matters that may have an effect on the proposal. 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 proposal. We also are interested in comments on the qualitative benefits and costs the Commission has identified and any benefits and costs the Commission may have overlooked. In addition to our general request for comments on the economic analysis associated with the proposal, the Commission requests specific comment on certain aspects of the proposal:

Baseline

- The Commission seeks input and supporting data on the size of the U.S. Treasury securities market as a whole and additional data on the proportion of cash and repo U.S. Treasury transactions that U.S. Treasury securities CCA members clear and settle with the CCP and those that they clear and settle bilaterally. In particular, what proportion of dealer to client and dealer-to-dealer transactions are cleared?
- The Commission seeks data on U.S. Treasury securities transactions executed by banks and other institutions that are not members of FINRA and therefore do not have a regulatory requirement to report their executed trades to TRACE.
- Does the current menu of clearing offerings, including Sponsored Clearing, provide enough options for individuals and institutions who want to participate in the U.S. Treasury Securities market?
- What role does the market for ''when-issued'' U.S. Treasury securities that trade prior to and on the day of the auction currently play in risk mitigation and hedging strategies of primary dealers? What role does this market play in price discovery?
- Should the Commission include in the scope of eligible secondary market transactions when-issued transactions in U.S. Treasury securities that take place prior to and on the day of the auction for those securities? What are the potential benefits and costs of including in the scope of eligible secondary market transaction pre-auction and auction day when-issued transactions along with post-auction when-issued transactions? Is there a greater contagion risk from fails-to-deliver if the proposal's scope of eligible secondary market transactions does not include ''when-issued'' U.S. Treasury securities transactions that take place prior to and on the day of the auction?

Economic Effects, Including Impact of Efficiency, Competition, and Capital Formation

- Are there any additional costs and benefits associated with the proposed amendments that should be included in the analysis? What additional materials and data should be included for estimating these costs and benefits?
- Does the economic analysis capture the relative risks posed by various types of market participants to the functioning of U.S. Treasury market?
- Will U.S. Treasury securities CCAs face additional costs to managing the risk of higher volumes and increased heterogeneity of entities that will result from the Membership proposal?
- Who requests sponsored membership? Is it the asset owner or the investment manager? If the asset owner, how does the adviser support sponsored membership with multiple sponsoring members? If the investment manager sets this up, how does the asset owner change investment managers and is more lead time required to set up a new account with a new investment manager? Who pays for all this and what does it cost?
- What are the operational costs to asset owners and to advisers to centrally clear cash U.S. Treasury securities? Will there be benefits to asset owners or to advisers? Will operational risk for asset owners or adviser increase or decrease and why?
- What are the operational costs to asset owners and to advisers to centrally clear repos? Will there be benefits to asset owners or to advisers? Will operational risk for asset owners or adviser increase or decrease and why?
- What would be the potential impact to FICC's CCLF and its participants' obligations under that requirement? What costs may participants incur as a result of changes to their obligations under that requirement? Would these costs vary depending on whether or not the entity was affiliated with a bank? Would they vary based on the size of the entity?
- Market participants in the secondary market for U.S Treasury securities that would be required to be centrally cleared could incur direct costs for arranging legal agreements with every potential counterparty. Depending on the customer there may be a large number of such arrangements. How much does it cost to arrange such legal agreements and how many such agreements might a market participant need to arrange?
- Given the potential effects on competition of the proposal if adopted, should FICC be required to review its fee structure as part of its review required by Rule 17Ad–22(e)(18)(iv)? Within what time frame should this review take place?
- Are there any additional impacts on dealer competition that should be

included in the analysis? The Commission seeks information and data on dealer concentration over time. In particular, have there been any changes in dealer concentration in recent years?

Reasonable Alternatives

- The Commission seeks input on the costs, benefits and feasibility of the alternatives to the proposed rule described above. Are there any additional benefits or costs that should be included in the analysis of the reasonable alternatives considered?

V. Paperwork Reduction Act

A. Proposed Changes to Covered Clearing Agency Standards

The proposed amendments to Rule 17Ad–22(e) contain ''collection of information'' requirements within the meaning of the PRA.[499] The Commission is submitting the proposed collection of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. For the proposed amendments to Rule 17Ad–22(e), the title of the existing information collection is ''Clearing Agency Standards for Operation and Governance'' (OMB Control No. 3235–0695), and that collection would be revised by the changes in this proposal, if adopted. 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.

Respondents under this rule are Treasury securities CCAs, of which there is currently one. The Commission anticipates that one additional entity may seek to register as a clearing agency to provide CCP services for Treasury securities in the next three years, and so for purposes of this proposal the Commission has assumed two respondents.

A. Proposed Amendment to Rule 17Ad–22(e)(6)

The purpose of this collection of information is to enable a covered clearing agency for Treasury securities to better understand and manage the risks presented by transactions that a direct participant may submit on behalf of its customer, *i.e.,* an indirect participant which relies upon the direct participant to access the covered clearing agency. The collection is mandatory. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.[500]

The proposed amendments to Rule 17Ad–22(e)(6) would require a Treasury securities CCA to establish, implement, maintain, and enforce written policies and procedures. The proposed rule amendment contains similar provisions to existing FICC rules, specifically with respect to its Sponsored Member program, but would also impose additional requirements that do not appear in existing Rule 17Ad–22. As a result, the Commission preliminarily believes that a respondent Treasury securities CCA would incur burdens of reviewing and updating existing policies and procedures in order to comply with the proposed amendments to Rule 17Ad–22(e)(6) and, in some cases, may need to create new policies and procedures.[501] The Commission preliminarily believes that the estimated PRA burdens for the proposed amendments to Rule 17Ad–22(e)(6) may require a respondent clearing agency to make substantial changes to its policies and procedures. Based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for several rules in the Covered Clearing Agency Standards where the Commission anticipated similar burdens,[502] the Commission preliminarily estimates that respondent Treasury securities CCAs would incur an aggregate one-time burden of approximately 258 hours to review existing policies and procedures and create new policies and procedures.[503]

Proposed Rule 17Ad–22(e)(6) would impose ongoing burdens on a respondent Treasury securities CCA. 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. Based on the similar reporting requirements and the corresponding burden estimates previously made by the Commission for several rules in the Covered Clearing Agency Standards where the Commission anticipated similar burdens,[504] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(6) would impose an aggregate annual burden on respondent clearing agencies of 182 hours.[505]

Name of information collection	Type of burden	Number of respondents	Initial burden per entity (hours)	Aggregate initial burden (hours)	Ongoing burden per entity (hours)	Aggregate ongoing burden (hours)
17Ad–22	Recordkeeping	2	129	258	91	182

B. Proposed Amendment to Rule 17Ad–22(e)(18)(iv)

The purpose of the collection of information under proposed Rule 17Ad–22(e)(18)(iv) is to enable a U.S. Treasury securities CCA to ensure that its direct participants submit for clearance and settlement, as a requirement of membership in the CCA, all eligible secondary market transactions in U.S. Treasury securities to the U.S. Treasury securities CCA to

[499] *See* 44 U.S.C. 3501 *et seq.*

[500] *See, e.g.,* 5 U.S.C. 552. Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. *See* 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. *See* 5 U.S.C. 552(b)(8).

[501] *See supra* note 126 and accompanying text (discussing existing FICC rules for sponsored member program).

[502] *See* CCA Standards Adopting Release, *supra* note 26, 81 FR at 70895–97 (discussing Rules 17Ad–22(e)(13), (15), and (18)). Although the proposed rule amendment is with respect to Rule 17Ad–22(e)(6), the Commission believes that these Rules present the best overall comparison to the current proposed rule amendment, in light of the nature of the changes needed to implement the proposal here and what was proposed in the Covered Clearing Agency Standards.

[503] This figure was calculated as follows: (Assistant General Counsel for 20 hours) + (Compliance Attorney for 40 hours) + (Computer Operations Manager for 12 hours) + (Senior Programmer for 20 hours) + (Senior Risk Management Specialist for 25 hours) + (Senior Business Analyst for 12 hours) = 129 hours × 2 respondent clearing agencies = 258 hours.

[504] *See* CCA Standards Adopting Release, *supra* note 26, 81 FR at 70893 and 70895–96 (discussing Rules 17Ad–22(e)(6) and (13)).

[505] This figure was calculated as follows: (Compliance Attorney for 25 hours + Business Risk Analyst for 40 hours + Senior Risk Management Specialist for 20 hours) = 80 hours × 2 respondent clearing agencies = 160 hours.

which the direct participants are a counterparty. This should, in turn, help ensure that the risk presented by the eligible secondary market transactions of that direct participant that are not centrally cleared would not be transmitted to the U.S. Treasury securities CCA, and to enable the CCA to identify and manage the risks posed by those transactions that are currently not submitted for central clearing. In addition, the purpose of this proposal is to ensure that the U.S. Treasury securities CCA adopts policies and procedures to identify and monitor its direct participants' submission of transactions for clearance and settlement, including how the CCA would address a failure to submit transactions that are required to be submitted. Finally, the purpose of the proposal is to ensure that the CCA has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, which policies and procedures the board of directors of such covered clearing agency reviews annually.

This additional collection is mandatory. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.[506]

Proposed Rule 17Ad–22(e)(18)(iv) would require a U.S. Treasury securities CCA to establish, implement, maintain, and enforce written policies and procedures, as discussed above. Because such policies and procedures are not currently required under existing Rule 17Ad–22, the Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(18)(iv) would be significant and may require a respondent clearing agency to make substantial changes to its policies and procedures. The proposed rule amendment contains similar provisions to existing rules, but would also impose additional requirements that do not appear in existing Rule 17Ad–22.[507] As a result, the Commission preliminarily believes that a respondent U.S. Treasury securities CCA would incur burdens of reviewing and updating existing policies and procedures in order to comply with the provisions of proposed Rule 17Ad–22(e)(18)(iv) and, in some cases, may need to create new policies and procedures. Based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for several rules in the Covered Clearing Agency Standards where the Commission anticipated similar burdens,[508] the Commission preliminarily estimates that respondent Treasury securities CCAs would incur an aggregate one-time burden of approximately 520 hours to review existing policies and procedures and create new policies and procedures.[509]

Proposed Rule 17Ad–22(e)(18)(iv) would impose ongoing burdens on a respondent Treasury securities CCA. 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. Based on the similar reporting requirements and the corresponding burden estimates previously made by the Commission for several rules in the Covered Clearing Agency Standards where the Commission anticipated similar burdens,[510] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(18)(iv) would impose an aggregate ongoing burden on respondent clearing agencies of 170 hours.[511]

Name of information collection	Type of burden	Number of respondents	Initial burden per entity (hours)	Aggregate initial burden (hours)	Ongoing burden per entity (hours)	Aggregate ongoing burden (hours)
17Ad–22(e)	Recordkeeping	2	260	520	80	170

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

1. Evaluate whether the proposed collections of information are 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 burdens of the proposed collections 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 and rule amendments would have any effects on any other collection of information not previously identified in this section.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and

[506] *See, e.g.,* 5 U.S.C. 552 *et seq.* Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. *See* 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. *See* 5 U.S.C. 552(b)(8).

[507] *See supra* note 34 and accompanying text (discussing current FICC rules).

[508] *See* CCA Standards Adopting Release, *supra* note 26, 81 FR at 70895–97 (discussing Rules 17Ad–22(e)(13), (15), and (18)). The Commission believes that these Rules present the best comparison to the current proposed rule amendment, in light of the nature of the changes proposed. Although the proposed rule amendment is with respect to Rule 17Ad–22(e)(18), the Commission believes that considering additional rules in the Covered Clearing Agency Standards is reasonable in light of the nature of the proposed requirement and the changes necessary to establish and implement that requirement, as compared to the current Commission rules and U.S. Treasury securities CCA rules.

[509] This figure was calculated as follows: Assistant General Counsel for 40 hours + Compliance Attorney for 80 hours + Computer Operations Manager for 20 hours + Senior Risk Management Specialist for 40 hours + Business Risk Analyst for 80 hours = 260 hours × 2 respondent clearing agencies = 520 hours.

[510] *See supra* note 502 above (discussing relevant aspects of the Covered Clearing Agency Standards).

[511] This figure was calculated as follows: Compliance Attorney for 25 hours + Business Risk Analyst for 40 hours + Senior Risk Management Specialist for 20 hours = 85 hours × 2 respondent clearing agencies = 170 hours.

Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, 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 S7–23–22. 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 S7–23–22 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.

B. Broker-Dealers

The proposed rule amendment to Rule 15c3–3a does not require a new collection of information on the part of any entities subject to these rules. Accordingly, the requirements imposed by the PRA are not applicable to this rule amendment.

VI. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996,[512] a rule is ''major'' if it has resulted, or is likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, investment, or innovation. The Commission requests comment on whether the proposed rules and rule amendments would be a ''major'' rule for purposes of the Small Business Regulatory Enforcement Fairness Act. In addition, the Commission solicits comment and empirical data on: the potential effect on the U.S. economy on annual basis; any potential increase in costs or prices for consumer or individual industries; and any potential effect on competition, investment, or innovation.

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.[513] Section 603(a) of the Administrative Procedure Act,[514] 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.''[515] 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 economic impact on a substantial number of small entities.[516]

A. Clearing Agencies

The proposed amendments to Rule 17Ad–22 would apply to covered clearing agencies, which would include registered clearing agencies that provide the services of a central counterparty or central securities depository.[517] For the purposes of Commission rulemaking and as applicable to the proposed amendments to Rule 17Ad–22, 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.[518]

Based on the Commission's existing information about the clearing agencies currently registered with the Commission, the Commission preliminarily believes that such entities exceed the thresholds defining ''small entities'' set out above. While other clearing agencies may emerge and seek to register as clearing agencies, the Commission preliminarily does not believe that any such entities would be ''small entities'' as defined in Exchange Act Rule 0–10.[519] In any case, clearing agencies can only become subject to the new requirements under proposed Rule 17Ad–22(e) should they meet the definition of a covered clearing agency, as described above. Accordingly, the Commission preliminarily believes that any such registered clearing agencies will exceed the thresholds for ''small entities'' set forth in Exchange Act Rule 0–10.

B. Broker-Dealers

For purposes of Commission rulemaking in connection with the RFA, a small entity includes a broker-dealer that: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act, or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[520] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (1) for entities in credit intermediation and related activities, firms with $175 million or less in assets; (2) for non-depository credit intermediation and certain other activities, firms with $7 million or less in annual receipts; (3) for entities in financial investments and related activities, firms with $7 million or less in annual receipts; (4) for insurance carriers and entities in related activities, firms with $7 million or less in annual receipts; and (5) for funds, trusts, and other financial vehicles, firms with $7 million or less in annual receipts.

The proposed rule amendment to Rule 15c3–3a would permit margin required and on deposit at a covered clearing agency providing central counterparty services for Treasury securities to be included by broker-dealers as a debit in the customer or PAB reserve formula. Only carrying broker-dealers will be impacted by the proposed rule amendment. This is because only carrying broker-dealers are required to maintain a customer or PAB reserve account and may collect customer margin.

Based on FOCUS Report data, the Commission estimates that as of December 31, 2021, there were approximately 744 broker-dealers that were ''small'' for the purposes of Rule 0–10. Of these, the Commission estimates that there are less than ten broker-dealers that are carrying broker-

[512] Pubic Law 104–121, Title II, 110 Stat. 857 (1996).

[513] *See* 5 U.S.C. 601 *et seq.*

[514] 5 U.S.C. 603(a).

[515] 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.

[516] *See* 5 U.S.C. 605(b).

[517] 17 CFR 240.17AD–22(a)(5).

[518] *See* 17 CFR 240.0–10(d).

[519] *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 and lifecycle event service providers for OTC derivatives.

[520] *See* 17 CFR 240.0–10(c).

dealers (*i.e.,* can carry customer or PAB margin accounts and extend credit). However, based on December 31, 2021, FOCUS Report data, none of these small carrying broker-dealers carried debit balances. This means that any ''small'' carrying firms are not extending margin credit to their customers, and therefore, the proposed rule amendment likely would not apply to them. Therefore, while the Commission believes that some small broker-dealers could be affected by the proposed amendment, the amendment will not have a significant impact on a substantial number of small broker-dealers.

C. Certification

For the reasons described above, the Commission certifies that the proposed amendments to Rules 17Ad–22 and 15c3–3a 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, including clearing agencies and broker-dealers, and provide empirical data to support the extent of the impact.

Statutory Authority

The Commission is proposing amendments to Rule 17Ad–22 under the Commission's rulemaking authority set forth in section 17A of the Exchange Act, 15 U.S.C. 78q–1. Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly, sections 15 and 23(a) (15 U.S.C. 78o and 78w(a)), thereof, the Commission is proposing to amend § 240.15c3–3a under the Exchange Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 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.

* * * * *

Section 240.17Ad–22 is also issued under 12 U.S.C. 5461 *et seq.*

* * * * *

■ 2. Revise § 240.15c3–3a to read as follows:

§ 240.15c3–3a Exhibit A–Formula for determination of customer and PAB account reserve requirements of brokers and dealers under § 240.15c3–3.

§ 240.15c3–3a Exhibit A–Formula for determination of customer and PAB account reserve requirements of brokers and dealers under § 240.15c3–3.

	Credits	Debits
1. Free credit balances and other credit balances in customers' security accounts. (See Note A)	XXX	....
2. Monies borrowed collateralized by securities carried for the accounts of customers (See Note B)	XXX	....
3. Monies payable against customers' securities loaned (See Note C)	XXX	....
4. Customers' securities failed to receive (See Note D)	XXX	....
5. Credit balances in firm accounts which are attributable to principal sales to customers	XXX	....
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	XXX	....
7. Market value of short security count differences over 30 calendar days old	XXX	....
8. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days	XXX	....
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	XXX	....
10. Debit balances in customers' cash and margin accounts excluding unsecured accounts and accounts doubtful of collection. (See Note E)	....	XXX
11. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver	....	XXX
12. Failed to deliver of customers' securities not older than 30 calendar days	....	XXX
13. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts. (See Note F)	....	XXX
14. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) related to the following types of positions written, purchased or sold in customer accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (See Note G)	....	XXX
15. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) resulting from the following types of transactions in U.S. Treasury securities in customer accounts that have been cleared, settled, and novated by the clearing agency: (1) purchases and sales of U.S. Treasury securities; and (2) U.S. Treasury securities repurchase and reverse repurchase agreements (See Note H)	....	XXX
Total credits	....	....
Total debits	....	....
16. Excess of total credits (sum of items 1–9) over total debits (sum of items 10–15) required to be on deposit in the ''Reserve Bank Account'' (§ 240.15c3–3(e)). If the computation is made monthly as permitted by this section, the deposit must be not less than 105 percent of the excess of total credits over total debits.	....	XXX

Notes Regarding the Customer Reserve Bank Account Computation

Note A. Item 1 must include all outstanding drafts payable to customers which have been applied against free credit balances or other credit balances and must also include checks drawn in excess of bank balances per the records of the broker or dealer.

Note B. Item 2 must include the amount of options-related or security futures product-related Letters of Credit obtained by a member of a registered clearing agency or a derivatives clearing organization which are collateralized by customers' securities, to the extent of the member's margin requirement at the registered clearing agency or derivatives clearing organization. Item 2 must also include the amount of Letters of Credit which are collateralized by customers' securities and related to other futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule. Item 2 must include the market value of customers' U.S. Treasury securities on deposit at a ''qualified clearing agency'' as defined in Note H below.

Note C. Item 3 must include in addition to monies payable against customers' securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities.

Note D. Item 4 must include in addition to customers' securities failed to receive the amount by which the market value of securities failed to receive and outstanding more than thirty (30) calendar days exceeds their contract value.

Note E. (1) Debit balances in margin accounts must be reduced by the amount by which a specific security (other than an exempted security) which is collateral for margin accounts exceeds in aggregate value 15 percent of the aggregate value of all securities which collateralize all margin accounts receivable; provided, however, the required reduction must not be in excess of the amounts of the debit balance required to be excluded because of this concentration rule. A specified security is deemed to be collateral for a margin account only to the extent it represents in value not more than 140 percent of the customer debit balance in a margin account.

(2) Debit balances in special omnibus accounts, maintained in compliance with the requirements of Section 7(f) of Regulation T (12 CFR 220.7(f)) or similar accounts carried on behalf of another broker or dealer, must be reduced by any deficits in such accounts (or if a credit, such credit must be increased) less any calls for margin, mark to the market, or other required deposits which are outstanding five business days or less.

(3) Debit balances in customers' cash and margin accounts included in the formula under Item 10 must be reduced by an amount equal to 1 percent of their aggregate value.

(4) Debit balances in cash and margin accounts of household members and other persons related to principals of a broker or dealer and debit balances in cash and margin accounts of affiliated persons of a broker or dealer must be excluded from the Reserve Formula, unless the broker or dealer can demonstrate that such debit balances are directly related to credit items in the formula.

(5) Debit balances in margin accounts (other than omnibus accounts) must be reduced by the amount by which any single customer's debit balance exceeds 25 percent (to the extent such amount is greater than $50,000) of the broker-dealer's tentative net capital (*i.e.,* net capital prior to securities haircuts) unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (*e.g.,* the separate accounts of an individual, accounts under common control or subject to cross guarantees) will be deemed to be a single customer's accounts for purposes of this provision. If the registered national securities exchange or the registered national securities association having responsibility for examining the broker or dealer (''designated examining authority'') is satisfied, after taking into account the circumstances of the concentrated account including the quality, diversity, and marketability of the collateral securing the debit balances or margin accounts subject to this provision, that the concentration of debit balances is appropriate, then such designated examining authority may grant a partial or plenary exception from this provision. The debit balance may be included in the reserve formula computation for five business days from the day the request is made.

(6) Debit balances in joint accounts, custodian accounts, participation in hedge funds or limited partnerships or similar type accounts or arrangements that include both assets of a person or persons who would be excluded from the definition of customer (''noncustomer'') and assets of a person or persons who would be included in the definition of customer must be included in the Reserve Formula in the following manner: if the percentage ownership of the non-customer is less than 5 percent then the entire debit balance shall be included in the formula; if such percentage ownership is between 5 percent and 50 percent then the portion of the debit balance attributable to the non-customer must be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula; or if such percentage ownership is greater than 50 percent, then the entire debit balance must be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula.

Note F. Item 13 must include the amount of margin required and on deposit with the Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities and letters of credit collateralized by customers' securities.

Note G. (a) Item 14 must include the amount of margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) for customer accounts to the extent that the margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

(b) Item 14 will apply only if the broker or dealer has the margin related to security futures products, or futures (and options thereon) carried in a securities account pursuant to an approved SRO portfolio margining program on deposit with:

(1) A registered clearing agency or derivatives clearing organization that:

(i) Maintains security deposits from clearing members in connection with regulated options or futures transactions and assessment power over member firms that equal a combined total of at least $2 billion, at least $500 million of which must be in the form of security deposits. For the purposes of this Note G, the term ''security deposits'' refers to a general fund, other than margin deposits or their equivalent, that consists of cash or securities held by a registered clearing agency or derivative clearing organization; or

(ii) Maintains at least $3 billion in margin deposits; or

(iii) Does not meet the requirements of paragraphs (b)(1)(i) through (b)(1)(iii) of this Note G, if the Commission has determined, upon a written request for exemption by or for the benefit of the broker or dealer, that the broker or dealer may utilize such a registered clearing agency or derivatives clearing organization. The Commission may, in its sole discretion, grant such an exemption subject to such conditions as are appropriate under the circumstances, if the Commission determines that such conditional or unconditional exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors; and

(2) A registered clearing agency or derivatives clearing organization that, if it holds funds or securities deposited as margin for security futures products or futures in a portfolio margin account in a bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), obtains and preserves written notification from the bank at which it holds such funds and securities or at which such funds and securities are held on its behalf. The written notification will state that all funds and/or securities deposited with the bank as margin (including customer security futures products and futures in a portfolio margin account), or held by the bank and pledged to such registered clearing agency or derivatives clearing agency as margin, are being held by the bank for the exclusive benefit of clearing members of the registered clearing agency or derivatives clearing organization (subject to the interest of such registered clearing agency or derivatives clearing organization therein), and are being kept separate from any other accounts maintained by the registered clearing agency or derivatives clearing organization with the bank. The written notification also will provide that such funds and/or securities will at no time be used directly or indirectly as security for a loan to the registered clearing agency or derivatives clearing organization by the bank, and will be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any

person claiming through the bank. This provision, however, will not prohibit a registered clearing agency or derivatives clearing organization from pledging customer funds or securities as collateral to a bank for any purpose that the rules of the Commission or the registered clearing agency or derivatives clearing organization otherwise permit; and

(3) A registered clearing agency or derivatives clearing organization establishes, documents, and maintains:

(i) Safeguards in the handling, transfer, and delivery of cash and securities;

(ii) Fidelity bond coverage for its employees and agents who handle customer funds or securities. In the case of agents of a registered clearing agency or derivatives clearing organization, the agent may provide the fidelity bond coverage; and

(iii) Provisions for periodic examination by independent public accountants; and

(iv) A derivatives clearing organization that, if it is not otherwise registered with the Commission, has provided the Commission with a written undertaking, in a form acceptable to the Commission, executed by a duly authorized person at the derivatives clearing organization, to the effect that, with respect to the clearance and settlement of the customer security futures products and futures in a portfolio margin account of the broker or dealer, the derivatives clearing organization will permit the Commission to examine the books and records of the derivatives clearing organization for compliance with the requirements set forth in § 240.15c3–3a, Note G (b)(1) through (3).

(c) Item 14 will apply only if a broker or dealer determines, at least annually, that the registered clearing agency or derivatives clearing organization with which the broker or dealer has on deposit margin related to securities future products or futures in a portfolio margin account meets the conditions of this Note G.

Note H. (a) Item 15 must include the amount of margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) that clears, settles, and novates transactions in U.S. Treasury securities (''qualified clearing agency'') to the extent that the margin is in the form of cash or U.S. Treasury securities and is being used to margin U.S. Treasury securities positions of the customers of the broker or dealer that are cleared, settled, and novated by the qualified clearing agency.

(b) Item 15 will apply only if the cash and U.S. Treasury securities required and on deposit at the qualified clearing agency:

(1) Are, in the case of cash, owed by the broker or dealer to the customer of the broker or dealer or, in the case of U.S. Treasury securities, held in custody by the broker or dealer for the customer of the broker or dealer and were delivered by the broker or dealer to the qualified clearing agency to meet a margin requirement resulting from that customer's U.S. Treasury securities positions cleared, settled, and novated at the qualified clearing agency and not for any other customer's or the broker's or dealer's U.S. Treasury securities positions cleared, settled, and novated at the qualified clearing agency;

(2) Are treated in accordance with rules of the qualified clearing agency that impose the following requirements and the qualified clearing agency and broker or dealer are in compliance with the requirements of the rules (as applicable);

(i) Rules requiring the qualified clearing agency to calculate a separate margin amount for each customer of the broker or dealer and the broker or dealer to deliver that amount of margin for each customer on a gross basis;

(ii) Rules limiting the qualified clearing agency from investing cash delivered by the broker or dealer to margin U.S. Treasury security transactions of the customers of the broker or dealer or cash realized through using U.S. Treasury securities delivered by the broker or dealer for that purpose in any asset other than U.S. Treasury securities with a maturity of one year or less;

(iii) Rules requiring that the cash and U.S. Treasury securities used to margin the U.S. Treasury securities positions of the customers of the broker or dealer be held in an account of the broker or dealer at the qualified clearing agency that is segregated from any other account of the broker or dealer at the qualified clearing agency and that is:

(A) Used exclusively to clear, settle, novate, and margin U.S. Treasury securities transactions of the customers of the broker or dealer;

(B) Designated ''Special Clearing Account for the Exclusive Benefit of the Customers of [name of broker or dealer]'';

(C) Subject to a written notice of the qualified clearing agency provided to and retained by the broker or dealer that the cash and U.S. Treasury securities in the account are being held by the qualified clearing agency for the exclusive benefit of the customers of the broker or dealer in accordance with the regulations of the Commission and are being kept separate from any other accounts maintained by the broker or dealer or any other clearing member at the qualified clearing agency; and

(D) Subject to a written contract between the broker or dealer and the qualified clearing agency which provides that the cash and U.S. Treasury securities in the account are not available to cover claims arising from the broker or dealer or any other clearing member defaulting on an obligation to the qualified clearing agency or subject to any other right, charge, security interest, lien, or claim of any kind in favor of the qualified clearing agency or any person claiming through the qualified clearing agency, except a right, charge, security interest, lien, or claim resulting from a cleared U.S. Treasury securities transaction of a customer of the broker or dealer effected in the account;

(iv) Rules requiring the qualified clearing agency to hold the customer cash and U.S. Treasury securities used to margin the U.S. Treasury securities positions of the customers of the broker or dealer itself or in an account of the clearing agency at a U.S. Federal Reserve Bank or a ''bank,'' as that term is defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), that is insured by the Federal Deposit Insurance Corporation, and that the account at the U.S. Federal Reserve Bank or bank must be:

(A) Segregated from any other account of the qualified clearing agency or any other person at the U.S. Federal Reserve Bank or bank and used exclusively to hold cash and U.S. Treasury securities to meet current margin requirements of the qualified clearing agency resulting from positions in U.S. Treasury securities of the customers of the broker or dealer members of the qualified clearing agency;

(B) Subject to a written notice of the U.S. Federal Reserve Bank or bank provided to and retained by the qualified clearing agency that the cash and U.S. Treasury securities in the account are being held by the U.S. Federal Reserve Bank or bank pursuant to § 240.15c3–3 and are being kept separate from any other accounts maintained by the qualified clearing agency or any other person at the U.S. Federal Reserve Bank or bank; and

(C) Subject to a written contract between the qualified clearing agency and the U.S. Federal Reserve Bank or bank which provides that the cash and U.S. Treasury securities in the account are subject to no right, charge, security interest, lien, or claim of any kind in favor of the U.S. Federal Reserve Bank or bank or any person claiming through the U.S. Federal Reserve Bank or bank; and

(v) Rules requiring systems, controls, policies, and procedures to return cash and U.S. Treasury securities to the broker or dealer that are no longer needed to meet a current margin requirement resulting from positions in U.S. Treasury securities of the customers of the broker or dealer no later than the close of the next business day after the day the cash and U.S. Treasury securities are no longer needed for this purpose; and

(3) The Commission has approved rules of the qualified clearing agency that meet the conditions of this Note H and has published (and not subsequently withdrawn) a notice that brokers or dealers may include a debit in the customer reserve formula when depositing customer cash or U.S. Treasury securities to meet a margin requirement of the qualified clearing agency resulting from positions in U.S. Treasury securities of the customers of the broker or dealer.

Notes Regarding the PAB Reserve Bank Account Computation

Note 1. Broker-dealers should use the formula in Exhibit A for the purposes of computing the PAB reserve requirement, except that references to ''accounts,'' ''customer accounts, or ''customers'' will be treated as references to PAB accounts.

Note 2. Any credit (including a credit applied to reduce a debit) that is included in the computation required by § 240.15c3–3 with respect to customer accounts (the ''customer reserve computation'') may not be included as a credit in the computation required by § 240.15c3–3 with respect to PAB accounts (the ''PAB reserve computation'').

Note 3. Note E(1) to § 240.15c3–3a does not apply to the PAB reserve computation.

Note 4. Note E(3) to § 240.15c3–3a which reduces debit balances by 1 percent does not apply to the PAB reserve computation.

Note 5. Interest receivable, floor brokerage, and commissions receivable of another broker or dealer from the broker or dealer

(excluding clearing deposits) that are otherwise allowable assets under § 240.15c3–1 need not be included in the PAB reserve computation, provided the amounts have been clearly identified as payables on the books of the broker or dealer. Commissions receivable and other receivables of another broker or dealer from the broker or dealer that are otherwise non-allowable assets under § 240.15c3–1 and clearing deposits of another broker or dealer may be included as ''credit balances'' for purposes of the PAB reserve computation, provided the commissions receivable and other receivables are subject to immediate cash payment to the other broker or dealer and the clearing deposit is subject to payment within 30 days.

Note 6. Credits included in the PAB reserve computation that result from the use of securities held for a PAB account (''PAB securities'') that are pledged to meet intra-day margin calls in a cross-margin account established between the Options Clearing Corporation and any regulated derivatives clearing organization may be reduced to the extent that the excess margin held by the other clearing corporation in the cross-margin relationship is used the following business day to replace the PAB securities that were previously pledged. In addition, balances resulting from a portfolio margin account that are segregated pursuant to Commodity Futures Trading Commission regulations need not be included in the PAB Reserve Bank Account computation.

Note 7. Deposits received prior to a transaction pending settlement which are $5 million or greater for any single transaction or $10 million in aggregate may be excluded as credits from the PAB reserve computation if such balances are placed and maintained in a separate PAB Reserve Bank Account by 12 p.m. Eastern Time on the following business day. Thereafter, the money representing any such deposits may be withdrawn to complete the related transactions without performing a new PAB reserve computation.

Note 8. A credit balance resulting from a PAB reserve computation may be reduced by the amount that items representing such credits are swept into money market funds or mutual funds of an investment company registered under the Investment Company Act of 1940 on or prior to 10 a.m. Eastern Time on the deposit date provided that the credits swept into any such fund are not subject to any right, charge, security interest, lien, or claim of any kind in favor of the investment company or the broker or dealer. Any credits that have been swept into money market funds or mutual funds must be maintained in the name of a particular broker or for the benefit of another broker.

Note 9. Clearing deposits required to be maintained at registered clearing agencies may be included as debits in the PAB reserve computation to the extent the percentage of the deposit, which is based upon the clearing agency's aggregate deposit requirements (*e.g.,* dollar trading volume), that relates to the proprietary business of other brokers and dealers can be identified. However, Note H to Item 15 of § 240.15c3–3a applies with respect to margin delivered to a U.S. Treasury securities clearing agency.

Note 10. A broker or dealer that clears PAB accounts through an affiliate or third party clearing broker must include these PAB account balances and the omnibus PAB account balance in its PAB reserve computation.

■ 3. Amend § 240.17Ad-22 by:

■ a. In paragraph (a):

■ i. Removing the second-level paragraph designations, and

■ ii. Inserting in alphabetical order definitions for ''Central bank'', ''Eligible secondary market transaction'', ''International financial institution'', ''Sovereign entity'', and ''U.S. Treasury security''.

■ b. Revising paragraphs (e)(6)(i) and (e)(18).

The revisions and additions read as follows:

§ 240.17Ad-22 Standards for clearing agencies.

(a) * * *

Central bank means a reserve bank or monetary authority of a central government (including the Board of Governors of the Federal Reserve System or any of the Federal Reserve Banks) and the Bank for International Settlements.

* * * * *

Eligible secondary market transaction refers to a secondary market transaction in U.S. Treasury securities of a type accepted for clearing by a registered covered clearing agency that is:

(i) A repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities, in which one of the counterparties is a direct participant; or

(ii) A purchase or sale, between a direct participant and

(A) Any counterparty, if the direct participant of the covered clearing agency brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions;

(B) Registered broker-dealer, government securities broker, or government securities dealer;

(C) A hedge fund, that is, any private fund (other than a securitized asset fund):

(*1*) With respect to which one or more investment advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses);

(*2*) That may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or

(*3*) That may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration); or

(D) An account at a registered broker-dealer, government securities dealer, or government securities broker where such account may borrow an amount in excess of one-half of the net value of the account or may have gross notional exposure of the transactions in the account that is more than twice the net value of the account; except that

(iii) any purchase or sale transaction in U.S. Treasury securities or repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities in which one counterparty is a central bank, a sovereign entity, an international financial institution, or a natural person shall be excluded from the definition set forth in this section of an eligible secondary market transaction.

* * * * *

International financial institution means the African Development Bank; African Development Fund; Asian Development Bank; Banco Centroamericano de Integración Económica; Bank for Economic Cooperation and Development in the Middle East and North Africa; Caribbean Development Bank; Corporación Andina de Fomento; Council of Europe Development Bank; European Bank for Reconstruction and Development; European Investment Bank; European Investment Fund; European Stability Mechanism; Inter-American Development Bank; Inter-American Investment Corporation; International Bank for Reconstruction and Development; International Development Association; International Finance Corporation; International Monetary Fund; Islamic Development Bank; Multilateral Investment Guarantee Agency; Nordic Investment Bank; North American Development Bank; and any other entity that provides financing for national or regional development in which the U.S. Government is a shareholder or contributing member.

* * * * *

Sovereign entity means a central government (including the U.S. Government), or an agency, department, or ministry of a central government.

* * * * *

U.S. Treasury security means any security issued by the U.S. Department of the Treasury.

* * * * *

(e) * * *

(6) * * *

(i) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, and, if the covered clearing agency provides central counterparty services for U.S. Treasury securities, calculates, collects, and holds margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities;

* * * * *

(18) Establish objective, risk-based, and publicly disclosed criteria for participation, which

(i) Permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities,

(ii) Require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency,

(iii) Monitor compliance with such participation requirements on an ongoing basis, and

(iv) When the covered clearing agency provides central counterparty services for transactions in U.S. Treasury securities,

(A) Require that any direct participant of such covered clearing agency submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty;

(B) Identify and monitor its direct participants' submission of transactions for clearing as required in paragraph (e)(18)(iv)(A) of this section, including how the covered clearing agency would address a failure to submit transactions in accordance with paragraph (e)(18)(iv)(A) of this section; and

(C) Ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, which policies and procedures board of directors of such covered clearing agency reviews annually.

* * * * *

By the Commission.

Dated: September 14, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–20288 Filed 10–24–22; 8:45 am]

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